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10 **IOWA DISTRICT COURT**
11 **POLK COUNTY**

<p>12 STATE OF IOWA,</p> <p>13 14 Plaintiff,</p> <p>15 v.</p> <p>16 17 MICHAEL PATRICK CASSIDY,</p> <p>18 19 Defendant.</p>	<p>20 Case No.: SRCR376781</p> <p>21 22 MOTION TO DISMISS</p>
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23 Pursuant to Iowa Rule of Criminal Procedure 2.11(8), Defendant Michael Cassidy, by
24 and through the undersigned attorney of record, hereby moves this Court to dismiss the
25 violation of individual rights enhancement (Iowa Code § 729A.2). This motion is based on the
26 memorandum of points and authorities filed herein.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. FACTS**

On or about December 14, 2023, Cassidy visited the Iowa State Capitol Building and
observed the Satanic Temple of Iowa’s (STI) display. The display depicted a pagan deity called
Baphomet. *See, e.g.,* <https://apnews.com/article/satanic-temple-display-vandalized-iowa-capitol-199fb41983a3f3a390b7be370214bb64>. Though Baphomet’s precise origins are a matter



1 of scholarly debate, the deity has come to be associated with occultists, such as Aleister
2 Crowley, and more recently the Satanic Temple—an organization known for, among other
3 things, erecting displays in public spaces to protest God and more specifically the Ten
4 Commandments. <https://www.britannica.com/topic/Baphomet>.

5 Some time after entering the property, Cassidy approached Capitol security officers and
6 advised them that he had removed STI's display. Police were contacted, arrived on the scene to
7 investigate the incident, and eventually allowed Cassidy to leave without issuing a citation.
8 But shortly after permitting Cassidy to leave the premises, police contacted him and informed
9 him that a person using the alias Gigi Macabre (apparently the head of STI) wished to file
10 charges. <https://www.desmoinesregister.com/story/news/local/2023/12/16/satanic-temple-of-iowa-members-gather-at-capitol-to-support-display/71933177007>. As a result,
11 police officers asked Cassidy to meet with them so they could issue a summons but indicated
12 that he would not be arrested. Cassidy agreed, met with the officers, and received a summons
13 to appear for fourth degree criminal mischief in violation of Iowa Code § 716.6(1)(a)(1). Later,
14 the State filed an information which includes a hate crime enhancement pursuant to Iowa
15 Code § 729A.2. Because the inclusion of the hate crime enhancement under these
16 circumstances is legally infirm, Cassidy now moves this Court for dismissal of the same.
17

18 II. LEGAL AUTHORITY

19 Iowa R. Crim. P. 2.11(8) provides that “[a] motion to dismiss the indictment or
20 information may be made on the ground that the matters stated do not constitute the offense
21 charged . . . or that the prosecution is barred by some other legal ground.”

22 III. ANALYSIS

23 Cassidy submits that there are four primary bases for dismissal of the hate crime
24 enhancement: (1) consistent with the plain language of the statute, STI is not a person; (2) STI
25 is not a religion within the statute's meaning; (3) to the extent that the statute applies, its
26 application is ambiguous under these circumstances, requiring that any doubts as to its
27 application be resolved in Cassidy's favor in accord with the rule of lenity; and (4) the statute
28 is unconstitutional on its face and as applied. Each contention is addressed *seriatim*.

