IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT CLARK GEDDES,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR BOONE COUNTY
DISTRICT ASSOCIATE JUDGE STEPHEN A. OWEN

APPELLEE'S BRIEF

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ROUTING STATEMENT

The State disagrees with Geddes that retention is appropriate. There is not a substantial free-speech constitutional challenge to Iowa Code section 716.7(2)(a)(1) prohibiting trespass. Iowa R. App. P. 6.1101(2)(a). Geddes was not punished for his words.

Two statutory interpretation issues appear to be of first impression. The first is how section 716.7(2)(a)(1) works with hate-crime provisions in Iowa Code sections 716.8(3) and 729A.2(4). Interpretive canons weigh strongly against Geddes's proposed interpretation, so the issue is not substantial. Iowa R. App. P. 6.1101(2)(c). The second is the meaning of "association" in section 729A.2. Yet, no matter the definition of "association," it is met here.

Were Geddes's constitutional vagueness and overbreadth challenges to section 716.7(2)(a)(1) not eclipsed by *State v. Chase*, 335 N.W.2d 630 (Iowa 1983), the State would agree that they are substantial. Iowa R. App. P. 6.1101(2)(a). But *Chase* requires the Court to summarily reject them.

So, this case presents issues that can be resolved by the application of existing legal principles. Transfer to the court of appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

"Burn that gay flag." This is the anonymous command Robert Clark Geddes posted on front doors of five Boone properties flying rainbow flags. Geddes contends that free-speech protections shield him from punishment for hate-crime trespass. Yet, he was not punished for the content of his notes—they simply announced his guilty mind. Even so, Geddes meant to intimidate with his notes, so they are not protected speech.

Geddes also argues that evidence was insufficient to convict him and that the trespass statute is vague and overbroad. His misinterpretations of the underlying statutes resolve the sufficiency claims. And the Iowa Supreme Court held that a materially indistinguishable version of the challenged trespass statute is not vague or overbroad. *State v. Chase*, 335 N.W.2d 630 (Iowa 1983).

Course of Proceedings

The State charged defendant Robert Clark Geddes with five counts of harassment in violation of Iowa Code section 708.7(1)(a)(1), a simple misdemeanor, as well as five counts of trespass as a hate crime in violation of Iowa Code sections 716.7 and 716.8, a serious misdemeanor. Rule 2.17(2) Findings Fact, Conclusions Law, &

Verdicts p. 3 (Apr. 18, 2022) (hereinafter Rule 2.17(2) Order); Conf. App. 83. On the State's motion, the district court consolidated all five trespass case files—each included a companion harassment charge—into one: SRCR114537. Order: Close & Consolidate Cases (July 14, 2021); App. 9–10. In the State's trial information charging five counts of hate-crime trespass—the only indictable counts—it included each of the simple misdemeanor harassment complaints in the minutes of evidence. Minutes Evid. pp. 3–6, 15–18, 27–30, 40–44, 56–59; Conf. App. 6–9, 18–21, 30–33, 43–47, 59–62.

The parties agreed to a trial on the minutes and made further agreements in anticipation of the district court convicting on the five hate-crime-trespass charges. Trial Tr. 4:9–13. Geddes agreed to a trial on the minutes to preserve his free-speech challenge for appeal. Trial Tr. 3:12–18. The State agreed to dismiss the harassment charges and recommend probation. Trial Tr. 4:9–22. The parties agreed that the suspended sentence would be five consecutive one-year prison terms. *Id.*

After the trial on the minutes, the district associate judge did find Geddes guilty on all five counts of trespass as a hate crime. Rule 2.17(2) Order p. 14; Conf. App. 94. The judge sentenced him to one

year in jail on each count, with credit for time served, and suspended the sentences in favor of probation. Judgment & Sentence p. 1; App. 43.

Facts

Geddes handwrote a note on a triangle-shaped paper with an exclamation point made to resemble a warning sign:

> Warning due to high levels of [flaggotry][1] an investigation has been launched to control the spread of HIV/AIDS. We are sad to say the bare back orgy has been canceled. Burn that gay flag.

Rule 2.17(2) Order p. 4; Conf. App. 84. Geddes placed the note on the door of a rented building that displayed in the window a rainbow flag, known as an LGBTQ+ pride flag. *Id.* The renter of this building in Boone found the note on June 16, 2021. *Id.* Geddes placed the note there due to the renter's sexual orientation or her association with persons of a certain sexual orientation. *Id.* at 10; Conf. App. 90. The renter felt harassed, alarmed, annoyed, and threatened. *Id.* at 4; Conf. App. 84; Minutes Evid. p. 2; Conf. App. 5.

[1] The minutes consistently state the note says "flaggotry," while the ruling says "faggotry." Minutes pp. 2, 54, 57, 59, 66; Conf. App. 5, 57, 60, 62, 69; Rule 2.17(2) Order pp. 2, 4, 13; Conf. App. 82, 84, 93. The version of Geddes's portmanteau in the minutes shows his slur was tied to the pride flags.

Geddes then placed four more handwritten notes on four residences flying pride flags in Boone. Rule 2.17(2) Order pp. 3–4; Conf. App. 83–84. Each of these notes was on white notebook paper and omitted the virulent opening of the first, saying just, "Burn that gay flag." *Id*. The people who found each shorter note were lawful possessors of the targeted properties, respectively, and felt alarmed, annoyed, and threatened. *Id*.; Minutes Evid. pp. 1–2; Conf. App. 4–5.

After being arrested and while being processed for four of the charges, Geddes was presented with documents for the fifth charge—he responded, "I figured." Minutes Evid. pp. 1, 53, 68; Conf. App. 4, 56, 71.

Motion to Dismiss

Geddes moved to dismiss the trial information on free-speech grounds, citing the United States Constitution's First Amendment as well as the Iowa Constitution's article I section 7, which provides parallel protections. Mot. Dismiss (Sept. 28, 2021); App. 11–27.

The State resisted, addressing both trespass charges under section 716.7 as well as pending simple-misdemeanor harassment charges under section 708.7. Resistance Mot. Dismiss (Oct 11, 2021); App. 28–33. Though the harassment charges were not indictable, the

district court concluded that it could only address trespass violations in the trial information. Ruling & Order p. 5 (Oct. 12, 2021); App. 38. Yet, the simple misdemeanor harassment charges remained pending as part of the consolidated criminal complaints. The complaints were also included as minutes of testimony. Minutes Evid. pp. 3–6, 15–18, 27–30, 40–44, 56–59; Conf. App. 6–9, 18–21, 30–33, 43–47, 59–62.

