THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2023-0663

JOHN M. FORMELLA, ATTORNEY GENERAL

v.

CHRISTOPHER HOOD, et al.

APPEAL PURSUANT TO RULE 7 FROM A DECISION OF THE
ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF FOR JOHN M. FORMELLA, ATTORNEY GENERAL

John M. Formella, Attorney General

By His Attorneys,

THE OFFICE OF THE
NEW HAMPSHIRE ATTORNEY GENERAL

JOHN M. FORMELLA
ATTORNEY GENERAL

and

ANTHONY J. GALDIERI
SOLICITOR GENERAL

Sean R. Locke, Bar No. 265290
Senior Assistant Attorney General
New Hampshire Department of Justice
1 Granite Place-South, Concord, NH 03301
603-271-3658

15-Minute Argument Requested

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[1] Citations to the record include: App1: Appendix 1 (court filings); App2: Appendix 2 (legislative history); Prelim Hr.: March 1, 2023 Preliminary Hearing Transcript; and Motion Hr.: August 9, 2023 Motion Hearing Transcript.

STATEMENT OF THE CASE AND FACTS

On January 17, 2023, the Attorney General's Office ("State") initiated a series of enforcement actions under the New Hampshire Civil Rights Act, RSA Chapter 354-B, against Christopher Hood, Leo Anthony Cullinan,[2] and Nationalist Social Club-131 ("NSC-131"), an unincorporated association, by filing three separate complaints seeking expedited processing consistent with RSA 354-B:4, IV in Rockingham County Superior Court. App1: 124-35, 183-201. The complaints alleged that the defendants violated and/or conspired to violate the Civil Rights Act when they unlawfully affixed banners a highway overpass fence that read "Keep New England White" and "Defend New England." App1: 125, 184, 193. The complaints alleged that the unlawful act of affixing the banners constituted trespass and that animus based on race, among other protected characteristics, motivated the trespass. App1: 125-26, 185-86, 194-95. The complaints asked the court to impose civil penalties and a restraining order consistent with the provisions of RSA 354-B:3. App1: 131-32, 189-90, 200-01.

On February 26, 2023, Defendant Hood filed a motion to dismiss alleging that these acts did not constitute criminal or common law trespass, did not violate any state statute, that the complaint failed to allege the speech at issue constituted a threat, and that the application of the Civil Rights Act was overbroad and unconstitutionally vague. App1: 48-76. On February 28, 2023, Defendant Cullinan filed his own motion to dismiss that

[2] On August 8, 2023, counsel for Leo Anthony Cullinan filed a suggestion of death and an affidavit supporting the contention that Cullinan died on June 19, 2023. The State does not dispute that Cullinan is deceased.

reiterated content in Defendant Hood's motion and also alleged that the sidewalks on which the defendants engaged in their conduct constituted public fora. App1:77-87. A motion to dismiss was not filed on behalf of Defendant NSC-131. App1: 22.

On February 27, 2023, the State filed an objection to Defendant Hood's motion to dismiss. App1: 88-100. In it, the State argued that a violation of the Civil Rights Act occurred when the defendants trespassed on the overpass fence and that the language on the banner was merely evidence of how racial animus motivated their trespass. App1: 89-98. The objection argued that using the language as evidence of motivation is not a violation of the defendants' constitutional rights, as recognized by both the United States Supreme Court in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993), and this Court in *State v. Costella*, 166 N.H. 705 (2014). App1:95-98. On March 8, 2023, the State filed an objection to Defendant Cullinan's motion to dismiss to the extent that it raised questions about whether the overpass was a public forum, and the State contended that overpasses and the fencing on those overpasses have been recognized as non-public fora. App1: 101-09.

On March 1, 2023, the trial court (*Ruoff*, J.) held a preliminary hearing. Prelim Hr.: 1-26. The preliminary hearing covered all three cases, and, after the preliminary hearing, the trial court consolidated the three cases into a single docket. Prelim Hr.: 2; App1: 3-4. The Court scheduled a one-day trial for the final hearing in late-July. App1: 21. At the preliminary hearing, the defendants raised concerns about being able to retain counsel to represent them in New Hampshire, which the trial court addressed. Prelim Hr.: 4-7. Defendant Cullinan also raised concerns about service of

process, which the trial court addressed. Prelim Hr.: 7-10. At the preliminary hearing, the State offered to participate in a hearing on the motions to dismiss once it had been afforded an opportunity to object to them and the defendants had the opportunity to file a reply. Prelim Hr.: 21.

Over three months later, on June 5, 2023, the trial court granted the defendants' motions to dismiss without a hearing. App1: 3-23. The trial court agreed with the State that criminal or civil trespass could serve as the predicate act for a Civil Rights Act violation. App1: 10-12. The trial court concluded that allowing civil trespass to serve as a predicate act for a Civil Rights Act violation, however, would be unconstitutionally overbroad because a civil trespass occurs when any person enters onto the property of another and, therefore, a Civil Rights Act violation could occur in numerous constitutionally protected situations, such as proselytizing or traveling to work. App1: 17-22. Accordingly, the trial court granted the defendants' motions to dismiss. App1: 22-23.

On June 15, 2023, the State filed a motion to reconsider. App1: 139-48. In its motion, the State contended that the trial court had overlooked or misapprehended an important limitation to civil trespass, which requires proof that the entry onto another's property was unprivileged or unpermitted. App1: 145-48. In other words, simply traveling to work over roads or sidewalks would not constitute a civil trespass. App1: 145-48. The State also contended that numerous statutes prohibit unauthorized display of signs or "advertising devices" from highway overpasses. App1: 142-45. Accordingly, the State requested that the trial court reconsider its June 5, 2023 order. App1: 148. The defendants objected to the State's motion alleging that, regardless of whether a trespass had occurred, the complaint

failed to sufficiently allege that the language on the banner was a threat or incitement to violence. App1: 149-50.