1 **A. Based on the plain language of the statute, STI cannot be a person.**

2 Statutory interpretation is a legal inquiry that involves ascertaining the meaning of
3 words. *See Ridinger v. State*, 341 N.W.2d 734, 736–37 (Iowa 1983). “The purpose of statutory
4 interpretation is to determine the legislature’s intent.” *State v. Howse*, 875 N.W.2d 684, 691
5 (Iowa 2016). Typically, words are to be given their ordinary and common meanings, as
6 appropriate within the specific context. *Id.*; *See* Iowa Code § 4.1(38) (“Words and phrases shall
7 be construed according to the context and the approved usage of the language”); *State v.*
8 *Doe*, 903 N.W.2d 347, 351 (Iowa 2017) (providing that ordinarily courts consider the “relevant
9 language, read in the context of the entire statute”). Thus, a statute’s language is to be given a
10 fair meaning, but it should not extend beyond its express terms or what is reasonable. *Com.*
11 *Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021); Antonin Scalia & Bryan A. Gardner,
12 *Reading Law: The Interpretation of Legal Texts* 33 (2012) (recommending a “fair reading” method
13 that focuses on the “basis of how a reasonable reader . . . would have understood the text at the
14 time it was issued”).

15 If the “text of a statute is plain and its meaning clear,” a court “will not search for a
16 meaning beyond the express terms of the statute or resort to rules of construction.” *Doe*, 903
17 N.W.2d at 351. But, if the language of the statute is ambiguous or vague, the court “may resort
18 to other tools of statutory interpretation.” *Id.* Often times this will include examining the title
19 of a statute, which can reveal the legislative intent. *State v. Hall*, 969 N.W.2d 299, 307 (Iowa
20 2022) (“Although the title of a statute cannot change the plain meaning of the statutory text, it
21 can be considered in interpreting the text.”); *State v. Ross*, 941 N.W.2d 341, 347 (Iowa 2020)
22 (holding that the court can consider the title of a statute to determine legislative intent). “This
23 is particularly true where the title of the statute is merely the word, or . . . the offense, defined
24 in the statutory text.” *Hall*, 969 N.W.2d at 307.

25 The *Hall* case is instructive on this point. There, as pertinent, the State charged Hall with
26 two counts of suborning perjury. *Id.* at 302. The charges were based on coded text messages
27 that Hall sent to his girlfriend instructing her to ignore a subpoena and not show for her
28 deposition, where she was likely to give testimony that would incriminate him. *Id.* The matter

1 proceeded to trial, and the jury found Hall guilty. *Id.* On appeal, Hall argued that even if he
2 did send coded texts, those texts did not constitute suborning perjury within the meaning of
3 Iowa Code § 720.3. *Id.* at 304. As part of its inquiry, the Iowa Supreme Court looked at the
4 statute's title and noted that "[t]he title of the statute is 'Suborning perjury'" and that "[t]he
5 plain meaning of 'suborning perjury' is to persuade or induce a person to commit perjury,
6 which is to provide false testimony after the administration of the oath or affirmation." *Id.* at
7 307. Ultimately, the Court vacated Hall's conviction, holding that his conduct fell "outside the
8 scope of statutory liability." *Id.* at 308.

9 Here, like in *Hall*, the State is attempting to stretch the hate crime statute beyond a fair
10 and reasonable reading. The relevant statute, Iowa Code § 729A.2, is titled: "Violation of
11 individual rights — hate crime" and provides as follows:

12 "Hate crime" means one of the following public offenses when
13 committed *against a person* or a *person's property* because of the
14 *person's* race, color, religion, ancestry, national origin, political
15 affiliation, sex, sexual orientation, age, or disability, or the *person's*
16 association with a *person* of a certain race, color, religion, ancestry,
17 national origin, political affiliation, sex, sexual orientation, age, or
18 disability.

19 (Emphases added.) The most natural reading of this statute is that it applies to human beings
20 and is meant to protect human beings and their personal rights. The State, of course, will likely
21 contend that "person" has a broad meaning within the law. Although this is true in some
22 contexts, it necessarily cannot be true in this case for two reasons.

