THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS SUPERIOR COURT
SOUTHERN DISTRICT

DOCKET NO. 07-S-1674

STATE OF NEW HAMPSHIRE

V.

GEORGE DAABOUL

ORDER ON DEFENDANT'S MOTIONS TO DISMISS

LYNN, C.J.

The defendant, George Daaboul, is charged with one count of using a computer on-line service to solicit a person he believed to be a child under age 16 to engage in sexual activity, in violation of RSA 649-B:4 (2007). The defendant has filed two motions to dismiss the indictment. The State objects. For the reasons set forth below, the motions are DENIED.

I.

The indictment arises out of the following allegations. As part of a series of undercover operations, Detective Michael Niven of the Hudson Police Department established a fictitious online profile with Yahoo! Instant messenger service, posing as "sarahnh14," a fourteen-year-old girl living in Hudson, New Hampshire. In July 2007, the defendant participated in a series of online chats in a Yahoo! chatroom with "sarahnh14" from his residence in Topsfield, Massachusetts. On July 20, 2007, the defendant attempted to meet "sarahnh14" in Hudson, New Hampshire. Subsequently, the defendant was arrested and indicted for violating RSA 649-B:4.

Indictment 07-S-1674 alleges that, contrary to the foregoing statute, the defendant "did knowingly utilize a computer on-line service know as Yahoo[!] Messenger to attempt to entice 'sarahnh14', a person he believed to be a child under the age of 16, to engage in sexual penetration, . . . and then attempt[ed] to meet 'sarahnh14[.]'"

RSA 649-B:4 (2007) provides, in pertinent part, that:

> Any person who knowingly utilizes a computer on-line service, Internet service, or local bulletin board service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any of the following is guilty of a class B felony:
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> I. Any offense under RSA 632-A, relative to sexual assault and related offenses.

II.

Motion to Dismiss (Lack of Subject Matter Jurisdiction)

The defendant argues that the indictment must be dismissed because this court lacks subject matter jurisdiction. The defendant contends that neither RSA 649-B:6 (2007), which provides for criminal jurisdiction in computer pornography and child exploitation cases, nor RSA 625:4 (2007), which delineates general territorial jurisdiction of criminal offenses, allow for prosecution of the defendant in New Hampshire.

According to the defendant, when an out-of-state person is alleged to have violated RSA 649-B:4, the State may prosecute that person in New Hampshire only if the would-be victim resides in New Hampshire. Thus, the defendant contends that, under RSA 649-B:6, when the State prosecutes an out-of-state person for allegedly violating RSA 649-B:4, by soliciting an undercover police officer who has posed as a child, the jurisdiction of a New Hampshire court depends on the location of that officer's

residence. The defendant further maintains that, as so constued, RSA 649-B:6 violates the equal protection and due process clauses of the State and federal constitutions.

The State asserts that under the plain meaning of the language of RSA 649-B:6, the court has subject matter jurisdiction because the defendant believed that "sarahnh14" was a child residing in New Hampshire. The State further contends that RSA 649-B:6 does not violate the equal protection and due process clauses in cases where a police officer poses as a child because the statute does not hinge criminal liability under New Hampshire law on the residence of the police officer who posed as the child. Rather the State maintains that, in such circumstances, New Hampshire jurisdiction depends on where the person believes the child is residing.

Since the New Hampshire Constitution provides at least as much protection as the United States Constitution in these areas, the court will address the State constitutional issues, referring to federal cases for guidance only. See In re Baby K., 143 N.H. 201, 203-04 (1998) (due process); LeClair v. LeClair, 137 N.H. 213, 221-22 (1993) (superseded by statute on other grounds) (equal protection); see also State v. Ball, 124 N.H. 226, 231-32 (1983).