On June 22, 2023, the trial court ordered a hearing on the State's motion, which it later scheduled for August 9, 2023. App1: 182. In that order, the trial court asked the State to address, among other things, its belief that while the Civil Rights Act was pending before the legislature, the Attorney General's Office had claimed it would only apply when criminal trespass had occurred. App1: 182. At the hearing, the State addressed the trial court's concern regarding the legislative history and the trial court's belief that the legislature intended trespass to mean "criminal trespass," which the State explained is not stated or supported by the legislative record, and the scope of the Civil Rights Act. Motion Hr.: 4-8. The trial court made numerous inquiries regarding the mental state for committing trespass, notice of the law, the risk of selective enforcement, and the State's interest in regulating this conduct. Motion Hr.: 12-29, 35-40. The State emphasized that the free speech provisions of the state and federal constitutions are not a shield from generally applicable laws. Motion Hr.: 49-50.

Over two months later, on October 18, 2023, the trial court denied the State's motion to reconsider. App1: 38. The trial court concluded that it must adopt a narrow construction of the Civil Rights Act to "avoid[] the unnecessary chill on free speech" and, accordingly, incorporated a "knowing" mental state for trespass into the Civil Rights Act. App1: 29.

Because the October 18, 2023 order included newly developed reasons for granting the motion to dismiss, the State filed a second motion for reconsideration on October 30, 2023. App1: 39-47. In its second motion

for reconsideration, the State contended that the trial court invented a "knowing" mental state without any briefing, developed argument, or consideration of the statute's plain language, and that its requirement that the State prove the defendants knew they were engaging in unlawful conduct when they affixed the banner is inconsistent with traditional expectations that "ignorance of the law is no excuse." App1: 41-46. The State also addressed the trial court's claims that the Civil Rights Act fails to distinguish between public and non-public fora in its application of trespass and asserted that dismissal was inappropriate because it could be reasonably inferred from the facts pled that the defendants knew they were engaging in unlawful conduct. App1: 41-46. On November 16, 2023, the trial court denied the State's second motion for reconsideration. App1: 39.

This appeal followed.

SUMMARY OF THE ARGUMENT

1. The trial court erred in its construction of the Civil Rights Act (the "Act"). The Act prohibits trespasses motivated by the protected characteristics, such as race or national origin, of a person or group. For an actor to commit a trespass, the actor, without permission, privilege, or authorization, must intentionally enter onto the property of another. If the actor trespasses and such trespass was motivated by race or national origin, then the actor has violated the Act.

That the trespass occurs on government property does not change this conclusion. The government has the right to regulate access to its property. A trespass occurs when an actor exceeds the scope of authority for the actor to enter or intrude upon government property. Whether it be a reasonable time, place, or manner restriction or a more stringent restriction will depend upon the type of government property at issue. If the actor trespasses on government property and such trespass was motivated by race or national origin, then the actor has violated the Act.

Here, the defendants trespassed on the highway overpass fence when they affixed banners to it without authorization. Several state laws and municipal ordinances prohibited this act; thus, it was a trespass. The text of the banners evidenced the defendants' race- and/or national origin-based motivation for committing the trespass. Accordingly, the defendants violated the Act and any conclusion to the contrary is error.

2. The trial court erred when it concluded that the State's construction of the Act was overbroad, vague, or otherwise violated the defendants' right to freedom of speech. Trespass, by its own definition, is

limited rather than broad because it requires proof that a defendant lacked authority to intrude upon the property in question or provides a defendant with the opportunity to present an affirmative defense that the defendant had authority to intrude upon the property. This limitation prevents any interpretation of the Act from chilling speech. So long as a person does not commit trespass, that person cannot violate the Act.

The Act is not vague because a person is presumed to have knowledge of the law and notice of when laws prohibit access to certain government-owned property. Only through willful ignorance of the law could a person trespass upon government property, which does not excuse their intrusion. Accordingly, the Act provides ample notice of what it prohibits and does not chill speech.

3. The trial court erred when it *sua sponte* concluded that only evidence of a knowing trespass could withstand scrutiny because a knowledge standard created a greater limitation than necessary to protect the public's constitutional rights. Last term, the United States Supreme Court recognized that a reckless mental state is sufficient to protect a defendant's First Amendment rights. Similarly, the Supreme Court of Iowa upheld convictions for criminal trespass under a trespass theory like that proposed by the State. A knowing mental state was unnecessary to protect the defendants' constitutional rights, and this Court must reverse.

4. Even assuming the trial court's reasoning was correct, it erred when it refused to permit the State to proceed under its new construction. Read under the appropriate notice-pleading standard, the complaint sufficiently alleged facts that would permit the State to proceed even if it

had to prove a knowing mental state. Accordingly, this Court must reverse and remand.

ARGUMENT

I. STANDARD OF REVIEW

"In reviewing an order granting a motion to dismiss, [this Court] assume[s] the truth of the facts as alleged in the plaintiff's pleadings and construe all reasonable inferences in the light most favorable to the plaintiff." *Beane v. Dana S. Beane & Co.*, 160 N.H. 708, 711 (2010) (quotation omitted). This Court "will uphold the granting of the motion to dismiss if the facts pled do not constitute a basis for legal relief." *Id*. In reviewing the trial court's decision, this Court reviews a trial court's rulings regarding interpretation *de novo*. *Langevin v. Travco Ins. Co.*, 170 N.H. 660, 664 (2018). This Court also reviews a trial court's rulings on questions of constitutional law *de novo*. *Bd. of Trustees, N.H. Judicial Ret. Plan v. Sec'y of State*, 161 N.H. 49, 53 (2010).

The trial court erred, as a matter of law, when it granted the defendants' motions to dismiss because: (1) the New Hampshire Civil Rights Act (the "Act"), RSA Chapter 354-B, requires proof of knowledge to support a trespass theory under the Act; (2) that absent proof of knowledge the Act, as applied to allegations of trespass, is unconstitutionally overbroad, vague, or otherwise undermining the defendants' right to freedom of speech; and (3) that assuming the Act could be overbroad or vague, the only cure was to incorporate a knowing mental state. Assuming the trial court correctly concluded that a knowing mental state is necessary, it also erred when it dismissed the case because the State's complaint alleged sufficient facts to proceed under a knowledge

standard. Accordingly, this Court must reverse and remand the case with instructions that it proceed to discovery and, ultimately, a final hearing.

II. THE TRIAL COURT ERRED WHEN IT DISMISSED THE CASE BECAUSE THE DEFENDANTS' ALLEGED RACIALLY-MOTIVATED TRESPASS VIOLATED THE CIVIL RIGHTS ACT AND WAS NOT PROTECTED BY THE RIGHT TO FREEDOM OF SPEECH.

