

PASQUALE LAW

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**IOWA DISTRICT COURT
POLK COUNTY**

<p>STATE OF IOWA,</p> <p>Plaintiff,</p> <p>v.</p> <p>MICHAEL PATRICK CASSIDY,</p> <p>Defendant.</p>	<p>Case No.: SRCR376781</p> <p>REPLY IN SUPPORT OF MOTION TO DISMISS</p>
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Defendant Michael Cassidy, by and through the undersigned attorney of record, hereby submits this reply in support of his motion to dismiss the violation of individual rights enhancement (Iowa Code § 729A.2). This reply is based on the memorandum of points and authorities filed herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ANALYSIS

A. Satantic Temple of Iowa (STI) cannot be a person under Iowa Code § 729A.2.

The State relies heavily on *Struve* to support the proposition that entities qualify as persons, but such case is unhelpful to the instant matter. In *Struve*, which implicates Iowa Code § 235F.1(8) (the elder abuse statute), it was argued that the district court erred in

disallowing an LLC to be added as an additional defendant. The Supreme Court primarily looked at two factors in reversing the lower court: (1) Code § 4.1 provides an LLC is a “person,” and (2) Iowa Code § 235F.1(8) specifically *excludes* some entities “without excluding LLCs [which] supports the conclusion the term ‘person’ includes LLCs unless otherwise excluded by section 235F.1(14).” *Struve v. Struve*, 930 N.W.2d 368 (Iowa 2019).

While a legal entity may be considered a “person” under various statutory schemes (such as in *Struve*), to hold STI, or any legal entity, as a “person” for purposes of Iowa Code § 729A.2 would be inconsistent with the manifest intent, or repugnant to the natural reading of, the statute. Code § 729A.2 sets forth various, distinctly human, characteristics which must be at issue for the statute to apply: “race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability.” It is clear from the plain language that this statute is meant to protect *human individuals and their rights* from crimes against them based solely on the aforementioned attributes as discussed *ad nauseam* in Cassidy’s motion to dismiss. Furthermore, unlike in *Struve*, Code § 729A.2 does not provide any exclusions which tend to support the contention that certain legal entities are included as “person” within the meaning of the statute.¹

The State further relies on an unpublished opinion from the last century to, presumably, support its position that a religious organization can be considered a person pursuant to the hate crime statute. All the State provides is that the defendant was charged with criminal mischief in violation of individual rights, that the damaged property belonged to St. Paul’s United Methodist Church, an Alford plea was entered, and the conviction was affirmed on appeal. See *Resistance* citing *State v. Modlin*, 1999 WL 1299310, No. 99-0104 (Iowa 1999); *State v. Modlin*, (Appellee’s Brief), 1999 WL 34685665. Rule of Appellate Procedure 6.904(2) only allows citing to unpublished opinions to provide “persuasive reasoning,” it reasons that the same rule

¹If the court is inclined to conclude that a legal entity is, in fact, included in “person” under Iowa Code § 729A.2, it is important to point out that STI is not currently registered in Iowa as a legal entity, nor are there any legal entities using STI as a fictitious name.

applies here. The Court, therefore, may consider the following, and only, contents of the opinion as persuasive: “Affirmed.” *Modlin*, No. 99-0104.²

As an aside, the State cites to *State v. Hagen* to argue that entities can be victims pursuant to Iowa Code §§ 4.1 and 910 (the recitation statute). The defense agrees that entities may be considered a person under certain statutory schemes. Rather, Cassidy’s contention is that STI cannot be a person (as defined by Code § 4.1) under Iowa Code § 729A.2 because such a reading “would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of [Code § 729A.2].” Iowa Code § 4.4(3) emphasizes the point by stating that a enacting a statute “presume[s] that ... [a] just and reasonable result is intended.” In the State’s preferred reading of Section 729A.2, destruction of property owned by Chick-fil-A, a company heavily influenced by Christian beliefs, would fall squarely within Iowa’s hate crime statute. Would this result be just, reasonable, and consistent with the manifest intent of the statute? The answer must be a resounding “no.”³