Dispelling the argument that Geddes was punished for his thoughts or words, the district court reasoned: "The statutes in question criminalize actions, specifically unlawful "entering", which is enhanced due to a status of an owner or possessor's membership or association in a class of protection, the statutes do not criminalize thoughts or words." Ruling & Order p. 4; App. 37. Noting that Geddes's words were not criminalized but were evidence of his criminal intent, the district court concluded that it is "entering (or trespassing) that is criminalized to the level of a hate crime because of the statutorily protected status" of the property's owner or possessor or the owner's or possessor's association with someone having protected status. *Id.* The court denied the motion.

Geddes agreed to trial on the minutes to pursue this appeal. Trial Tr. 3:12–18; 4:9–22.

ARGUMENT

I. It is a hate crime to trespass because of the property possessor's association with people of a certain sexual orientation, and Geddes did so five times.

Preservation of Error

Geddes does not contend that he preserved a challenge to the legal argument that trespass as a hate crime requires a predicate hate crime. Appellant's Br. pp. 32–33. The same goes for his proposed interpretation of "association." *Id.* Attempting to sidestep these shortcomings, he portrays his nuanced legal challenges to the necessary elements as a routine challenge to the sufficiency of the evidence, citing *State v. Crawford*, 972 N.W.2d 189 (Iowa 2022). Straightforward challenges to sufficiency are not required to be preserved below, it is true. *Id.* But *Crawford* does not say anything about a multifaceted legal challenge to the elements making up a crime under three code provisions working in concert. Geddes's legal challenge is unpreserved.

Geddes does not challenge the validity of harassment in violation of Iowa Code section 708.7(4) as a predicate crime for hate-crime trespass, so he has waived that argument as well. Appellant's Br. pp. 32–105.

Standard of Review

Challenges to the elements of a crime require statutory interpretation, which is reviewed for errors of law. *State v. Wells*, 629 N.W.2d 346, 351 (Iowa 2001). Sufficiency of the evidence is also reviewed for errors at law. *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018)).

Merits

Defendant Robert Geddes committed trespass in violation of Iowa Code section 716.7(2)(a)(1) five times. He trespassed each time that he, without permission, entered onto property with the intent to harass the possessor by placing a note thereon. Iowa Code § 716.7(2)(a)(1)). Each trespass was a hate crime because Geddes did so because of the property possessor's sexual orientation or their association with people of a certain sexual orientation. Iowa Code §§ 716.8(3) & 729.2(4).

The statutes under which Geddes was convicted of hate-crime trespass do not require that he intended to commit a separate hate crime. Iowa Code §§ 716.7(2)(a)(1), 716.8(3), & 729A.2(4). So, the court can reject Geddes's elements argument on the merits as well as for lack of preservation. Also, there was sufficient evidence of

Geddes's knowing entry on the properties, without permission, with the intent to commit harassment or place the notes there, because of the property owners' or possessors' sexual orientation or association with persons of certain sexual orientations. The court should thus reject Geddes's sufficiency arguments.

A. Hate-crime trespass does not require an intent to commit a separate hate crime.

Geddes was properly charged with, and convicted of, trespass as a hate crime. The trespass statute here prohibits a person without express permission from entering onto property of another with the intent to commit a public offense or to place anything thereon:

> "Trespass" shall mean . . . [e]ntering upon . . . property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to . . . place thereon or therein anything . . . inanimate . . . , or to hunt . . . .

Iowa Code § 716.7(2)(a)(1)). The penalty provision, section 716.8(3), makes a trespass violation a hate crime when the trespasser does so "knowingly . . . with the intent to commit a hate-crime, as defined in

section 729A.2 . . . ."[2] Iowa Code § 716.8(3) (2019). The referenced provision, section 729A.2(4), tells us:

> "Hate crime" means one of the following public offenses when committed against . . . a person's property because of the person's . . . sexual orientation . . . or the person's association with a person of a certain . . . sexual orientation . . . .
>
> . . .
>
> Trespass in violation of individual rights under section 716.8, subsections 3 and 4.

Iowa Code § 729A.2(4). Besides trespass, the offenses listed in 729A.2 are assault, arson, and criminal mischief. *Id.*

The proper reading of the combination of statutes here is that Geddes committed a hate crime if he 1) knowingly trespassed; and 2) he did so because of a person's sexual orientation or association with a person of a certain sexual orientation. Yet, Geddes reads the language in the penalty provision, section 716.8(3), to require an intent to commit a second hate crime. The penalty provision, however, points to the hate-crime definition, section 729A.2, to require its "because of" provision, not its list of offenses. We know this because the penalty provision, section 716.8(3), is already on that

[2] This is the language Geddes uses to argue that trespass is not a hate crime unless the violator does so intending to commit a separate hate crime not tied to the trespass. Appellant's Br. pp. 32–46.

list. Iowa Code § 729A.2(4). There is no requirement to commit a second hate crime.

The first step in interpreting a statute is to determine whether its language is ambiguous. *State v. Coleman*, 907 N.W.2d 124, 135 (Iowa 2018). If it is not ambiguous, the Court applies the plain language. *State v. Ross*, 941 N.W.2d 341, 346 (Iowa 2020). If, based on the statute's context, reasonable minds could differ about its meaning, only then does the analysis turn to canons of statutory construction. *State v. Iowa Dist. Ct.*, 889 N.W.2d 467, 471 (Iowa 2017). The primary objective is to honor the intent of the legislature. *State v. Harrison*, 846 N.W.2d 362, 367 (Iowa 2014).

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
>
> 1. The object sought to be attained.
>
> 2. The circumstances under which the statute was enacted.
>
> 3. The legislative history.
>
> 4. The common law or former statutory provisions, including laws upon the same or similar subjects.
>
> 5. The consequences of a particular construction.

> 6. The administrative construction of the statute.
>
> 7. The preamble or statement of policy.

Iowa Code § 4.6. The language of the penalty provision—"with the intent to commit a hate crime"—could be interpreted two ways, so it is ambiguous. We thus turn to canons.

The penalty provision and hate-crime definition sections point to one another, and so, under the *in pari materia* canon, they are closely related and should be read as one provision. Iowa Code §§ 716.8(3) & 729A.2(4). Two principles underlie this canon: "(1) that the body of the law should make sense, and (2) that it is the responsibility of the courts, within the permissible meanings of the text, to make it so." Antonin S. Scalia & Brian A. Garner, *Reading Law: Interpretation of Legal Texts* 252 (2012). *State v. Peters* tells us that even without cross references, the statutes at issue there were sufficiently closely related. 525 N.W.2d 854, 857 (Iowa 1994) (citing 82 C.J.S. *Statutes* § 366, at 801–08 (1953)). *Peters* thus began its analysis with the premise that statutes with cross references should be read as one. That is where interpretation here should begin as well—it just makes sense to consider the penalty provision in section 716.8(3) and hate-crime definition in section 729A.2 as one.