A. The Civil Rights Act, RSA 354-B:1, prohibits the unprivileged, unpermitted, or unauthorized intrusion upon the property of another, a trespass, when such trespass is motivated by protected characteristics, including race and national origin.

The Act, RSA 354-B:1 (2022), declares, "All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire." To help secure that right, the Act prohibits subjecting any person "to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability."[3] RSA 354-B:1. The Act defines "threatened physical force" and "threatened damage to or trespass on property" and references the intent to commit "some unlawful act," but it does not define the scope of "physical force," "violence," "property damage," or "trespass on property." *Id*.

The meaning and scope of the phrase, "trespass on property," as used in the Act, presents a question of statutory interpretation that this Court reviews *de novo*. *Dichiara v. Sanborn Reg'l Sch. Dist.*, 165 N.H. 694,

[3] Hereinafter, race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, and disability shall be referred to as "protected characteristics."

696 (2013). In such matters, this Court is "the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole." *Id*. This Court first "examine[s] the language of the statute, and, where possible, [] ascribe[s] the plain and ordinary meanings to the words used." *State v. Guay*, 164 N.H. 696, 699 (2013).

The Court "interpret[s] a statute in the context of the overall statutory scheme and not in isolation." *Id*. It "construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." *Franklin v. Town of Newport*, 151 N.H. 508, 510 (2004). A construction that nullifies all or part of a statute or a significant portion of a statute's purpose is one way in which an absurd result may occur. *See*, *e.g.*, *State v. Costella*, 166 N.H. 705, 711 (2014) ("[I]t is not to be presumed that the legislature would pass an act leading to an absurd result and nullifying to an appreciable extent the purpose of the statute."); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 180-82 (2012) (discussing the "Harmonious-Reading Cannon" of statutory construction).

Unlike the phrases "threatened physical force" and "threatened damage to or trespass on property," the Act does not provide its own definition of "trespass on property." RSA 354-B:1. When a statute does not define a particular term, this Court often looks to its ordinary definition from dictionaries. *See*, *e.g.*, *State v. Parr*, 175 N.H. 52, 60 (2022) (looking to dictionaries to fill gaps in statutory definitions). Using an ordinary dictionary, "trespass" is both a verb and a noun and means: "an unlawful invasion of the person, property, or rights of another," "to make an unwarranted or uninvited incursion," and "to enter unlawfully upon the

land of another." *Webster's Third New International Dictionary* 2439 (2002). "Trespass" is also a legal concept and term of art, which *Black's Law Dictionary* defines as "[a]n unlawful act committed against the person or property of another, . . . [a]t common law, a legal action for injuries resulting from an unlawful act of this kind." *Black's Law Dictionary* 1642 (9th ed. 2009); *see also Rankin v. South St. Downtown Holdings, Inc.*, 172 N.H. 500, 504 (2019) (recognizing that legal terms of art, such as trespass, must be construed according to the "peculiar and appropriate meaning" in law). These definitions are consistent with the concept of trespass as established through centuries of common law jurisprudence, also known as "civil trespass" to distinguish it from the criminal offense of "criminal trespass." *See*, *e.g.*, *Western Watersheds Project v. Michael*, 869 F.3d 1189, 1192 (10th Cir. 2017) (recognizing and delineating the distinctions between "civil trespass" and "criminal trespass").

Regarding "civil trespass," this Court, in *Case v. St. Mary's Bank*, 164 N.H. 649 (2013), cited the Restatement (Second) of Torts and reiterated that "a trespass is an intentional invasion of the property of another . . . [but c]onduct which would otherwise constitute a trespass is not a trespass if it is privileged." *Case*, 164 N.H. at 658 (brackets and quotations omitted); *see also Moulton v. Groveton Papers Co.*, 112 N.H. 50, 54 (1972) (defining trespass and citing the Restatement of Torts in support of that definition). If a property owner consents to or permits the intrusion upon their property, then it is not a trespass. *Case*, 164 N.H. at 658. *Case* and the Restatement recognize three ways in which a trespass may occur: (1) entering land in possession of another or causing a thing or third person to do so; (2) remaining on the land; or (3) failing to remove

from the land a thing which the trespasser is under a duty to remove. *Id*.; Restatement (Second) of Torts § 158 (1965). Such an entry can including "throwing, propelling, or placing a thing" on, beneath, or above the property of another. Restatement (Second) of Torts § 158, cmt. i. Accordingly, a person's intentional and unauthorized act of affixing any thing to the property of another constitutes "civil trespass." *Id*.; *see also Case*, 164 N.H. at 658.

A trespasser's self-serving claim that they mistakenly believed they had such authorization or did not know they lacked the necessary authorization to intrude upon another's property does not immunize them from liability for trespass. *See* Restatement (Second) of Torts § 164 (detailing that a mistake of law is not a defense to trespass and even an honest or reasonable belief as to whether the trespasser has the privilege or consent to enter the property is not a defense). This remains the case even where the law may require proof that the trespasser knew that he or she entered onto the property of another without authorization because the trespasser would be able to present an affirmative defense that showed that he or she had either: (1) express consent to enter the property, *see*, *e.g.*, *State v. Clay*, 455 N.W.2d 272, 274 (Iowa Ct. App. 1990) (defining trespass to include public or private property that is entered without the express permission of the owner for certain prohibited purposes); (2) a right to enter the property conveyed by contract, *see*, *e.g.*, *Case*, 164 N.H. at 658-59 (concluding that the bank by virtue of the mortgage agreement had been granted the right to enter the property); or (3) a right to enter the property though some other function of law, *see*, *e.g.*, *id*. (recognizing that the trespasser may have some "interest in the land, such as to abate a public or

private nuisance" that permits the trespasser to enter). Absent evidence that the trespasser had been granted such authorization to intrude upon the property of another, the trespasser cannot be shielded from the legal consequences of their unlawful act. *See*, *e.g.*, *State v. Geddes*, 998 N.W.2d 166, 178-79 (Iowa 2023) (affirming hate crime enhanced convictions under Iowa's criminal trespass law where the defendant, motivated by animus toward gay people, entered onto the property of another without permission to leave hateful notes); *see also State v. Soucy*, 139 N.H. 349, 352-53 (1995) (describing affirmative defenses as "a defense overriding the element" and its operation).