The court first considers the defendant's argument regarding subject matter jurisdiction. In interpreting a statute, the court looks to the language of the statute and "ascribe[s] the plain and ordinary meanings to the words used." State v. Polk, 155 N.H. 585, 587 (2007) (quotation and citation omitted). The court "construe[s] each statute as a whole, and if the statute's language is clear and unambiguous, [the court will] not look beyond it." Id. (citation omitted). When interpreting a criminal statute, "[a]ll words of a statute are to be given effect, and the legislature is presumed not to use words that are

superfluous or redundant." State v. Pierce, 152 N.H. 790, 791 (2005) (citation omitted). Criminal Code provisions are construed "according to the fair import of their terms and to promote justice." Id. (quotation and citation omitted).

RSA 649-B:6 provides that:

> A person is subject to prosecution for engaging in any conduct proscribed by this chapter within this state, or for engaging in such conduct outside this state if by such conduct the person commits a violation of this chapter involving a child or an individual the person believes to be a child, residing within this state.

Although the placement of a coma following the word "child" in the last clause of the above statute provides a plausible basis for the defendant's argument that the jurisdictional reach of the statute turns on the actual residence of either a real or a feigned victim, construction of the statute in this fashion is not warranted because it would lead to absurd results. See State v. Rosario, 148 N.H. 488, 490 (2002) (stating that the court "will not presume that the legislature would pass an act leading to [an] absurd result[ ]."). In particular, there is no logical reason why, in the case of a feigned victim, i.e., "an individual the person believes to be a child," it should make any difference where such person actually resides as long as the defendant believes that person resides in New Hampshire. Despite its inartful wording, the only sensible construction of the statute is that it subjects to New Hampshire jurisdiction (1) a person who engages in the prohibited conduct with a child who actually resides in New Hampshire (regardless of the person's knowledge of the child's residence) or (2) a person who engages in the prohibited conduct with an individual the person believes to be a child residing in New Hampshire.[1]

[1] The court recognizes that, under the construction it has adopted, New Hampshire arguably could exercise jurisdiction in a case involving a "real victim," that is, an actual child, who resided in another state

In this case, the indictment alleges that the defendant utilized Yahoo! Messenger to attempt to entice "sarahnh14," who was in fact Detective Niven posing as a fourteen-year-old girl residing in Hudson, New Hampshire, to engage in unlawful sexual acts. Although the defendant was in Massachusetts when he used Yahoo! to communicate with Niven, RSA 649-B:6 provides that this court has jurisdiction because the defendant allegedly believed "sarahnh14" to be a child residing in New Hampshire.

Contrary to the defendant's assertions, the reach of RSA 649-B:4 and RSA 649-B:6 encompasses both the situation where a real victim actually resides in New Hampshire and (at least, see note 1) the situation where the defendant believes a feigned victim resides in this state In the former situation, New Hampshire has an obvious interest in asserting jurisdiction, i.e., to protect its minor residents from harm from internet predators. While New Hampshire arguably has a somewhat less immediate interest in the case of a feigned victim believed to reside in this state, in this situation assertion of jurisdiction by New Hampshire is justified by the fact that the defendant intentionally directed his unlawful conduct toward this state and would have caused harm in this state if the facts had been as he believed them to be.[2] See RSA 625:4, I(a) and (b); see also State v. Stewart, 142 N.H. 610, 611 (1998) (finding New Hampshire had jurisdiction over defendant where violation of New Hampshire protective order occurred in Maine). Here, the defendant attempted to entice a girl he believed to

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but who led the defendant to believe s/he resided in New Hampshire. Although the court need not decide here if the statute should be construed to confer jurisdiction in such circumstances, the court notes that to do so would not be irrational because New Hampshire could be found to have a legitimate interest in prosecuting a person who has directed harmful conduct toward this state regardless of whether that person was interacting with a real child or only someone posing as a child.

[2] The court notes that the defendant did not argue that Detective Niven did not live in New Hampshire. Further, at the March 31, 2008 hearing on the defendant's motions to suppress, the State represented on the record that Detective Niven resides in New Hampshire and did so in July 2007.

be a fourteen-year-old resident of New Hampshire to engage in sexual activity. This activity brought the defendant within the purview of New Hampshire law.