The penalty provision adds the "with the intent to commit a hate crime," language here, and it points to section 729A.2 for its definition of hate crime. Iowa Code § 716.8(3). Considering those two provisions as one law, the crux here is the meaning of the "with the intent to commit a hate crime," language in the section 716.8(3) penalty provision. Geddes urges that it means he did not commit a hate crime unless he trespassed while intending to commit an additional section 729A.2 listed offense because of the property possessor's protected status—assault, arson, property damage, or an additional trespass. Reading the laws together dispels this notion—they require only that he trespassed because of the property possessor's protected status.

The hate-crime definition requires an offense to be committed for a prohibited reason but points to the section 716.8(3) penalty provision here as one of the offenses. Iowa Code § 729A.2. Section 716.8(3) does not include the section 792A.2 definition provision's list of offenses because section 716.8(3) is one of its offenses. It makes little sense for section 716.8(3)'s reference to section 792A.2 to incorporate the list it is already on. So, sensibly, it incorporates only

the remainder—that trespass is a hate crime when committed because of a property possessor's protected status.

Geddes proposes that the strictest possible reading is required. Yet, it is not a canon but a false notion that words of a statute should be strictly construed. Scalia & Garner, *Reading Law* at 355. Reaching a fair meaning, not the narrowest meaning, is the goal of interpretation. *Id.* As shown in the following paragraphs, the bizarre effects of Geddes's interpretation disqualify it as the combined statutes' fair meaning. Iowa Code § 4.6(5).

If the section 716.8(3) penalty provision added a requirement that a separate hate crime was intended, that separate hate crime could never be trespass despite trespass's inclusion in the definition section's list of covered offenses. This is because the predicate hate-crime trespass would itself need a separate hate-crime predicate—a third hate crime. Otherwise, the predicate hate-crime trespass would not have its predicate hate-crime element required under Geddes's section 716.8(3) reading. Each hate-crime trespass predicate would be in search of its own predicate hate crime, which could never be hate-crime trespass because the State could only ever get half the way there in its proof. So, Geddes's reading renders superfluous

subsection (4) of section 729A.2, which points to sections 716.8(3) and (4) trespass penalty provisions in its list of hate crimes. Iowa Code § 729A.2(4). In Geddes's interpretation, the section 716.8(3) penalty provision does all the work. So, section 729A.2(4) would be unnecessary.

Geddes's proposed reading runs afoul of three statutory-interpretation canons. As shown, Geddes's reading effectively invalidates Iowa Code section 729A.2(4). So, the presumption-of-validity canon prefers the State's interpretation, which validates that subsection. Scalia & Garner, *Reading Law* at 66. A provision of a statute rendered futile also violates the surplusage canon—subsection (4) of section 729A.2 would be of no consequence if section 716.8(3) requires proof of a separate hate crime. *Id.* at 174. Finally, Geddes's infinite-loop reading is absurd, violating the canon to avoid absurd results. *Id.* at 234 (2012). The results of Geddes's reading favor the State's interpretation. Iowa Code § 4.6(5). After these interpretive canons are applied, there remains no reasonable doubt as to the meaning of the related provisions, so the rule of lenity has no application here. Scalia & Garner, *Reading Law* at 297. The tools of interpretation require the State's reading.

Reading the two closely related provisions together avoids invalidating one subsection of the hate-crime definition. The *in pari materia* interpretation largely tracks Geddes's approach but does not create an infinite loop or render parts of the law surplusage. Under this better reading, Geddes need not have intended to commit a second hate crime to commit the first.

B. "Association" is not ambiguous, and flying a flag shows an association with a group of people.

The term "association" used in section 729A.2 is unambiguous. "Association" has a well-known meaning derived from free-speech principles. Flying a pride flag undoubtedly displays an association with people of a certain sexual orientation. The evidence here thus showed that Geddes committed his trespass because of the victims' association with those of certain sexual orientations.

The because-of-an-association element requires that Geddes trespassed because of any victim's protected association. Importantly, the term "because of" addresses what was in Geddes's mind, not that there was, in fact, such an association. The State did not have to provide evidence that any victim associated with a person of a certain sexual orientation, only that Geddes thought so. The court should not

credit Geddes's arguments that association is an ambiguous term or that evidence of association was insufficient.

Free-speech principles support Geddes's conviction, they don't prohibit it. "Association" is a well-understood free-speech term and not ambiguous. The district court said it well: "[W]e 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, economic, educational, religious, and cultural ends." Rule 2.17(2) Order p. 8 (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)); Conf. App. 88.

Geddes says that people could argue about the meaning of "association." Reductively, he concludes that this renders the statute ambiguous. People could of course argue about anything; the ability to make a bad argument doesn't make every word used everywhere ambiguous. The argument on each side must be reasonable. And "people could argue" is not a reasonable argument. Yet, that is all that Geddes offers here. There is no reason to resort to canons of statutory interpretation because we know what "association" means in a free-speech context.

C. The evidence of Geddes's five hate-crime trespasses is sufficient.

Properly construed as not requiring intent to commit a separate hate crime, and fairly reading "association," Geddes violated the trespass provision, section 716.7(2)(a)(1), as enhanced by the interplay of the hate-crime penalty and definition provisions—sections 716.8 and 729A.2. The elements of a hate-crime trespass are:

> (1) Geddes knowingly entered upon property of another.
>
> (2) He did not have the express permission of the person in possession.
>
> (3) When Geddes entered, he had the specific intent to commit the crime of harassment or to place any object on or in the property.
>
> (4) Geddes committed the offense against a person's property because of the person's sexual orientation or association with a person of a certain sexual orientation.

Iowa State Bar Association, Model Jury Instructions 1610.1 & 2900.1 (June 2000); Iowa Code §§ 716.7(2)(a)(1), 716.8(3), & 729A.2(4).

At trial, the standard of proof begins as robust—the State must prove every element of a crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). Failure violates a defendant's due process rights under the Fourteenth Amendment to the United States

Constitution. *Id.* After trial, the burden flips to the defendant and the appellate court gives strong deference to the factfinder. *Coleman v. Johnson*, 566 U.S. 650, 656–57 (2012) (per curiam).