The definition of trespass in the Act cannot require the State to prove that a defendant committed "criminal trespass," as prohibited by RSA 635:2,[4] because such a requirement is inconsistent with both the plain meaning of the term used in the Act and, to the extent the Act may be ambiguous, the legislative history of the Act. The Act does not use criminal offenses or refer to criminal statutes when establishing what conduct triggers a violation of the Act. It uses the terms "physical force," "violence," "property damage," and "trespass" instead of "assault," "criminal mischief," and "criminal trespass." Because the legislature is presumed to use precision in choosing its language, *see*, *e.g.*, *Roberts v. Town of Windham*, 165 N.H. 186, 190 (2013) ("We also presume that the

[4] Although RSA 635:2 may not be unique in how it defines criminal trespass, it certainly is not the only method to criminalize trespass that withstands constitutional scrutiny and, as discussed in section III, that means it cannot be the touchstone for determining whether a definition of trespass passes constitutional muster. *See*, *e.g.*, *State v. Chase*, 335 N.W.2d 630, 633-34 (Iowa 1983) (concluding that a trespass statute that requires express permission is neither unconstitutionally overbroad or vague).

legislature knew the meaning of the words it chose, and that it used those words advisedly."), its choice to omit references to the criminal code, criminal statutes, or criminal terms of art evidences an intention to prohibit certain conduct beyond that which may be prohibited by the criminal code.

This conclusion is further supported in the legislative history of the Act. The only reference to criminal law in the 130 pages of legislative history occurred when the Attorney General's Office explained how it developed the definitions of "threatened physical force" and "threatened property damage or trespass on property," which "was lifted from the criminal [threatening] statute" to ensure that the "statute is First Amendment bulletproof." App2: 30.

Based upon the plain language of the statute and bolstered by the legislative history, under an actual trespass theory, the Act requires the State to prove that a defendant, motivated by a protected characteristic, intruded upon the property of another person to interfere with the rights or lawful activities of the property owner or any other person. RSA 354-B:1. The State must prove those elements by clear and convincing evidence. RSA 354-B:2, IV (2022). Regardless of whether the State needs to merely show that the defendant intruded upon the property of another or prove by clear and convincing evidence that the defendant also lacked the authority to intrude upon the property of another, the defendant may present the affirmative defense of consent or privilege to enter onto the property to defeat the State's trespass theory. That a defendant can defeat a trespass theory with evidence of consent or privileged entry prevents the Act from chilling otherwise protected conduct.

B. Government property can be trespassed upon when use of that property exceeds the scope of authority permitting public use or access.

As the United States Supreme Court has recognized and courts across the country, including this Court, have echoed, "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated," and rights to freedom of speech or assembly do not authorize a person to speak or assemble "whenever and however and wherever they please." *Adderley v. Florida*, 385 U.S. 39, 47-48 (1966); *see also State v. Bailey*, 166 N.H. 537, 545 (2014) (concluding that a person can be liable for violating reasonable time, place, and manner restrictions governing a place generally open for public expression); *State v. Korsen*, 69 P.3d 126, 136 (Id. 2003) (explaining that a trespass statute that prohibits access to government property that is closed for expression would not be overbroad); *Abney v. United States*, 616 A.2d 856, 862-63 (D.C. Ct. App. 1992) (concluding that the government can restrict access to certain spaces to further substantial interests and that a person's "*bona fide* belief in his right to remain in [or intrude upon] the restricted area" does not negate his liability). But depending on the nature of the government property, a need to balance the government's interest in protecting and preserving its property against the public's right to engage in acts of speech or expression exists, the contours of which are often defined through the public forum analysis. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983) (detailing the limits on government authority to restrict access to traditional public forums, designated public forums, and nonpublic forums); *Montenegro v. N.H.*

DMV, 166 N.H. 215, 219 (2014) (considering the forum analysis under the state constitution). When a person or group exceeds their right to access or remain in a particular forum, they are committing trespass. *Cf. United States v. Gilbert*, 920 F.2d 878, 885-86 (11th Cir. 1991) (finding that person who has trespassed upon public property may be enjoined from reentry or having his conduct on that public property restricted to comport with the law, even when that person claims to be trespassing to engage in expressive conduct); *Bailey*, 166 N.H. at 547 (upholding a city ordinance that limited access to public parks after certain hours and convictions for violating that city ordinance).

Traditional public forums are those "places which by long tradition or by government fiat have been devoted to assembly and debate," such as "streets and parks," and in these spaces the government may enforce time, place, and manner exclusions as well as "content-based exclusion[s]" upon showing that those exclusions serve a significant or compelling state interest and are narrowly drawn to serve that end. *Perry Educ. Ass'n*, 460 U.S. at 45; *see also Doyle v. Comm'r N.H. Dep't of Resources and Economic Dev.*, 163 N.H. 215, 221 (2012) (same). Designated public forums are government property that the government "has opened for expressive activity by part or all of the public," and they are often governed by the same standards as traditional public forums. *Doyle*, 163 N.H. at 221; *see also Perry Educ. Ass'n*, 460 U.S. at 45-46 (same). Nonpublic forums comprise "all remaining government property" and "[r]estriction on speech in nonpublic for[ums] are . . . constitutional if they are reasonable and not an effort to suppress expression based on the speaker's viewpoint."

HippoPress, LLC v. SMG, 150 N.H. 304, 312-13 (2003); *see also Perry Educ. Ass'n*, 460 U.S. at 46.