23 First, a fair and reasonable reading of 729A.2 precludes a broad definition of person.
24 Iowa law generically defines person as an "individual, corporation, limited liability company,
25 government or governmental subdivision or agency, business trust, estate, trust, partnership or
26 association, or any other legal entity." Iowa Code § 4.1(20). The prologue of 4.1 states that "[i]n
27 the construction of the statutes, the following rules [i.e., definitions] shall be observed." *Id.*
28 Thus, 4.1 provides definitions that ordinarily must be applied to Iowa statutes. *See id.* But 4.1

1 includes an exception to the prologue's decree and is therefore not as rigid as it initially
2 appears. In particular, 4.1 provides that a definition supplied by the rule need not be observed
3 if it "would be inconsistent with the manifest intent of the general assembly, or repugnant to
4 the context of the statute." *Id.*

5 In this case, the text of the hate-crime statute plainly cuts against a broad definition of
6 person, and therefore, such a definition would be inconsistent with the manifest intent of the
7 legislature, repugnant to the context of the statute, or both. The statute, for example, requires
8 that a criminal defendant commit one of the qualifying offenses against a person or a person
9 associated with a person because of that person's "race, color, religion, ancestry, national
10 origin, political affiliation, sex, sexual orientation, age, or disability." These attributes are
11 distinctly and unquestionably human. A legal entity cannot have a race, sex, or sexual
12 orientation. A corporation likewise cannot practice a religion. It could never be said, save in
13 Wonderland, that Best Buy is Buddhist. Neither can an LLC know skin color, ancestry, or a
14 disability. These things are uniquely part of the human experience, and they simply cannot
15 apply to legal entities.

16 The "associated with" language also does not support the State's preferred meaning of
17 "person" within the statute. This is so because the most natural, reasonable reading is that the
18 statute is meant to protect persons and their relationships with other persons. For instance, if a
19 person is attacked because she is married to someone of particular race or ethnicity, then the
20 statute is implicated, as such a situation is patently within the statute's contemplation. But
21 vague association between people and legal entities is not within the scope of the statute,
22 especially in light of the statute's title (discussed *infra*).

23 Second, similar to *Hall*, the title of 729A.2 is enlightening. As a reminder, the *Hall* court
24 held that the title of a statute can be helpful in interpreting the text of a statute especially when
25 the title names the offense that is defined in the text, which is the case here. *Hall*, 969 N.W.2d at
26 307. The title of 729A.2 is: "Violation of individual rights — hate crime."

27 Individual rights, naturally understood, are rights associated with people, not entities.
28 Black's Law Dictionary confirms this understanding. If one locates "individual right" in

1 Black's, it states, "1. See absolute right under Right. 2. See personal right (1) under Right."
 2 *Individual Right, Black's Law Dictionary* (11th ed. 2019). "Absolute right" is defined as "[a] right
 3 that belongs to every *human being*, such as the right of personal liberty; a natural right." *Id.*
 4 (emphasis added). Similarly, "personal right" means "[a] right that forms part of a person's
 5 legal status or personal condition, as opposed to the person's estate. - Also termed individual
 6 right." *Id.* Webster's further holds that a right is "a power, privilege, etc. that belongs to a *person*
 7 by law, nature, etc." *Right, Webster's New World Dictionary of the American Language* (Concise ed.
 8 1962) (emphasis added). Thus, the ordinary and common meaning of an individual right is a
 9 right that properly belongs to a human being. *Howse*, 875 N.W.2d at 691 (explaining that words
 10 are to be given their ordinary meanings). And here, there is simply nothing to suggest that the
 11 legislature meant anything more than this. When the legislature said individual rights, it
 12 meant the rights of a person, not those of Best Buy, Starbucks, or STI. There is nothing that
 13 permits an inference beyond that. *McGowen*, 956 N.W.2d at 133 (providing that meanings
 14 should not exceed the text or what is reasonable). The State's reading is simply inconsistent
 15 with this intent, repellent to the context, and unreasonable.