On appeal, the factfinder is entitled to deference, and its verdict is binding if supported by substantial evidence. *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017). Substantial evidence is that which will convince a rational factfinder beyond a reasonable doubt that the defendant is guilty. *State v. Torres*, 495 N.W.2d 678, 681 (1993). Evidence is viewed in the light most favorable to the verdict, which means the State is allowed all "legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *Crawford*, 972 N.W.2d at 202 (quoting *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005)). "This standard recognizes that it is the province of the fact-finder, not this court, 'to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *Garrison v. Burt*, 637 F.3d 849, 854–55 (8th Cir. 2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Geddes first challenges the sufficiency of the evidence that he trespassed with the intent to commit a hate crime. Geddes faults the

State for not proving a predicate hate crime. As established above, sections 716.8(3) and 729A.2 refer to each other and thus require one hate crime, not two. Geddes does not make a sufficiency argument under the prevailing interpretation, so the State takes the related because-of challenge and the association challenge together.

"Burn that gay flag" written on a note posted to the door of a home displaying a LGBTQ+ pride flag really tells us all we need to know about why Geddes went on any of the properties and left his notes. A reasonable factfinder could find that Geddes perceived an association between the property possessors and people with a certain sexual orientation. Rule 2.17(2) Order pp. 10–13; Conf. App. 90–93. In the longer note posted on the commercial building, Geddes tied it together even more closely, using the term "flaggotry"—an apparent combination of flag, pageantry, and a slur against LGBTQ+ people. Minutes Evid. p. 2; Conf. App. 5.

For as long as humans have made textiles, flying a flag has been a way that an individual or group can show a relationship or association with other people—members of nations, states, or cities; supporters of political figures, partisan movements, or even sports teams; as well as those in special status groups or certain careers such

as law enforcement, labor unions, or health care workers. *Shurtleff v. City of Boston, Massachusetts*, 142 S. Ct. 1583, 1590–92 (2022). There are few ways more universal to show an association with a group of people than flying a flag. *See id.* (detailing the history of flag flying and mentioning that the city's approval of a pride flag flown on city property connected it to the related cause or message). If a person flies a flag, it is a physical manifestation of their association with the group symbolized. *See West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 632 (1943) ("The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design.").

Whatever the precise contours of "association" in section 729A.2, the proof here meets the because-of-an-association element: Geddes trespassed to post the notes because of the pride flags, which convinced him that the property possessor had an association with a person of a certain sexual orientation. Rule 2.17(2) Order pp. 10–14; Conf. App. 90–94. Each property here that bore a rainbow LGBTQ+ pride flag told the world of the property possessor's association with

people of different sexual orientations. *See e.g.*, *Coleman v. Miller*, 117 F.3d 527, 528 (11th Cir. 1997) (concluding that the Confederate battle flag on Georgia's state flag was "an emblem that historically had been associated with white supremacy and resistance to federal authority"); *see also Texas v. Johnson*, 491 U.S. 397, 405 (1989) ("Pregnant with expressive content, the flag as readily signifies this Nation as does the combination of letters found in 'America.' "). Flying a pride flag is thus symbolic speech saying: I have an association with people of certain sexual orientations.

The association that a rational factfinder could find the pride flags reflected to Geddes is an association of likeminded people with a set of similar political, social, and cultural goals for people of certain sexual orientations. Rule 2.17(2) Order p. 8; Conf. App. 88. At a minimum, a rational factfinder could conclude that is what the flags told Geddes. Even if the only association with flying the pride flags was a message, "we support people of certain sexual orientations," that is expressive symbolism of an association, from which a rational factfinder could reasonably infer from Geddes's five "Burn that gay flag" notes on five properties bearing pride flags that those pride flags told Geddes of an association. So, evidence was sufficient that he

trespassed because of the possessor's association with a person having a certain sexual orientation.

* * *

The court should reject Geddes's elements and sufficiency arguments.

II. Geddes was not convicted for the content of his notes, so free-speech protections do not apply. Even so, the notes' messages are unprotected true threats.

Preservation of Error

The State agrees that Geddes preserved his free-speech claim. Mot. Dismiss pp. 14–17; App. 24–27.

Standard of Review

Constitutional claims are reviewed de novo. *State v. Milner*, 571 N.W.2d 7, 12 (Iowa 1997).

Merits

Constitutional free speech protections do not prohibit punishing Geddes for his actions here. A law does not violate free-speech principles if it punishes a person for committing a crime for a prohibited reason. *State v. Hennings*, 791 N.W.2d 828, 833–35 (Iowa 2010), *overruled on other grounds by State v. Hill*, 878 N.W.2d 269, 275 (Iowa 2016). Geddes was convicted for trespasses done because of the homeowners' protected status. Content-based restrictions on

speech are generally prohibited by the United States Constitution's First Amendment and the Iowa Constitution's parallel article I, section 7. *Id.*; *see also Virginia v. Black*, 538 U.S. 343, 358–59 (2003) (concluding a ban on cross burning with the intent to intimidate did not violate the First Amendment). Yet, his notes' content was not the subject of any of his convictions. Ruling & Order p. 4; App. 37. Each one simply reflected his guilty mind. *Id.*

Geddes's "Burn that gay flag" notes are evidence that he entered upon the properties because of the property possessors' association with people of a certain sexual orientation, an element of each trespass. They are also evidence of a second element—his specific intent to either (1) harass the possessors or (2) leave inanimate objects upon the properties. So, Geddes was not punished for the content of the notes, not even with respect to the harassment predicate—he didn't have to commit that crime here to be convicted, he only had to intend it. Iowa Code § 716.7(2)(a)(1).

The notes' content simply broadcasted his guilty mind to the world. Free-speech protections thus do not proscribe his hate-crime-trespass convictions. *Black*, 538 U.S. at 358–59. Iowa's hate-crime statute is constitutional because it does not criminalize prejudice

against a protected class standing alone; it criminalizes it only if the prejudice is the reason behind the subject crime. *Hennings*, 791 N.W.2d at 834. But even viewing the convictions as punishing Geddes for his notes' content, the notes contained true threats. So, punishment for their intimidating content does not violate constitutional free speech protections. *Black*, 538 U.S. at 358–59.

A. Geddes had the intent to commit harassment or leave an object, which satisfies the intent-to-commit-a-public-offense element of trespass as a hate crime.

The content of Geddes's notes is not why he was punished. Ruling & Order p. 4; App. 37. Under the reading preferred by the Iowa State Bar Association's Model Jury Instructions, Geddes was guilty of trespass if he entered the properties while intending to (1) harass the possessors or (2) leave an object. Iowa State Bar Association, Model Jury Instruction 1610.1 (June 2000). He left an object—a note—on each property, and that is the basis for each of the district court's guilty verdicts. Rule 2.17(2) Order pp. 10–14; Conf. App. 90–94.