The rights to freedom of speech or assembly do not prevent the government from enforcing lawful restrictions upon a space, ordering that people leave, excluding them from the space, or bringing civil or criminal actions against those who violate the lawful restrictions. *See*, *e.g.*, *United States v. Kokinda*, 497 U.S. 720, 727-28 (1990) (concluding that the First Amendment does not require a post office to open a nonpublic forum to those soliciting donations); *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 807-08 (1984) (concluding utility poles are nonpublic forums and that a municipality can lawfully prohibit members of the public from posting signs or advertisements upon them to preserve esthetic value and prevent road hazards from developing); *Greer v. Spock*, 424 U.S. 828, 838-39 (1976) (permitting the government to exclude solicitors from sidewalks that are generally open to the public on a military base); *Bailey*, 166 N.H. at 543-44 (permitting the government to exclude protesters during hours where a public park is closed); *State v. Koski*, 120 N.H. 112, 115 (1980) (recognizing that a person's "belief that she had a license or privilege" to be in a restricted public space does not negate the elements of trespass). Those prohibitions, specifically prohibitions that affect nonpublic forums such as overpasses on highways, can include prohibiting all expressive activity so long as the prohibitions remain viewpoint neutral. *See Luce v. Town of Campbell, Wisconsin*, 872 F.3d 512, 517-18 (7th Cir. 2013) (concluding that prohibitions on displaying signs and banners from overpasses do not violate the First Amendment because of the hazards such signs pose to drivers); *Brown v. California Dep't of*

Transp., 321 F.3d 1217, 1222-23 (9th Cir. 2003) (concluding that an overpass fence is a nonpublic forum and a policy restricting expressive conduct in the forum is valid so long as it is viewpoint neutral). Prohibitions against expressive activities in nonpublic forums remain lawful even when those forums may share apparent characteristics with traditional public forums or may be considered designated public forums in other locations. *See Kokinda*, 497 U.S. at 727-28 (sidewalks on government owned property); *Taxpayers for Vincent*, 466 U.S. at 807-08 (utility poles on public streets); *Greer*, 424 U.S. at 838-39 (sidewalks in portions of a military base open to the public and where visitors were "welcome).

The Act prohibits "trespass on property" and that encompasses unlawful entries upon government property as well as private property. As discussed in Section II.A, above, trespass requires an unprivileged or unpermitted intrusion upon the property of another person. *Case*, 164 N.H. at 658; Restatement (Second) of Torts § 158; *Black's Law Dictionary*, 1642. "Person" is not limited to natural persons and may include "bodies corporate and politic." RSA 21:9. This Court has found that members of the public can be charged and convicted of criminal trespass on government property. *See*, *e.g.*, *State v. Gaffney*, 147 N.H. 550, 555-56 (2002) (affirming convictions for criminal trespass where defendant had been ordered to leave a local police station and refused to do so). Thus, a person can violate the Act by trespassing upon property owned by municipalities, the State, and other governmental bodies.

Multiple statutes and a city ordinance prohibit members of the public from affixing or displaying signs from highway overpasses without some prior authorization. *See* RSA 236:27 (2009) (prohibiting affixing to any

"bridge, fence, or other structure" without the consent of the property owner any "device, trademark, advertisement, or notice"); RSAs 236:69-:81 (2009) (regulating the display of, among other things, advertising devices—including any and all signs and banners—within a certain distance of federally funded highways); City of Portsmouth, NH Ordinances §§ 9.503, *et seq*. (governing obstructions on public ways in the City of Portsmouth). These regulations prohibit, among other things, signs, banners, and other objects that are intended to or do attract the attention of motorists regardless of whether those objects have a commercial nature. RSA 236:70, I (defining "Advertising Device"). These regulations are not only viewpoint-neutral but content-neutral as well, which affords greater protection than what regulations for nonpublic forum require. *See HippoPress LLC*, 150 N.H. 312-13.

These statutes and regulations are matters of public record and put the public on notice that placing a sign or banner on a highway overpass fence is an unlawful entry onto government property—in other words, a trespass—that could subject trespassers to liability in the form of enforcement actions because this Court, among others, has recognized that "ignorance of the law is no excuse." *State v. Stratton*, 132 N.H. 451, 457 (1989) (citation omitted); *see also United States v. Freed*, 401 U.S. 601, 612 (1971) (*Brennan*, J., concurring) ("If the ancient maxim that 'ignorance of the law is no excuse' has any residual validity, it indicates that the ordinary intent requirement -- *mens rea* -- of the criminal law does not require knowledge that an act is illegal, wrong, or blameworthy."). A trespass of this nature can serve as the foundation for an enforcement action under the Act, if the trespass is accompanied by evidence of motivation by

a person's or group's protected characteristics and an attempt or actual interference with the lawful activities of another.

Given this interpretation of the Act, the notice provided to the defendants by the Act and other statutes prohibiting their conduct, and the unlawful and unprotected nature of the defendants' conduct, the trial court erred when it granted their motions to dismiss. Accordingly, this Court must reverse and remand.

C. Relying upon the defendants' speech, such as the content of their banner, to provide evidence of the race motivation for their trespass does not violate their right to freedom of speech.

The Act does not become a content or viewpoint-based action because the State relies upon a defendant's speech. Both the United States Supreme Court and this Court have held that evidence of motivation, including race motivation or hate motivation, may come from speech—including speech that, absent the accompanying unlawful conduct, would otherwise be protected speech. *See Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) ("The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. Evidence of a defendant's previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like."); *Costella*, 166 N.H. at 710 (citing *Mitchell* as authority in construing the scope and application of New Hampshire's hate-crime sentencing enhancement).

In *Mitchell*, the Supreme Court considered the question of whether the State has violated a defendant's right to freedom of speech when it

relied upon statements the defendant made as evidence of his motive for selecting a white victim. *Mitchell*, 508 U.S. at 479-80. The Supreme Court concluded that relying upon those statements did not violate the defendant's right to freedom of speech because "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." *Id*. at 486. In *Costella*, this Court upheld a hate-crime enhanced conviction for criminal threatening when the evidence of hate-motivation derived from statements the defendant made to the victims about their perceived Jewish heritage. *Costella*, 166 N.H. at 713.

Like the hate-crime sentencing enhancement, the Act functions like a modification of ordinary civil liability that an person may face for his or her tortious conduct. Considering an actor's motivation to assess whether that remedy may be warranted has no impact on the person's right to freedom of speech, even when proof of motivation relies upon evidence of the person's speech, because a person's motivation has always been a proper consideration in crafting the appropriate remedy or consequence.

The fact that the Act is a civil statute as opposed to criminal does not undermine this conclusion because the ability to consider speech as evidence of motivation extends beyond criminal law. *See*, *e.g.*, *Roberts v. United States Jaycees*, 468 U.S. 609, 628-29 (1984) (concluding that enforcement of antidiscrimination laws does not violate the First Amendment). Relying upon speech as evidence of a defendant's motivation for undertaking some unlawful act enables the State and the trial court better redress the harm caused, a plainly legitimate consideration.