16 In short, the plain language, context, and title all support Cassidy's position that STI
 17 cannot be a person within the meaning 729A.2. First, the statute uses the word "person" in its
 18 ordinary sense, and does not imply or suggest a broad sense; and the attributes listed in the
 19 statute are distinctly human, thus the text and context support a natural, narrow use of the
 20 term "person," not a broad unnatural one. Second, the title uses the term individual right, and
 21 individual rights belong to human beings. Taken together, the statute cannot be read as the
 22 State prefers. Accordingly, applying the hate-crime statute to the circumstances of this case is
 23 "inconsistent with the manifest intent of the general assembly" and "repugnant to the context
 24 of the statute." Therefore, this Court should grant Cassidy's motion to dismiss the hate-crime
 25 enhancement pursuant to Iowa R. Crim. P. 2.11(8).¹

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 28 ¹It is irrelevant as to whether there is a criminal act against the person or the person's
 property as *the person* is the subject of the statute and what the statute is meant to protect. And
 as demonstrated, STI cannot be a person under the statute.

1 **B. STI is also not a religion within the statutes meaning.**

2 Applying the same rules articulated in Section III.A, STI cannot be considered a religion.
3 Though the world has changed significantly in the past 150 years, the common meaning of
4 religion has not. A nineteenth century dictionary defined religion as “a system of faith and
5 worship; pious practice.” *Religion, Webster’s Hand Dictionary* (1877). Eighty-five years later,
6 Webster framed religion as a “belief in a superhuman power or powers to be obeyed and
7 worshipped as the creator(s) and ruler(s) of the universe” or a “specific system of belief,
8 worship, etc.” *Religion, Webster’s New World Dictionary of the American Language* (Concise ed.
9 1962); see *Webster’s* (Thumbed Index ed. 1980) (providing that religion is a “system of belief and
10 worship”). Oxford’s meaning is strikingly consistent, noting that religion is “belief in and
11 worship of a God or gods” or “a particular system of faith and worship.” *Religion, Pocket*
12 *Oxford American Dictionary & Thesaurus* (3rd ed. 2010). And finally, Black’s holds that religion is
13 “[a] system of faith and worship usu. involving belief in a supreme being.” *Religion, Black’s Law*
14 *Dictionary* (11th ed. 2019). Thus, the definition has remained largely the same over the past
15 century and a half, with the common components being faith and worship.

16 Given that neither the statute nor Iowa Code § 4.1 provides a definition of religion, we
17 can assume the word’s ordinary meaning. *Howse*, 875 N.W.2d at 691. And, as shown above, the
18 ordinary meaning of religion is well-established and unwavering. Applying this definition, STI
19 cannot be considered a religion within the meaning of statute. On a December 16, 2023, the Des
20 Moines Register published an article about STI’s display, wherein Gigi Macabre was
21 interviewed about STI.² There, the Register noted that “[a]ccording to Gigi Macabre...head for
22 the local chapter, a common misconception is that the Satanic Temple is a theistic religion that
23 worships Satan”; that “[t]he Satanic Temple *does not worship* Satan, nor does it *believe* in the
24 existence of a devil”; and finally, according the temple’s website, that “we [the Satanic Temple]

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28 ²<https://www.desmoinesregister.com/story/news/local/2023/12/16/satanic-temple-of-iowa-members-gather-at-capitol-to-support-display/71933177007/>

1 do not promote a *belief* in a personal Satan.”³ *Id.* (emphases added). Thus, STI’s own words
 2 establish that it is not a religion within the ordinary meaning of religion, as they have no faith,
 3 do not worship, and reject the supernatural. That they call themselves a religion simply does
 4 not make it so. And court’s evaluate and apply the common meaning words, not personal
 5 meanings or misapplications. Accordingly, STI is not a religion within the statute’s meaning.

6 **C. Assuming, *arguendo*, that STI is a person and a religion, at best the statute is**
 7 **ambiguous and therefore the rule of lenity applies.**

8 The rule of lenity “directs that criminal statutes are to be strictly construed in favor of
 9 the accused.” *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011). In the modern context, the rule
 10 serves two primary purposes: to provide “fair notice that conduct is subject to criminal
 11 sanction” and to promote “separation of powers by ensuring that crimes are created by the
 12 legislature, not the courts.” *In re Bo Brian Li*, 911 N.W.2d 423, 429 (Iowa 2018).