The respective intent-to-harass predicates are not necessary unless the court holds this reading of the trespass statute overbroad as discussed below in Section III.B. The State proposes in that

discussion a narrower reading that would prevent overbreadth. The narrow reading would require an intent to commit a public offense for all section 716.(2)(a)(1) trespass convictions. This reading would thus make the intent-to-harass predicates necessary for the convictions. Unless the court overrules *State v. Chase*, 335 N.W.2d 630 (Iowa 1983), and holds the statute overbroad, however, the following harassment-as-a-predicate analysis is unnecessary.

The State included Geddes's pending harassment complaints in the minutes of testimony attached to the trial information. Minutes Evid. pp. 3–6, 15–18, 27–30, 40–44, 56–59; Conf. App. 6–9, 18–21, 30–33, 43–47, 59–62. His intent to harass, evidenced by the notes, fulfills the intent-to-commit-a-public-offense element of section 716.7(2)(a)(1). A section 708.7(1) harassment conviction requires proof of both of the following:

> 1. On or about [a date] the defendant communicated with (name of victim) in writing, without a legitimate purpose, in a manner likely to cause them annoyance or harm.
>
> 2. The defendant did so with the specific intent to intimidate, annoy or alarm (name of victim).

Iowa State Bar Association, Model Jury Instruction 810.3 (June 2020); *see also State v. Fratzke*, 446 N.W.2d 781, 783 (Iowa 1989) (setting out elements). Geddes's notes were written threats, as explained in section II.C below, and threats have no legitimate purpose. *Black*, 538 U.S. at 358–59. Each property owner reported feeling harassed or annoyed and alarmed. Rule 2.17(2) Order pp. 3–4; Conf. App. 83–84. So, Geddes communicated with the property owners in writing, having no legitimate purpose, in a manner likely to cause annoyance or harm, and with the specific intent to intimidate, annoy, or alarm. He thus intended to harass the property possessors. *Fratzke*, 446 N.W.2d at 783. The district court did not address this theory of the crime, but evidence is sufficient. If the court here determines it is the only leg upon which the convictions can stand, remand is appropriate for the district court to address it.

B. Geddes was not punished for his prejudice alone—actions may be punished if done because of a victim's association with a person of a certain sexual orientation.

A law, as already noted, does not violate free-speech protections if it punishes a person for committing a crime for a prohibited reason. *Hennings*, 791 N.W.2d at 833–35. There are three offender categories to which a hate-crime law could possibly be applied. The first is

offenders who happen to have prejudice toward those in a protected class, but who commit a crime for an unconnected reason. *Id.* at 833. This category does not fall under section 729A.2's "because of" language requiring a causal connection between proscribed motive and wrongful act and is protected by free-speech principles. *See State v. McKnight*, 511 N.W.2d 389, 395-96 (Iowa 1994) (noting the First Amendment prohibits punishing prejudice alone).

The other two categories are punishable by section 729A.2. *Hennings*, 791 N.W.2d at 833–35. The second is those whose singular motivation for a crime is the victim's protected status. Such offenders often look for "a person of protected status simply because the individual wishes to harm *any* person of that protected status." *Id.* at 834. "There can be no question that actions with such a single discriminatory motivation are properly covered by section 729A.2." *Id.* (citing *Mitchell*, 508 U.S. at 480). Offenders with mixed motives or dual intents make up the third category and are also properly covered by section 729A.2. *Id.*

There is no doubt Geddes trespassed with prejudice in his heart, and each note tells us that prejudice was the reason for the trespass. *McKnight*, 511 N.W.2d at 395-96. The messages in the notes show the

necessary causal connection between the anti-LGBTQ+ prejudice in Geddes's mind and his trespasses. *Id.* at 395. They also show that he meant to intimidate the victims. Evidenced by the content of the notes, Geddes was not convicted due to his prejudice alone but due to the causal connection between it and his trespasses, so the convictions are valid. *Hennings*, 791 N.W.2d at 834.

C. Geddes's true threat to each owner or possessor of the properties he targeted was not protected speech.

"Burn that gay flag" is not protected speech; it is a "true threat." *See Black*, 538 U.S. at 358–59 (detailing the reasons intimidating statements are not protected speech). So, even if the court were to view the convictions as punishing Geddes for the content of his notes, Constitutional free speech provisions do not protect his speech because it was meant to intimidate. *Id.* (detailing intimidation exceptions to free-speech protections: words that incite a breach of the peace; fighting words; advocacy of using force or violating the law likely to reach that result; and true threats). A court evaluates the totality of the circumstances to determine whether a statement is a true threat. *Milner,* 571 N.W.2d at 13.

"Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Black*, 538 U.S. at 359–60. Despite that language from *Black*, the decision was fractured, and courts remain split on scienter requirements for the speaker. *State v. Taupier*, 193 A.3d 1, 15–19 (Conn. 2018) (discussing varied approaches to true threats). The Supreme Court has granted certiorari review on whether a speaker must intend a statement to be threatening, or know that is its nature, for it to qualify as a true threat. *People v. Counterman*, 497 P.3d 1039, 1047–51 (Colo. Ct. App. 2021), *cert. granted sub. nom., Counterman v. Colorado*, No. 22-138, __ U.S. __, 2023 WL 178395 (Jan. 13, 2023).[3] A true threat is also a statement that an ordinary, reasonable person, familiar with the context in which the statement was made, would interpret as a threat. *Milner,* 571 N.W.2d at 13. The

[3] Resolution of the issue in *Counterman* is not necessary for this appeal to progress to decision. The entire true-threats analysis is in the alternative. So, if the Court agrees with the district court that Geddes was not punished for the content of his notes, it is all an interesting, academic exercise. On the other hand, if the Court concludes otherwise, remand to the district court may be needed for it to address the issue first. So, there too, waiting for the Supreme Court's *Counterman* decision would be unnecessary.

second question is thus whether the reasonable recipient would interpret the statement as a threat. *State v. Button*, 622 N.W.2d 480, 485 (Iowa 2001).