The court next addresses the defendant's argument that RSA 649-B:6 violates the right to equal protection and due process in cases where a police officer poses as a child. The defendant claims that the statute violates equal protection because it "effectively immunize[s] some out-of-state offenders from prosecution." Def.'s Mot. to Dismiss (Lack of Subject Matter Jurisdiction), ¶ 21. The defendant bases this argument on his assertion that, in cases where a police officer poses as a child, criminal liability under RSA 649-B:4 depends upon an irrational consideration – viz., where the officer resides. As a result, according to the defendant, two individuals who engage in exactly the same New Hampshire-directed conduct by communicating with a police officer they believe to be a child will be treated differently depending on the wholly fortuitous circumstance of where the officer lives: the person who communicates with an officer who happens to live in New Hampshire will be subject to prosecution, while the person who communicates with an officer who lives outside New Hampshire will not be charged.

The New Hampshire Supreme Court has described "[t]he equal protection guarantee [as] essentially a direction that all persons similarly situated should be treated alike." Gonya v. Comm'r, N.H. Ins. Dep't, 153 N.H. 521, 532 (2006) (quotation and citation omitted). "Thus, [the] two basic prerequisites to the equal protection inquiry are the existence of a classification and the differing treatment of persons so classified." Id. (citation omitted).

As discussed earlier, the fatal flaw in defendant's argument is that its premise is incorrect. Criminal liability under RSA 649-B:4 does not depend on where the posing police officer resides. The critical inquiry is whether the defendant believed he was communicating with a child residing in New Hampshire. Thus, all out-of-state individuals accused of violating RSA 649-B:4 by engaging in conduct directed at New Hampshire are treated the same. The application of RSA 649-B:4 does not, as the defendant contends, violate his equal protection rights.

Finally, the defendant argues that RSA 649-B:6 infringes on his due process rights under both the New Hampshire and federal constitutions. Although the defendant makes passing reference to due process, he fails to specify whether his argument is based upon substantive or procedural due process. The court declines to speculate as to the basis of the defendant's argument. As a result, the court will not conduct either a State or Federal constitutional analysis of this claim. Cf. State v. Ayer, 154 N.H. 500, 513 (2006) (citation omitted) (declining to address the defendant's constitutional argument because the mere submission of a laundry list of adverse rulings by the trial court without developed legal argument was not sufficient for review); State v. Dellorfano, 128 N.H. 628, 632 (1986) (outlining the preconditions for triggering a State constitutional analysis).

Having found that the court has subject matter jurisdiction over the instant case under RSA 649-B:6, the court finds it unnecessary to determine whether RSA 625:4 independently affords a basis for jurisdiction in this case.

For these reasons, the defendant's Motion to Dismiss for lack of subject matter jurisdiction is DENIED.

III.

Motion to Dismiss No. 2 (Facial Overbreadth Challenge to the Charged Statutory Variant of RSA 649-B:4)

By this motion, the defendant seeks dismissal of the indictment on the grounds that the statutory variant under which he is charged criminalizes a substantial amount of protected speech and, as such, is overly broad in violation of Part I, Article 22 of the New Hampshire Constitution and the First Amendment to the United States Constitution. The defendant further maintains that RSA 649-B:4 contains content-based speech restrictions and, thus, the court should apply the strict scrutiny standard in its analysis of the statute.

The State asserts that RSA 649-B:4 is constitutional because it prohibits unlawful conduct, not protected speech. In the alternative, the State contends that even if RSA 649-B:4 contains content-based restrictions on speech, it is constitutional because it passes muster under strict scrutiny analysis. The State argues that RSA 649-B:4 is narrowly tailored such that any protected speech encompassed by the statute is minimal. Finally, the State notes that other jurisdictions have upheld laws similar to RSA 649-B:4 against First Amendment challenges.