13 Here, assuming (without granting) that STI could be a person and a religion, then using
 14 the rule is appropriate. This is so because a person of ordinary intelligence, like Cassidy, could
 15 not have been on notice that STI was person within the statute’s meaning, nor would such a
 16 person have assumed that STI was a religion. Indeed, there does not appear to be any reported
 17 cases in Iowa where 729A.2 was invoked in circumstances similar or analogous to the instant
 18 one. Moreover, the legislature has not clearly spoken on or clarified this issue; thus, doubt
 19 permeates. As such, this Court should refrain from wading into muddy waters, and instead,
 20 construe the statute narrowly and conclude that it cannot apply in this case.

21 **D. Iowa Code § 729A.2 is unconstitutional on its face and as applied.**

22 The Free Speech Clause of the First Amendment permits the freedom to speak and “the
 23 freedom to think.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 143 S. Ct. 2298, 2310 (2023); *see*
 24 Article I, section 7 of the Iowa Constitution. So-called hate-crime statutes have withstood
 25 constitutional challenges on the basis that they punish conduct, not speech. *See, e.g., State v.*

26 _____
 27 ³This information can be confirmed at the official website under the FAQ sections. “Do
 28 you worship Satan? No, nor do we believe in the existence of Satan or the supernatural. The
 Satanic Temple believes that religion can, and should, be divorced from superstition. As such,
 we do not promote a belief in a personal Satan.” <https://thesatanictemple.com/pages/faq>

1 *Geddes*, 998 N.W.2d 166, 169 (Iowa 2023) (upholding a trespass conviction with a hate-crime
2 enhancement); *Wisconsin v. Mitchell*, 508 U.S. 476, 479, 113 S. Ct. 2194, 2196 (1993) (affirming the
3 constitutionality of a Wisconsin hate-crime statute); *but cf. R. A. V. v. St. Paul*, 505 U.S. 377, 397,
4 112 S. Ct. 2538, 2550 (1992) (invalidating a “fighting words” statute).

5 But such cases are misguided. Indeed, both *Geddes* and *Mitchell* miss the point, though
6 in different ways. The US Supreme Court in *Mitchell* focused its analysis primarily on the
7 presupposition that the challenged statute simply operated as a sentencing enhancement and
8 “that the Wisconsin statute singles out for enhancement bias-inspired conduct” 508 U.S. at
9 487. And moreover, according to the Court, motive has traditionally been a factor considered
10 at sentencing; “[t]hus, in many States the commission of a murder, or other capital offense, for
11 pecuniary gain is a separate aggravating circumstance under the capital sentencing statute.” *Id.*
12 at 485.

13 But this reasoning is not only flawed, it completely dodges the issue. The issue isn’t
14 whether motive (or thought) can result in an enhanced sentence, so long as the sentence is
15 within the sentencing guidelines; rather, the question is can thought change the nature of the
16 crime with which the defendant is charged? With respect to the *Mitchell* court’s murder
17 example, motive does permit an enhancement because, generally, there is a prescribed range of
18 punishment for murder—e.g., 25 to life. The defendant’s motives only aid the court in
19 determining how dangerous the individual is and at what end of the continuum he ought to be
20 placed. Stated simply, he is being punished for murder, not his motivations.

21 But 729A.2 is not merely a sentencing enhancement—instead, it modifies the very
22 nature of the crime because of what a criminal defendant allegedly thought. For example,
23 section 716.6A provides that “a hate crime as defined in section 729A.2, shall be classified and
24 punished as an offense **one degree higher** than the underlying offense.” (Emphasis added.) In
25 Cassidy’s case, that means the predicate offense, third degree criminal mischief under 716.5, is
26 magically transformed into a felony based solely on his purported thoughts. And each
27 qualifying offense is modified in a similar way under 729A.2—that is, the enhancement is born
28

1 out of thought, not conduct. Therefore, the statute unquestionably punishes thought (not
2 conduct), which is constitutionally impermissible. *See, e.g., 303 Creative LLC*, 143 S. Ct. at 2310.