Finally, *State v. Geddes* is relied upon for the proposition that excluding STI as a person under the statute would shield individuals from committing crime against entities. It is difficult to discern why or how the State comes to this reasoning from the *Geddes* opinion as there is no pinpoint citation or other indication as to where this can be found in the opinion. The *Geddes* court provided analyses on three issues, none of which are applicable here: whether (1) there was sufficient evidence to convict; (2) “content-based discrimination” is protected by the United States Constitution; and (3) Iowa Code § 716.2(2)(a)(1) is unconstitutionally vague or over broad. *State v. Geddes*, 998 N.w.2d 166 (Iowa 2023). It does not, however, take any stance on whether excluding entities from personhood pursuant to Iowa

²The defendant in *Modlin* was charged, and plead guilty to, spray painting racial epithets on numerous vehicles with varying owners. On appeal, *Modlin* argues “she was responsible for property damage exceeding \$500 but not exceeding \$1000,” and there was no argument related to the victims’ status as “person” pursuant to the hate crime statute. *State v. Modlin*, (Appellee’s Brief), 1999 WL 34685665.

³The opinion itself notes that this decision “SHALL NOT BE CITED OR RELIED UPON AS AUTHORITY IN ANY LITIGATION IN ANY COURT IN IOWA” with few exceptions not applicable here.

Code § 729A.2 would be used as a “shield to commit hate crimes.” *See Resistance*. In fact, it has been, and remains to be, unlawful to destroy others’ property, whether that property is owned by an individual or an entity. Thus, burning down a church would constitute arson. Moreover, if people were inside, this statute may apply as there would then be human victims. But generally, the hate crime statute is unique to individual (human) rights, and by its plain language cannot be applied to entities.

The State provides no persuasive reasoning or binding case law which supports its position that STI, or any entity for that matter, can and should be considered a “person” pursuant to Code § 729A.2. Therefore, Cassidy’s motion to dismiss the hate-crime enhancement should be granted for reasons stated therein.

B. STI cannot be a religion under Iowa Code § 729A.2.

It appears that the State’s high-level definition of “religion,” at least on its face, agrees with those definitions outlined in Cassidy’s motion as having to do with religious beliefs and practices. The State provides the following definitions:

- In the context of an alleged employer discriminating against a Jewish man, religion is “all aspects of *religious observances and practice*, as well as *belief*.” *King v. Iowa Civil Rights Comm’n*, 334 N.W.2d 598, 601 (Iowa 1983) (citing 42 U.S. Code § 2000e(f)) (emphasis added).
- Related to using tax-payer funds to have prison chaplains, religion is “unorthodox as well as orthodox *religious beliefs and practices*.” *Rudd v. Ray*, 248 N.W.2d 125, 128 (Iowa 1976)(emphasis added).⁴

Yet, no where does the State provide definitions of the words “religion” or “religious” which are required to understand the above definitions. The above definitions use the word “religious” to define “religion.” Without understanding the true meaning of the word, the above definitions are circular and utterly useless.

⁴The State mistakenly states that this case was related to marijuana use as part of religious beliefs.

The Iowa Supreme Court considered a manifestation of satanism, similar to that at bar, to be a secular engagement, not religious. *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003). While the *Kliebenstein* court noted that satanism “may have religious roots,” it did not decide the issue whether it is a religion. On the other hand, *Kliebenstein* held that satanism “also carries a common, and largely unflattering, secular meaning.” *Id.* at 407. The court noted that “‘Satan’ is defined as ‘the great enemy of man and of goodness’” *Id.* The court also stated that “definitions of ‘satanic’ and ‘satanism’ include ‘characterized by extreme cruelty or viciousness’ and ‘innate wickedness,’” and that “‘Devil’ has many dictionary meanings, including ‘an extremely wicked person’” *Id.* at 407-408. Wickedness, extreme cruelty, or viciousness are akin to criminal conduct, which Iowa law prohibits. These are not concepts which the legislature intended to provide protection to as “religion” in Iowa Code § 729A.2