As the United States Constitution provides no greater protection in this area than the New Hampshire Constitution, the court addresses the defendant's claims under the State constitution, considering cases from federal courts to aid its analysis. See State v. Brobst, 151 N.H. 420, 422 (2004) (free speech); see also Ball, 124 N.H. at 231-33.

The defendant makes a facial challenge to RSA 649-B:4, arguing that, under the First Amendment, the statute "cannot be enforced in this case regardless of whether [his] speech is deserving of protection." Def.'s Mot. to Dismiss No. 2, p. 1. Generally a court will not permit an individual to challenge a statute because its application may possibly impair the constitutional rights of others who are not presently before the court. See New York v. Ferber, 458 U.S. 747, 767 (1982) (citations omitted); Petition of Burling, 139 N.H. 266, 272 (1994). However, in the context of the First Amendment, courts have altered their traditional rules of standing to permit litigants to challenge a statute when their rights have not been violated. See Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973) (citation omitted); Burling, 139 N.H. at 272. In this context, the overbreadth doctrine serves "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.'" Brobst, 151 N.H. at 421 (quoting Ferber, 458 U.S. at 768).

Part I, Article 22 of the New Hampshire Constitution provides that "[f]ree speech and liberty of the press are essential to the security of freedom in a state: [t]hey ought, therefore, to be inviolably preserved." However, the right to free speech is not absolute. See State v. Comley, 130 N.H. 688, 691 (1988) (citation omitted). While the right to free speech guaranteed by the New Hampshire Constitution cannot be completely curtailed, it may be subjected to "reasonable and nondiscriminatory regulation" under certain circumstances. Opinion of the Justices, 128 N.H. 46, 49 (1986) (quoting State v. Derrickson, 97 N.H. 91, 93 (1951)). Furthermore, both the New Hampshire Supreme Court and the federal courts have noted the special governmental interest, even in the

free speech context, of protecting children from legitimate, potential harm. See, e.g., United States v. Meek, 366 F.3d 705, 719, 722 (9th Cir. 2004) (upholding constitutionality of federal statute analogous to RSA 649-B:4, I); Dover News, Inc. v. City of Dover, 117 N.H. 1066, 1069-71 (1977) (describing morals of minors as valid state concern in context of challenge to city ordinance under Part I, Article 22); cf. Ashcroft v. Free Speech Coalition, 535 U.S. 234, 244 (2002). ("The sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of decent people.").

With these principals in mind, the court turns to the defendant's specific overbreadth arguments. The defendant argues that the overbreadth doctrine should be applied to the portion of RSA 649-B:4 under which he has been charged. The court disagrees.

A statute is overly broad when "it sweep[s] unnecessarily broadly and thereby invade[s] . . . protected freedoms." State v. Haines, 142 N.H. 692, 699 (1998) (quotation and citation omitted) (brackets included). "The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." Ashcroft, 535 U.S. at 237. The United States Supreme Court has "recognized that the overbreadth doctrine is strong medicine and [has] employed it with hesitation, and then only as a last resort." Ferber 458 U.S. at 769 (quotations and citations omitted); Brobst, 151 N.H. at 422. The "crucial question" in each case is whether the statute "sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments." Grayned v. Rockford, 408 U.S. 104, 114-15 (1972). "[T]he overbreadth of a statute must be real and substantial,

judged in relation to the statute's plainly legitimate sweep." Brobst, 151 N.H. at 422 (citation omitted). "The criterion of 'substantial overbreadth' 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. (quotations and citations omitted).