Geddes's notes were true threats because Geddes intended to place the victims in fear of death or bodily harm, and an ordinary, reasonable person knowing the context of his "Burn that gay flag" messages would experience that fear. Each property owner had that experience. Rule 2.17(2) Order pp. 3–4; Conf. App. 83–84. Here, context is key—Geddes placed his anti-LGBTQ+ notes on properties showing support for those with certain sexual orientations while the national climate stokes the fears of many LGBTQ+ people and their allies. *See e.g.*, Victoria Kirby York, *Five years after the Pulse nightclub massacre the fight for LGBTQ+ rights continues*, The Hill, June 12, 2021, available at https://thehill.com/opinion/civil-rights/558047-five-years-after-the-pulse-nightclub-massacre-the-fight-for-lgbtq-rights/. Violent victimization because of sexual orientation has long plagued the LGBTQ+ community. Kami Chavis Simmons, *Subverting Symbolism: The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act and Cooperative Federalism*, 49 Am. Crim. L. Rev. 1863, 1873 (2012). So, Geddes's victims had

reason to fear, and not simply because 49 people lost their lives and 55 were injured at the Pulse nightclub mass shooting. *Id*. The rate of violent victimization—i.e., being sexually abused, robbed, or assaulted—for those who identify as gay, lesbian, or bisexual is twice that of those identifying as straight. Jennifer L. Truman and Rachel E. Morgan, U.S. Dept. Justice, Office Justice Programs, *Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020*, available at https://bjs.ojp.gov/content/pub/ pdf/ vvsogi1720.pdf. In Iowa, there were twenty-eight hate-crime incidents involving sexual orientation in 2021. Federal Bureau of Investigation, Crime Data Explorer, available at https://cde.ucr.cjis.gov/LATEST/ webapp/#/ pages/explorer/crime/hate-crime. After Geddes's note-posting campaign in Boone, there was a mass shooting at Club Q in Colorado Springs that left five people dead. Justine McDaniel & Marisa Iati, *Anti-LGBTQ efforts were widespread in 2022*. Washington Post, December 22, 2022, available at https:// www.washingtonpost.com/ nation/2022/12/22/lgbtq-threats-attacks-trans-bills/. Taken out of this context, Geddes's notes may be more benign. But we do not bury our heads in the sand when evaluating what Geddes was saying. *Milner,* 571 N.W.2d at 13–14. The

totality of the circumstances matters and includes the context for the speech. *Id.*

In this climate, a note on the door to a residence or business instructing "Burn that gay flag," conveys a threat of repercussions for failure to comply. *See State v. Meyers*, 799 N.W.2d 132, 145 (Iowa 2011) (reasoning a parent's command comes with an implicit threat of punishment for failing to obey). It is a command with an understood threat—stop flying that flag or you will not like what happens. *See State v. Baldon*, 829 N.W.2d 785 (Iowa 2013) (reasoning that the location and circumstances of an officer's request to search imparts implicit threats that turn the request into a demand). A reasonable recipient of any of the notes would fear for their safety. And the comments prefacing Geddes's command in the longer note demonstrated his virulence, disgust, and unadulterated hate: "Warning due to high levels of flaggotry an investigation has been launched to control the spread of HIV/AIDS. We are sad to say the bare back orgy has been canceled." Rule 2.17(2) Order p. 4; Conf. App. 84. He intended to put his victims in fear for their safety—or so a rational factfinder could infer.

Geddes admits that had there been an implied threat, his note would not be protected. Appellant Br. p. 70. Requiring an explicit statement would make statutes outlawing true threats "powerless against the ingenuity of threateners who can instill in the victim's mind as clear an apprehension of impending injury by an implied menace as by a literal threat." *United States v. Malik*, 16 F.3d 45, 50 (2d Cir. 1994). Yet, Geddes provides an explicit threat as an example of an implied threat—"If you don't burn that gay flag, I will return to burn your flag." An implied threat, on the other hand, is what his note contained. *See Brewington v. State*, 7 N.E.3d 946, 965 (Ind. 2014) ("That inquiry also recognizes the inherent fact-sensitivity of implied threats—where even a single detail can transform otherwise protected speech into an unprotected threat.") The district court noted the significance of placing the notes on the front doors—the possessors could not avoid the notes, the writing was concise, so the content was immediately apparent, and door-placement circumvented their right to exclude such a speaker. Rule 2.17(2) Order p. 6; Conf. App. 86. Also, burning a flag would risk the home catching fire. Geddes made implied threats.

Geddes anticipated that his statements would be viewed as threatening. Besides the nature of the statement, he demonstrated this when he was being held at the jail for four of the incidents and was presented with the charges for the fifth. He remarked, "I figured." This allows an inference that he anticipated his targets would find his notes threatening enough to notify police and lead to his arrest. In other words, he knew the notes were threatening.

Geddes leans heavily on *State v. Fratzke*, 446 N.W.2d 781, 785 (Iowa 1989), which overturned a harassment conviction based on a nasty note. Yet, the similarities between that case and the facts here end at "nasty note." Fratzke sent his profanity-filled note to a clerk of court and addressed it to the clerk and the state trooper who cited him for speeding. In the note, Fratzke criticized speed laws, law enforcement priorities, and the trooper. If the note didn't qualify as fighting words, the court reasoned, it could not, due to its blue language, be proscribed as having no legitimate purpose. *Fratzke*, 446 N.W.2d at 785. Geddes contends that if a note does not contain fighting words, it cannot be prohibited.

True, Fratzke's nastygram did not qualify as fighting words because: (1) a mailed note is far removed from using profanity to

incite a face-to-face fistfight; (2) police officers must withstand more annoyance than the average citizen; and (3) the First Amendment makes it a "uniquely American privilege" for a citizen to speak his mind on public institutions. *Id.* Now, we compare the apples to the oranges. Most importantly, the court did not evaluate Fratzke's message as a true threat. In fact, it avoided the constitutional question. *Id.* at 783. Also, Geddes posted his notes on the front doors of private homes and a small business, no public official was a target, and he did not criticize a public institution. *Fratzke* does not have much to say here.

Geddes argues also that because speech combined with an assault is not protected, his speech must be protected because it was not combined with an assault. Appellant's Br. pp. 73–77. There was no assault here, so cases on speech combined with assault are indeed inapplicable. *McKnight*, 511 N.W.2d at 396; *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992); *Wisconsin v. Mitchell*, 508 U.S. 476 (1993). Yet, there are multiple possible exceptions for content-based restrictions. *Black*, 538 U.S. at 358–59 (listing (1) words that incite a breach of the peace; (2) fighting words; (3) advocacy of using force or violating the law likely to reach that result; and (4) true threats). So, with at least

four exceptions, if one or two do not apply, it does not follow that the speech is thus protected.

Geddes contends that handing the note to a person on the street would be threatening while leaving it on the front door is a normal thing that people do. "Burn that gay flag," is not an invitation to debate or even crude hyperbole against a political figure. *Watts v. United States*, 394 U.S. 705, 708 (1969). And a wrongdoer who shows a willingness to seek out a subject and come onto their property demonstrates a higher likelihood of following through on an implicit threat. Jennifer E. Rothman, Freedom of Speech and True Threats, 25 Harv. J.L. & Pub. Pol'y 283, 353 (2001). A mysterious potential assailant seeking out, approaching, and physically touching the door—the access point to the home—when nobody is home is more anxiety provoking than the same individual walking up on the street with an awful message written on a piece of notebook paper. An unsigned, unprovoked note from an anonymous harasser with an implied threat invites the imagination to run wild. A reasonable property possessor recipient would likely experience more fear for two reasons: (1) because the anonymous harasser has an unknown

capacity for harm; and (2) he has demonstrated no respect for their right to exclude him from their property.