3 The Iowa Supreme Court's reasoning in *Geddes* is equally flawed. Two primary points
4 demonstrate the majority's unsound reasoning. First, the Court rejected Geddes' argument
5 "that he received felony convictions and a harsher sentence based only on what his notes *said*."
6 *Geddes*, 998 N.W.2d at 178. In rejecting this contention, the *Geddes* court reasoned "that [this]
7 isn't quite true. It is Geddes's *motive or intent*, the fact that he trespassed 'because of . . . the
8 person's association with a person of a certain . . . sexual orientation,' that led to the more
9 serious criminal consequence." *Id.* The Court continued, explaining that "[o]ur criminal law
10 provides many examples where conduct is punished more harshly depending on the
11 defendant's motive—**possession of a controlled substance with intent to distribute**, going
12 armed with intent, etc." *Id.* (emphasis added).

13 The problem, of course, is that Court's analysis rests on the assumption that motive and
14 intent are synonymous. They are not. Motive has to do with one's reason for doing something,
15 whereas intent is directed at results (i.e., what one wishes to achieve). The *Geddes* court's
16 example about "possession of a controlled substance with intent to distribute" proves this
17 point. One who possesses drugs with an intent to distribute is not motivated by his intent to
18 distribute. Rather, he wants to sell his drugs (the intent) to make money (the motive). He isn't
19 punished, therefore, because wants to make money (i.e., his subjective motive)—he is
20 punished because it is illegal to sell drugs (i.e., his objective conduct). Thus, *Geddes* is simply
21 incorrect on this point.

22 Second, quoting *R.A.V.*, the *Geddes* court noted that "[B]urning a flag in violation of an
23 ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an
24 ordinance against dishonoring the flag is not." *Geddes*, 998 N.W.2d at 175 (alteration in
25 original). The Court quoted this language as support for its holding, and apparently for the
26 proposition that conduct may be punished but not conduct tethered to expression. This, quite
27 frankly, demonstrates Cassidy's contention. Because on this reasoning a rule prohibiting the
28 burning of the flag is permissible so long as the the rule doesn't make burning the flag illegal

1 because of one’s desire (motive) to dishonor the flag. But that is essentially what 729A.2
2 authorizes, and *Geddes* affirmed the constitutionality of 729A.2. How can the flag example
3 from *R.A.V.* and the result in *Geddes* both be true? They can’t. In short, *Geddes* is internally
4 inconsistent, self-refuting, and fails to distinguish the difference between motive and intent.


5 Because 729A.2’s application in this case seeks to punish Cassidy’s thoughts, it cannot
6 withstand constitutional muster as it violates the First Amendment which protects “the
7 freedom to think.” Furthermore, because the statute only punishes thought and not conduct,
8 there is no application of the statute that can survive a constitutional challenge. Therefore,
9 729A.2 is unconstitutional both as applied and facially.

10 **IV. CONCLUSION**

11 In sum, this Court should dismiss the hate crime enhancement against Cassidy for four
12 reasons. First, consistent with the plain language of the statute, STI is not a person. Second, the
13 Satanic Temple is not a religion within the statute’s meaning. Third, to the extent that the
14 statute could apply, its application is ambiguous under these circumstances, requiring that
15 doubts be resolved in Cassidy’s favor in accord with the rule of lenity. And finally, the statute
16 is unconstitutional on its face and as applied. Accordingly, Cassidy requests that this Court
17 grant his motion to dismiss Iowa R. Crim. P. 2.11(8).


18 DATED this 15th day of March 2024.

19 PASQUALE LAW

20 By: 
21 SARA PASQUALE, ESQ.
22 ICIS Pin AT0015071
23 *Attorneys for Defendant*

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on March 15, 2024, I served a true and correct copy of the foregoing
26 Motion to Dismiss electronically with the Clerk of the Court using the e-filing system.

27 
28 SARA PASQUALE, ESQ.