"A statute is subject to less scrutiny where the behavior sought to be prohibited by the State moves from 'pure speech' toward conduct 'and that conduct--even if expressive--falls within the scope of otherwise valid criminal laws that reflect legitimate state interests.'" People v. Foley, 94 N.Y.2d 668, 678 (2000) (citing Broadrick, 413 U.S. at 615); see also Brobst, 151 N.H. at 422. Although a statute, "if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect—at best a prediction—cannot, with confidence, justify invalidating a statute on its face [thereby] prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe." Broadrick, 413 U.S. at 615 (citation omitted). Indeed, "[s]peech is not protected by the First Amendment when it is the very vehicle of the crime itself." United States v. Rowlee, 899 F.2d 1275, 1278 (2d Cir. 1990) (quotations and citations omitted). "Thus, where conduct and not merely speech is involved, the overbreadth doctrine can be invoked only where the overbreadth is 'substantial.'" Foley, 94 N.Y.2d at 678 (citations omitted).

RSA 649-B:4 punishes individuals who use computer on-line services to "seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice" a child to engage in sexual conduct. As the New York Court of Appeals noted in upholding the constitutionality of a nearly identical statute, "the 'luring prong' is significant. An

invitation or enticement is distinguishable from pure speech." See id. at 679. Similar to the terms discussed in Foley, the term at issue in this case, entice, "describe[s] [an] *act*[ ] of communication; [it] do[es] not describe the content of one's views. The term[ ] identif[ies] [a] form[ ] of conduct which may provide a predicate for criminal liability." See id. (emphasis in original).

Based on the foregoing, the court concludes that RSA 649-B:4 is not a content-based restriction on speech. Rather, it is "a preemptive strike against sexual abuse of children by creating criminal liability for conduct directed toward the ultimate acts of abuse." Id. It is clear that the State has a legitimate interest in protecting children from predatory sexual behavior. See Broadrick, 413 U.S. at 615; cf. Brobst, 151 N.H. at 423 (noting that "the State has a legitimate interest in protecting citizens from the effects of certain types of annoying or alarming phone calls . . ."). Simply because the conduct is "initiated or carried out . . . by means of language does not make" RSA 649-B:4 "susceptible to First Amendment scrutiny." State v. Robins, 646 N.W.2d 287, 297 (Wis. 2002) (finding that "the First Amendment is not implicated by the application of the child enticement statute to child enticements over the internet").

Nonetheless, even if the defendant's conduct were found to be a form of speech, he still cannot prevail. The defendant maintains that RSA 649-B:4 is overbroad because it prohibits the lawful activities of sexual counseling groups such as Planned Parenthood and OutProud. The defendant claims that a fifteen-year-old child could be "enticed" into engaging in sexual relationships from the on-line advice forums sponsored by these organizations, or that a child between the ages of thirteen and sixteen could be "enticed" into a sexual relationship by engaging in online conversations with others

regarding sexual contact. Likewise, the defendant asserts that RSA 649-B:4 prevents OutProud counselors from relating "coming out" stories to gay and lesbian teenagers.

The court believes that these arguments misconstrue the scope of the statute. When interpreting a statute, the court will "look to the plain and ordinary meaning of the statutory language in determining legislative intent" and "will not read words or phrases in isolation, but in the context of the entire statute." In re Juvenile 2003-248, 150 N.H. 751, 751-52 (2004) (citation omitted). When considered in its entirety, the statute does not proscribe people from utilizing an on-line computer service, internet service, or local bulletin board service to dispense advice or answer questions regarding teenage sexuality. Nor, as the defendant suggests, does the statute "prohibit[] the mere advocacy or encouragement of criminal activity." Def.'s Mot. to Dismiss No. 2, ¶ 15. Indeed, RSA 649-B:4 does not punish mere "advocacy of the use of force or of law violation." Brandenburg v. Ohio, 395 U.S. 444, 448 (1969). Rather, it prohibits a person from knowingly utilizing these services to induce (or to attempt to induce) a minor to engage in conduct that constitutes sexual assault or related offenses. See RSA 649-B:4. Contrary to the defendant's suggestion, general informational websites and counseling services "fall far short of being a knowing inducement of minor[s] . . . to participate in criminal sexual activity." United States v. Dhingra, 371 F.3d 557, 562 (9th Cir. 2004).