* * *

Geddes was not punished for the content of his notes. They simply reflected that he intended to harass the property owners and that he did so because of their association with people of certain sexual orientations. Geddes was also not punished solely for his anti-LGBTQ+ views but because those views led him to trespass for a proscribed reason. And even if the content of his speech is viewed as the reason for his punishment, it was unprotected because it was meant to intimidate the property owners by putting them in fear of death or bodily harm. The district court did not explicitly address the "true threats" issue because it concluded Geddes was not punished for his words. Ruling & Order p. 4; App. 37. If this Court concludes that the district court should do so in the first instance, remand would be appropriate; otherwise, this Court should affirm the judgment and sentence.

III. *State v. Chase* eclipses Geddes's vagueness and overbreadth arguments.

Preservation of Error

The State does not dispute that Geddes preserved error on overbreadth and vagueness challenges to Iowa Code section 716.7(2)(a)(1) in his motion to dismiss. Motion Dismiss pp. 14-16; App. 24–26.

Standard of Review

"Review of constitutional claims is de novo." *State v. Nail*, 743 N.W.2d 535, 538 (Iowa 2007).

Merits

The Iowa Supreme Court has concluded that a materially identical version of Iowa Code section 716.7(2)(a)(1) is not vague or overbroad. *State v. Chase*, 335 N.W.2d 630 (Iowa 1983). Geddes does not ask the Court to overrule *Chase*, so *Chase* controls. The court should apply *Chase* and affirm the district court.

A. *State v. Chase* controls; still, the trespass statute is not vague.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "No state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Article I, section 9 of the Iowa Constitution

provides identical protections. *Nail*, 743 N.W.2d at 539. Geddes offers no proposed alternative analysis under the Iowa Constitution, so the federal standard governs. *Id.*

Due process prohibits enforcement of vague prohibitions in criminal statutes. *State v. Showens*, 845 N.W.2d 436, 441 (Iowa 2014). To avoid unconstitutional vagueness, statutes must:

> (1) Give ordinary people fair notice of prohibited conduct; and
>
> (2) Provide those implementing the law with guidance sufficient to prevent arbitrary and discriminatory enforcement.

Id. Geddes argues he was convicted for simply entering property and placing a note. Not so. As detailed above, to convict, the state had to show:

> (1) Geddes knowingly entered upon property of another.
>
> (2) He did not have the express permission of the person in possession.
>
> (3) When Geddes entered, he had the specific intent to commit the crime of harassment or to place any object on or in the property.
>
> (4) Geddes committed the offense against a person's property because of the person's sexual orientation or association with a person of a certain sexual orientation.

Iowa State Bar Association, Model Jury Instructions 1610.1 & 2900.1 (June 2000); Iowa Code §§ 716.7(2)(a)(1), 716.8(3), & 729A.2(4).

1. The trespass statute gives fair notice of its prohibitions.

Geddes makes his as-applied challenge without incorporating the hate-crime modifiers as-applied to him by sections 716.8(3) and 729A.2, which add knowingly to element (1) and the entirety of element (4). No matter. Section 716.7(2)(a)(1) is not vague either way. It provides fair notice of its prohibitions:

> "Trespass" shall mean one or more of the following acts: 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 . . . place thereon or therein anything animate or inanimate . . . , or to hunt . . . .

Iowa Code § 716.7(2)(a)(1). All the words are right there—Geddes does not argue otherwise. In fact, in his fair-notice argument, Geddes points to no words of the statute as ambiguous. Appellant's Br. pp. 88–97. His failure to make a specific challenge is fatal. *Chase*, 335 N.W.2d at 634.

Instead of pointing to language, he complains of selective enforcement. Appellant's Br. pp. 94–97. He provides no reasons a person wouldn't understand from the statute that his conduct was

prohibited. So, he has not shown the statute to be vague. He also says, without support in the record or by citation, that people think they can post notes on people's doors, so doing so cannot be prohibited. Geddes does cite authority supporting a right to approach a door and knock, but that is not prohibited by section 716.7(2)(a)(1). Ignorance of the law is no defense, of course, and even if an ordinary person might not ever read section 716.7(2)(a)(1), if they did, they would understand that a person cannot legally post a note on someone's front door without express permission. They may be surprised or think it is not fair, but that would not be on account of vagueness.

The statute provides fair notice.

2. The trespass statute provides sufficient guidance to prevent arbitrary or discriminatory enforcement.

Turning to arbitrary or discriminatory enforcement, the trespass prohibition in section 716.7(2)(a)(1) avoids those risks by giving sufficient guidance to those charged with enforcing it. *Contra City of Chicago v. Morales*, 527 U.S. 41 (1999) (holding a law was vague because it required law enforcement to determine a suspect's "apparent purpose," allowing enormous discretion for subjective enforcement, thus extending to harmless conduct). In this argument,

Geddes does point to statutory language, targeting the phrase "place thereon or therein anything animate or inanimate . . . ." Iowa Code § 716.7(2)(a)(1). Yet, he contends that authorities might selectively, not subjectively, enforce this part of the section. There is nothing in the language that gives law enforcement discretion to determine whether something satisfies the term "place thereon or therein anything animate or inanimate." The term is broad, not vague—it identifies all objects. Iowa Code § 716.7(2)(a)(1). Law enforcement routinely must exercise discretion when deciding whether to charge a simple misdemeanor like non-hate-crime trespass—going the speed limit on the freeway will quickly demonstrate to anyone how many citations could be given with unlimited resources. As with his fair-notice argument, Geddes again tries to fit an overbreadth peg into a vagueness hole. Geddes does not meet his doubly heavy burden to give a reason to declare the statute unconstitutional or to overrule *Chase*. The statute is not vague.

B. *State v. Chase* controls; yet, the trespass statute is not overbroad.

State v. Chase rejected an overbreadth challenge to section 716.7(2)(a)(1) on the same basis Geddes urges here. *Chase*, 335 N.W.2d at 633. First Amendment overbreadth doctrine is one of few

times, if not the only one, when a party can challenge a law as unconstitutional in its hypothetical application to other people. *United States v. Yung*, 37 F.4th 70, 76 (3d Cir. 2022) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973)). "The purpose of the overbreadth doctrine is to protect those persons who, although their speech or conduct is constitutionally protected, 'may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression.' " *State v. Brobst*, 151 N.H. 420, 422 (2004) (quoting but omitting quotation in *New York v. Ferber,* 458 U.S. 747, 768 (1982)). As noted, Geddes makes an overbreadth argument under three headings, two of which are vagueness.