Accordingly, reliance upon the content of the defendants' banner does not violate their right to freedom of speech and any conclusion to the contrary is error.

III. THE TRIAL COURT ERRED WHEN IT DISMISSED THE CASE BECAUSE TRESPASS COMES WITH AN IMPORTANT INHERENT LIMITING PRINCIPLE THAT PREVENTS THE ACT FROM BECOMING OVERBROAD OR VAGUE.

"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, 421 (2004) (quotation omitted). "The application of the overbreadth doctrine is 'strong medicine' to be employed only as a last resort." *Id*. (quotation omitted). "The overbreadth of a statute must be real and substantial, judged in relation to the statute's plainly legitimate sweep." *Id*. This requirement "precludes a court from invalidating a statute on its face simply because of the possibility, however slight, that it might be applied in some unconstitutional manner." *Id*. (quotation omitted). In the rare circumstance where a trial court concludes the statute is "substantially overbroad," it can supply a limiting construction or partial invalidation to narrow the scope of the statute, but if the statute is not "substantially over broad," then whatever overbreadth that may exist can be cured on a case-by-case basis. *Id*.

Relatedly, "[a] statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *State v. Porelle*, 149 N.H. 420, 423 (2003) (quotation omitted). "Regarding the first inquiry, we have stated: Due

process requires that a statute proscribing conduct not be so vague as to fail to provide a person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Id*. (quotation omitted). "The necessary specificity, however, need not be contained in the statute itself, but rather, the statute in question may be read in the context of related statutes, prior decisions, or generally accepted usage." *Id*. (quotation omitted). "Mathematical exactness is not required in a penal statute, nor is a law invalid merely because it could have been drafted with greater precision." *Id*. (quotation omitted). "The party challenging the statute as void for vagueness bears a heavy burden of proof in view of the strong presumption of a statute's constitutionality." *Id*. (quotation omitted). Regarding the second inquiry, the analysis addresses the standards provided to those charged with enforcing the statute and requires that the standards provide sufficient guidance to law enforcement to prevent arbitrary enforcement that can vary from actor to actor. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 170-71 (1972) (discussing the arbitrariness of standards for applying vagrancy laws).

Recently and relevantly, the Iowa Supreme Court rejected freedom of speech, overbreadth, and vagueness challenges to a hate-motivated trespass where the defendant intruded upon the property of another without express authorization. *Geddes*, 998 N.W.2d at 181. Under Iowa law, a person commits criminal trespass when they knowingly enter onto the property of another without express authorization from the property owner. *See Chase*, 335 N.W.2d at 633 (discussing the scope of Iowa's criminal trespass statute). The Iowa statute at issue functions similarly to common law trespass in that it contains two critical elements: (1) knowingly entering

the property of another and (2) without expressed authorization from the property owner.[5] *Id*. The Iowa Supreme Court had previously concluded that the statute was neither overbroad nor unconstitutionally vague even though it required express authorization rather than permitting the defendant to rely upon implied authorization or justification as a basis to enter. *Id*. at 633-34. The Iowa Supreme Court found that the statute provided fair notice to the public of the prohibited conduct and did not invade upon any protected freedoms because there is no right to intrude upon another's property. *Id*.

Forty years after *Chase*, the Iowa Supreme Court readdressed the overbreadth and vagueness issues along with a freedom of speech challenge in *Geddes*. *Geddes*, 998 N.W.2d at 169. In that case, the defendant entered onto property of renters and homeowners that had displayed rainbow LGBTQ+ Pride flags. *Id*. at 170. The defendant then taped notes that included a variety of homophobic and disturbing comments for the victims to find. *Id*. The defendant was arrested, charged with five counts of trespass as a hate crime, and convicted. *Id*. The court reiterated that a trespass occurred when the defendant entered the property of another without the express permission of the property owner. *Id*. at 171-72.

The court then addressed the defendant's contention that this application of the trespass statute and hate crime enhancement violated his right to freedom of speech. *Id*. at 175. The court recognized that this case could be distinguished from *Mitchell* because the defendant had engaged in

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[5] The statute at issue has a third element that required a defendant to "place something" upon the property of another but that element not a component of the vagueness or overbreadth challenge. *Id*. at 180.

expressive conduct while committing the trespass (or had committed the trespass to engage in expressive conduct). *Id*. at 176-77. The court detailed decisions from other states addressing similar expressive behavior that was intertwined with criminal conduct, such as disorderly conduct, harassment, and vandalism, where the suspects had committed hate-motivated, criminal acts while engaging in what was alleged to be expressive conduct. *Id*. at 177-78. In each, the courts concluded that the right to freedom of speech ended when the defendants engaged in unlawful conduct. *Id*. The Iowa Supreme Court found that although "[t]he conduct may be communicative," "the statute is aimed at a broader scope of conduct, whether communicative or not." *Id*. at 178. The court rejected the defendant's contention that he received harsher penalties because of what his notes said. Instead, the court found that he received harsher penalties because of his motivation to commit the trespass and that what he did was not protected conduct. *Id*. Ultimately, it found that convicting the defendant of a hate-motivated, criminal trespass did not violate his right to freedom of speech. *Id*. at 179.

The last arguments the Iowa Supreme Court addressed were the defendant's overbreadth and vagueness challenges. *Id*. at 179-81. Regarding vagueness, the court reiterated its holding in *Chase*, *id*. at 179, but also addressed the defendant's arguments regarding an implied right of entry for certain acts, such as "a Girl Scout leaving an advertisement for a cookie sale." *Id*. at 180. It rejected this argument because the standard is not "whether *others* engage in the prohibited conduct without prosecution, but whether the statute provides fair notice or intrudes substantially on protected freedoms." *Id*. The court concluded that the statute provides such sufficient notice and the defendant had neither express nor implied

permission to engage in his conduct. *Id*. at 180-81. The court also rejected the defendant's contention that because such trespasses are not universally prosecuted, they fail to provide sufficient guidance to law enforcement. *Id*. at 181.

Regarding overbreadth, the court rejected the argument because "there is no constitutional freedom to express one's self on someone else's private property." *Id*. The court also observed that trespass, unlike other laws and ordinances that the Supreme Court has deemed unconstitutional, is not a targeted restriction upon protected activity. *Id*. It applies to any trespass or act prohibited by law and is not limited to only acts that seek to engage in expressive conduct or speech. *Id*. Thus, the court concluded that the statute was not unconstitutionally overbroad and upheld the defendant's convictions. *Id*.