Moreover, STI expressly disavows religious beliefs and instead relies on beliefs and rituals such as: “[o]ur beliefs must be malleable to the best current scientific understanding of the material world” and “[t]he struggle for justice is an ongoing and necessary pursuit that should prevail over laws and institutions.” <https://thesatanictemple.com/pages/faq> (visited April 3, 2024). If this alleged belief system is considered to be a religion, then a group of chemists or outlaws could just as easily call themselves a religion and obtain religious protections. It is therefore unlikely that the legislature intended the hate crime statute to protect tenants of satanism, which is not a belief system in and of itself, but instead merely seeks to attack Judeo-Christian principles. That would bring about the unintended consequence of permitting satanists to perpetuate the very same hatred (under the guise of religion) that the hate crime statute is intended to prevent. *See* Iowa Code § 4.4(3) (“In enacting a statute, it is presumed that . . . [a] just and reasonable result is intended.”); *See Geddes*, 998 N.W.2d at 173 (citing *State v. McIver*, 858 N.W.2d 699, 703 (Iowa 2015)).

Finally, the State relies on STI’s claim that it is the only satanic “organization recognized as a church by the IRS.” *See Resistance*. This authority falls on its face: there are citizens who question the IRS’ expertise even in its acknowledged financial realm, while no sane person

would seriously cite the IRS as a spiritual authority. Further, assuming that STI makes this claim pursuant to receiving 501(c)(3) status, the Internal Revenue Code makes no distinction between nonprofit organizations operated for the following reasons: “religious, charitable, scientific, testing for public safety, literary, or educational purposes, ... to foster ... amateur sports competition ... or for the prevention of cruelty to children or animals.” 26 U.S. Code § 501(c)(3). It is just as likely that the IRS provided 501(c)(3) status for educational purposes or for some charitable reason, and in no way does this status unequivocally indicate that STI is a religious organization.

STI’s own words establish that it is not a religion within the ordinary meaning of religion, their “belief” system ebbs and flows with ever-changing scientific discoveries and is a secular engagement meant to challenge Judeo-Christian principles. Based on the ordinary meaning of religion and STI’s self-proclaimed principles and anti-religious tenets, STI is not a religion within the statute’s meaning.

C. The rule of lenity applies.

Suppose a law provides that it is illegal to use tobacco products near government-owned facilities, but fails to define “near” or “government-owned facilities.” A criminal defendant charged with violating this imaginary statute would be entitled to having the law “strictly construed in [his] favor.” *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011). The same is true here as neither “person” nor “religion” is defined.

The State argues “[t]he court in *State v. Peck*, held that although we resolve ambiguities in favor of the accused, criminal statutes nevertheless must be construed *reasonably* and in such a way as to not defeat their plain purpose.” See *Resistance* citing *State v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995)(emphasis added). This proves defense’s point exactly. As discussed in both the motion and above, no reasonable reading of the statute would permit the conclusion that the statute includes satanism.

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

The State argues that the statute is constitutional, based upon the holdings in *State v. Hennings* and *State v. Geddes*. It remains defense’s position that these cases, among others, are


punishing our constitutional right of “the freedom to think.” Cassidy’s motion to dismiss analyzes this issue at length and nothing further need be added to said analyses.

II. CONCLUSION

In sum, this Court should dismiss the hate crime enhancement against Cassidy for the reasons set forth herein along with all reasoning set forth in the motion to dismiss itself.

DATED this 3rd day of April 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2024, I served a true and correct copy of the foregoing Reply in Support of Motion to Dismiss electronically with the Clerk of the Court using the e-filing system.


SARA PASQUALE, ESQ.