Geddes, like Chase, has failed to show a right or protected freedom of Girl Scouts, neighbors, or political campaigners to post notes on a front door. *Chase,* 335 N.W.2d at 633. The defendant there argued "the amended statute now impinges upon protected freedoms by proscribing implied or justified intrusion on property." *Id.* His example was that even the garbage collector would run afoul of the provision. The court shrugged, "defendant has failed to demonstrate that a garbage collector has the right or protected freedom to enter

upon property and to remove anything therefrom without express permission . . . .” *Id.* Knocking and ringing the doorbell are not proscribed, but posting threatening notes is, so *Chase* controls. The statute is not overbroad.

C. If the broad, prevailing interpretation of the trespass statute requires overruling *State v. Chase* and invalidating the provision, the Court should adopt a narrower interpretation.

If the trespass statute is overbroad, there is an alternative, narrower reading that would save it from overbreadth. If a statute can be read narrowly enough to avoid unconstitutionality, a court will adopt that reading. *Yung*, 37 F.4th at 76 (citing *Broadrick*, 413 U.S. at 615). Even if interpretive tools support a broad reading, if the narrow reading is plausible, that is the one applied. *Id.* at 79 (citing Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 Boston U. L. Rev. 109, 141 (2010)). The “strong medicine” of determining a statute is overbroad is a court’s “last resort.” *Broadrick*, 413 U.S. at 613.

The language of the section 716.7(2)(a)(1) trespass prohibition can be read to have a with-the-intent-to-commit-a-public-offense element that applies in all cases:

> 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, or to hunt, fish or trap on or in the property . . . .

Iowa Code § 716.7(2)(a)(1). The broad reading has "with the intent" modifier apply to each of three groupings of acts:

> 1) to commit a public offense,
>
> 2) to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or
>
> 3) to hunt, fish or trap on or in the property . . . .

Id.; *see* Iowa State Bar Association, Model Jury Instruction 1610.1 (adopting this interpretation). Yet, if "with the intent to commit a public offense," is read as a standalone provision required to be fulfilled for every conviction, this would narrow the statute's reach. A quick look at the provision does not reveal that the "or" before "hunt" makes an implied "or" between the two prior groupings: "with the intent to commit a public offense" and "to use, remove therefrom . . . ." So, if the broad reading is too broad, instead of reading "with the intent to commit a public offense" as one of

multiple ways to violate the statute, it should be read as a necessary element for every 716.7(2)(a)(1) violation.

This narrow reading of the trespass law criminalizes only those entries that are done with the intent to commit a public offense—limiting its scope to intended unlawful conduct. Geddes doesn't challenge here his underlying intent to harass. But challenged harassment statutes are generally not overbroad if they expressly limit their proscription to illegitimate conduct. *See United States v. Bowker*, 372 F.3d 365, 380 (6th Cir. 2004), *cert. granted, judgment vacated on other grounds,* 543 U.S. 1182 (2005) ("Expressly excluded from the definition of 'harassment' is 'constitutionally protected activity or conduct that serves a legitimate purpose.' ") "Harassment and intimidation, narrowly construed, are punishable. 'Intimidation in the constitutionally proscribable sense of the word . . . plac[es] the victim *in fear of bodily harm or death*.'" *Id.* (citing, and adding emphasis to, *Black*, 538 U.S. at 360).

> Persons who find sidewalk speech annoying usually are not being singled out by the speaker and, in any event, have the option of ignoring that speech by walking away or taking a different route.

Bowker, 372 F.3d at 379. Like permissible harassment prohibitions, the narrow reading of section 716.7(2)(a)(1)'s has an illegitimacy requirement—that entries to leave a note be "with the intent to commit a public offense." This adequately shields legitimate activity of Girl Scouts, neighbors, and political campaigners, as well as garbage collectors.

The narrow reading is also plausible because another subsection captures much of the conduct as well:

> Trespass shall mean one or more of the following acts . . . . Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

Iowa Code § 716.7(2)(a)(4). There, "wrongfully" modifies each prohibited act, raising the question whether there is also a public-offense requirement to violate that section. But that question is not necessary to answer here.

Here, law enforcement and prosecutors charged five violations of section 716.7(2)(a)(1) as well as five counts of the predicate crime Geddes intended to commit: harassment in violation of Iowa Code section 708.7. Rule 2.17(2) Order p. 3; Conf. App. 83. The county

attorney attached the harassment complaints to the minutes. Minutes Evid. pp. 3–6, 15–18, 27–30, 40–44, 56–59; Conf. App. 6–9, 18–21, 30–33, 43–47, 59–62. Police and prosecutors thus showed an understanding that intent to commit a predicate public offense may have been required for conviction under section 716.7(2)(a)(1).

Geddes repeats that his note was no different than a cookie menu, garage sale flyer, or political pamphlet; and since law enforcement will not charge Girl Scouts, neighbors, or political campaigners, charging him is discriminatory based on the content of his note. Yet, Geddes's conduct was quite different—he posted his note with the intent to commit a public offense. Under the narrow reading, Geddes must have satisfied the other elements while having the intent to commit a public offense, here harassment. None of Geddes's note-posting examples include an intent to commit a public offense, so, under the narrow reading, law enforcement could not charge any of them as trespass. Geddes's note, on the other hand, was intended to harass. There is no option for discriminatory or arbitrary enforcement.

Yet, if a menu, flyer, or pamphlet showed an intent to commit a public offense like Geddes's note, and the other section 716.7(2)(a)(1)

elements were met, the statute's clear guidance under the narrow reading is that a crime was committed. For a note-posting entry on property without the intent to commit a public offense, the statute instructs the opposite—to "place thereon or therein anything animate or inanimate" is no violation.

* * *

The Iowa Supreme Court's opinion in *Chase* requires denying Geddes's vagueness and overbreadth arguments. Whether interpreted broadly or narrowly, the statute is not vague or overbroad.

CONCLUSION

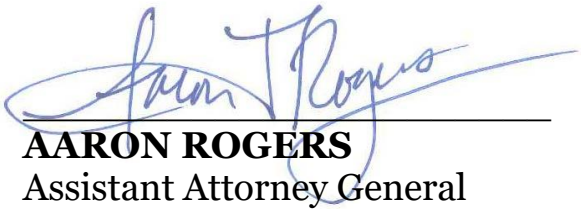
For the above reasons, the Court should affirm Geddes's judgment and sentence.

CONDITIONAL REQUEST FOR ORAL SUBMISSION

If the appellant is granted oral argument, the State requests to be heard.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



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