Looking to this Court's standards of vagueness and overbreadth, in conjunction with the Iowa Supreme Court's decision in *Geddes*, the only conclusion to reach is that the trial court erred when it found that the State's interpretation and application of the Act was overbroad, vague, and violated the defendants' right to freedom of speech. The Act prohibits trespass, motivated by race and other protected characteristics, that attempts to or actually interferes with the lawful activities of others. RSA 354-B:1. Considering the government property at issue, numerous state laws and city ordinances prohibit affixing signs and banners to the nonpublic forum of a highway overpass fence. These laws provide clear and adequate notice to the public and the defendants that their act of affixing a banner to the overpass's fence was unauthorized, unpermitted, unlawful, and, therefore, a trespass. The language on the banner did not make their conduct unlawful

or a violation of the Act; it was their trespass combined with this motivation for it—a content-neutral prohibition on conduct, that served as the foundation for the enforcement action. The language on the banner is merely evidence of motivation, which the United States Supreme Court as well as courts across the country have concluded is a lawful consideration. The Act is also not overbroad, in whole or as applied, because the defendants have numerous other ways and places to express their views, such as in public squares or parks, or on town or city sidewalks, or through proper, peaceful demonstration.

The Act simply permits an enforcement action when a person trespasses upon the property of another, that trespass is motivated by a protected characteristic, and that trespass causes the harm the Act seeks to prevent. The limitation inherent in the State's interpretation, as it is in any act of trespass, is the requirement that the intrusion be unprivileged, unpermitted, non-consensual, or otherwise unlawful. The State's interpretation cannot capture conduct that occurs where a person is lawfully allowed to be present, because such conduct is not a trespass as a matter of law. The State's interpretation cannot chill any expressive conduct or speech that is otherwise lawfully protected. The State's interpretation eliminates arbitrary or discriminatory enforcement because for trespass to occur on government property, there must be evidence that a person's entry was in violation of some statute, ordinance, rule, or regulation.

If the defendants did not trespass on government property, then they would not have violated the Act. Accordingly, the trial court erred when it concluded that the State's interpretation and/or application of the Act was

unconstitutionally vague, overbroad, or violated the defendants' right to freedom of speech, and this Court must reverse and remand.

IV. ASSUMING THE CIVIL RIGHTS ACT COULD BE OVERBROAD, THE TRIAL COURT ERRED WHEN IT CONCLUDED *SUA SPONTE* THAT THE ACT REQUIRES PROOF THAT THE DEFENDANTS KNEW THEY WERE TRESPASSING.

Although a court may have authority to provide a limiting construction when a statute is unconstitutionally overbroad or otherwise encroaches upon a person's constitutional rights, it must try "to limit the solution to the problem." *Ayotte v. Planned Parenthood*, 546 U.S. 320, 328 (2006). When crafting a limiting construction, a court must: (1) "try not to nullify more of a legislature's work than is necessary"; (2) "restrain [them]selves from rewriting state law to conform it to constitutional requirements"; and (3) resist "using [their] remedial powers to circumvent the intent of the legislature." *Id*. at 329 (quotations and brackets omitted).

The rationales behind these considerations are three-fold. First, when interpreting a statute, courts have a duty to honor the legislature's intent and "a[n overbroad] ruling of unconstitutionality frustrates the intent of the elected representatives of the people." *Id*. (quotation and brackets omitted); *see also Franklin*, 151 N.H. at 510. Second, courts have limited authority and expertise to engage in what is "quintessentially legislative work" and "making distinctions in a murky constitutional context, or where line-drawing is inherently complex, may call for a far more serious invasion of the legislative domain than [courts] ought to undertake." *Ayotte*, 546 U.S. at 329 (quotation omitted). Third, "the touchstone of any decision about remedy is legislative intent" because courts have a duty to consider what the legislature desired in enacting the statute. *Id*.

The trial court's *sua sponte* adoption of a knowledge requirement fails to honor its obligations to "try not to nullify more of a legislature's work than is necessary" and resist "using [its] remedial powers to circumvent the intent of the legislature." *Id*. The trial court cited no authority for why a "knowing" mental state or evidence that the defendants knew they lacked authority to intrude upon government property was either the only way or most narrow way to adequately limit the scope of the Act. This conclusion is contrary to case law from other jurisdictions that have upheld similar theories of trespass when defendants have alleged they had an implied right of access to the property of another. *See*, *e.g.*, *Geddes*, 998 N.W.2d at 179-81 (upholding trespass convictions where defendant was required to have express permission to enter in overbreadth, vagueness, and First Amendment challenges). This conclusion is inconsistent with the principle that "ignorance of the law is no excuse" and creates an incentive for those wishing to interfere with the rights of people or groups because of their protected characteristics to be willfully blind of the law. *See Stratton*, 132 N.H. at 457; *see also Freed*, 401 U.S. at 612 (*Brennan*, J., concurring) ("If the ancient maxim that 'ignorance of the law is no excuse' has any residual validity, it indicates that the ordinary intent requirement -- *mens rea* -- of the criminal law does not require knowledge that an act is illegal, wrong, or blameworthy.").

Importantly, the United States Supreme Court has recently rejected requiring a knowing or purposeful requirement as necessary to protect a defendant's right to freedom of speech. In *Counterman v. Colorado*, 143 S. Ct. 2106 (2023), the Court considered the necessary mental state for a defendant accused of making a "true threat" and facing criminal charges.

Counterman, 143 S. Ct. at 2111. In that case, the Court considered the appropriate subjective standard necessary to balance a speaker's First Amendment rights when they may engage in speech that is unprotected by the First Amendment against the government's compelling interest in protecting the public from true threats. *Id*. at 2117. The Court considered the benefits and drawbacks of purpose, knowledge, and recklessness. *Id*. In comparing them, the Court observed that recklessness, as opposed to purpose and knowledge, "involves insufficient concern with risk, rather than awareness of impending harm," and yet remains "morally culpable conduct involving a deliberate decision to endanger another." *Id*. (quotation omitted). The Court concluded that recklessness "offers the correct path forward" because it strikes the appropriate balance between free speech and protecting against the harms perpetuated by threats of violence. *Id*. The Court reached this conclusion recognizing that "reckless defendants have done more than make a bad mistake. They have consciously accepted a substantial risk of inflicting serious harm." *Id*. at 2118. The Court also recognized that recklessness "offers enough breathing space for protected speech, without sacrificing too many of the benefits of enforcing laws against true threats." *Id*. at 2119.

In reaching its conclusion, the Court provided a limiting construction or application that nullifies no more of the legislature's work than necessary. In this case, the trial court failed to follow the rule that its limiting construction nullifying no more of the legislature's work than necessary and provided little reasoning to support its decision. Likewise, its *sua sponte* action denied the parties the opportunity to develop arguments for or against such a standard.

Considering the command that courts resist "using [their] remedial powers to circumvent the intent of the legislature," *Ayotte*, 546 U.S. at 329, the trial court also failed to consider the legislature's intent when imposing such a dramatic limiting construction. Contrary to the trial court's belief in the order on the motion to dismiss, nothing in the legislative record or the statute's language indicated an intention to incorporate criminal law or statutes into the Act's interpretation or application. App1: 8 n.4, 173; App2: 30 (legislative record). As Assistant Attorney General Ann Larney articulated, "This statute prohibits a person from accompanying that hate and that bias with an illegal act." App2: 30. Examining the legislative record shows proponents of the Act identifying conduct that may be subject to criminal charges, App2: 10 (Senator Pignatelli describing an incident where someone carved a swastika into a Jewish person's car), as well as conduct that may not be subject to criminal charges, App2: 12-13 (Attorney General McLaughlin detailing conduct that the Act could address but where "there is no criminal law that has been violated" and addressing "distinctions between the criminal law and this law and no law"). Ultimately, the Act covers conduct that may only amount to a common law tort claim, like trespass; the Act does not always need to have a criminal analog.

The remedy that the Act further shows the Act covers potential criminal and non-criminal conduct. The Act does not impose incarceration for an initial violation. Instead, it aims to restrain and prevent future harm from occurring to protect victims of hate-motivated conduct and the public at large. As Attorney General McLaughlin explained, "What this statute does is allow us to intervene, to protect the rights of those individuals

whose rights have been put at risk in a manifest way. . . . It allows us to intervene civilly and not criminally." App2: 13. The Act establishes a protective scheme to ensure that people can exercise their "right to be left alone" or otherwise live peacefully in their communities. App2: 14.

Given this purpose, the trial court deviated dramatically from the legislature's intent when it effectively incorporated the definition of criminal trespass into a statute that makes no reference to the criminal code and whose legislative history shows a clear intent to craft a statute that covers all forms of unlawful or illegal conduct. Coupled with the trial court's failure to consider any narrower limitations, this deviation necessitates only one action from this court: to reverse and remand the case back to the trial court for trial.

V. EVEN ASSUMING THE TRIAL COURT DID NOT ERR IN ITS STATUTORY INTERPRETATION, DISMISSAL WAS NOT WARRANTED UNDER THE CIRCUMSTANCES.

"New Hampshire maintains a system of notice pleadings." *Porter v. City of Manchester*, 151 N.H. 30, 43 (2004). "As such, we take a liberal approach to the technical requirements of pleadings." *Id*. (quotation omitted). Thus, although "a defendant is entitled to be informed of the theory on which the plaintiff is proceeding," *id*., so long as the complaint connects the alleged conduct to a theory that would entitle the plaintiff to the relief it seeks, the complaint has provided sufficient notice to the defendant. *City of Keene v. Cleaveland*, 167 N.H. 731, 743 (2015). This principle is particularly true in circumstances where the plaintiff is seeking equitable relief because a court sitting in equity is "less hampered by technical difficulties" and is "not shackled by rigid rules of procedure." *27A Am. Jur. 2d Equity* § 2 (2008); *see also Cleaveland*, 167 N.H. at 743 (citing *27A Am. Jur. 2d Equity* § 2).

Although the Court found that "the State does not allege that the defendants in this case knew they were not licensed or privileged to enter and remain on the overpass in question or affix the banners to the overpass fencing," that finding was insufficient to warrant dismissal. App1: 38. The complaint alleged that the defendants took steps to conceal their identities, refused to identify themselves for police, attempted to conceal where they had parked, and other factual claims that would support the inference that the defendants knew their conduct was unlawful. App1: 128-30, 187-88, 196-97. On a motion to dismiss all reasonable inferences from the facts alleged are taken in the light most favorable to the complainant. *Beane v.*

Dana S. Beane & Co., 160 N.H. 708, 711 (2010). The State contended that the defendants trespassed upon the overpass in violation of state law and the Act. *See*, *e.g.*, App1: 125-26, 129-30, 184-86, 188, 194-98. Thus, the State's complaint, even when read in conjunction with the trial court's new knowledge requirement states a viable claim against the defendants for a violation of the Act. Accordingly, if and only if this Court concludes that the trial court did not err in all other respects raised in this brief, this Court must still reverse and remand because the complaint alleges sufficient facts that, when taken as true with all reasonable inferences construed in the light most favorable to the complainant, states a viable claim against the defendants for a violation of the Act.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court reverse the judgment below. The State requests a fifteen-minute oral argument before the Court, which will be presented by Senior Assistant Attorney General Sean R. Locke.

Respectfully Submitted,

JOHN M. FORMELLA, ATTORNEY GENERAL

By his Attorneys:

THE OFFICE OF THE NEW HAMPSHIRE ATTORNEY GENERAL

March 25, 2024

/s/ *Sean R. Locke*
Sean R. Locke
NH Bar No.: 265290
Senior Assistant Attorney General
New Hampshire Department of Justice
1 Granite Place—South
Concord, NH 03301
603.271.3650

CERTIFICATE OF COMPLIANCE

I, Sean R. Locke, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,500 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

March 25, 2024 */s/ Sean R. Locke*
Sean R. Locke

CERTIFICATE OF SERVICE

I, Sean R. Locke, hereby certify that a copy of Attorney General John M. Formella's brief shall be served on counsel for the parties through the New Hampshire Supreme Court's electronic filing system.

March 25, 2024 */s/ Sean R. Locke*
Sean R. Locke