Relying on Ashcroft, the defendant further argues that the statute prohibits consenting adults from engaging in fantasy speech, sexual or otherwise. The defendant's reliance on Ashcroft is misplaced as the statute at issue in Ashcroft is readily distinguishable from RSA 649-B:4. Ashcroft addressed whether certain sections

of the Child Pornography Prevention Act of 1996 ("the CPPA") violated the First Amendment. The first section at issue prohibited "any visual depiction . . . that is, or appears to be, of a minor engaging in sexually explicit conduct." 535 U.S. at 241 (citing 18 U.S.C. § 2256(8)(B)). The second section at issue defined "child pornography to include any sexually explicit image that was advertised, promoted, presented, described, or distributed in such a manner that conveys the impression it depicts a minor engaging in sexually explicit conduct." Id. at 242 (citing 18 U.S.C § 2256(8)(D)).

The United States Supreme Court held that these sections could not prohibit pornographic images of virtual children because they were neither obscene nor produced through the exploitation of real children. Id. at 249-50, 258. Specifically, the Supreme Court found that the sections were overbroad because they regulated not only child pornography, but "virtual child pornography" created with computer-generated images of artificial children. Id. at 252-258. The Court reasoned that virtual child pornography was protected speech because it did not fit into any recognized category of unprotected speech, including child pornography. See id. at 254-257 (finding that unlike child pornography, virtual pornography is not intrinsically related to sexual abuse of children). RSA 649-B:4, however, does not prohibit individuals from engaging in virtual fantasies; it proscribes communications by computer to seduce, solicit, lure, or entice a child, or someone the individual believes to be a child, to engage in unlawful sexual conduct. As noted above, the State has a legitimate interest in punishing those whose speech or conduct is intended to result in the commission of a sexual assault or a related offense against a child. Here, the statute's objective is to prohibit unlawful

conduct and the proscription it imposes does not "go[ ] well beyond that interest by restricting the speech available to law-abiding adults." Id. at 252-53.

The defendant also appears to suggest that RSA 649-B:4 chills lawful speech between consenting adults by attempting to apply the overbreadth doctrine to the mens rea set forth in the statute. As noted above, RSA 649-B:4 prohibits individuals from knowingly utilizing the internet to commit (or attempt to commit) unlawful sexual conduct with children. "[A] defendant acts knowingly when he is aware that it is practically certain that his conduct will cause a prohibited result." State v. Hall, 148 N.H. 394, 398 (2002) (quotation and citation omitted). Statutory mental states apply to each material element of the charged offense. See RSA 626:2, I (2007). When a statute contains only one reference to a particular mental state, courts presume that the mental state applies to every material element of the offense. See id.; see also State v. Reid, 134 N.H. 418, 422 (1991).

RSA 649-B:4 requires that the defendant knowingly communicate with a minor and seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice the minor to engage in unlawful sexual conduct. See, e.g., Foley, 94 N.Y.2d at 679 (finding similar New York statute required the defendant to intend to initiate contact with a minor and "further intend to importune, invite or induce the minor to engage in sexual conduct for the sender's benefit"). Accordingly, RSA 649-B does not chill protected speech such as adult fantasy speech because the statute requires the State to prove, at the least, that the defendant knowingly believed he or she was communicating with a minor at the of the communication. "Merely because [the defendant's] communications were transmitted to an adult does not negate his belief he was communicating with a minor,

which is an aspect of the culpability defined by the statute." State v. Backlund, 672 N.W.2d 431, 442 (N.D. 2003) (citation omitted) (finding similar North Dakota statute did not violate free speech provisions of the North Dakota and federal constitutions).

The attempt prong of RSA 649-B:4 underscores the seriousness with which the legislature views the underlying offense. An individual is criminally liable under the statute regardless of whether he or she successfully completes the intended crime. Indeed, it would make little sense "to distinguish the defendant who attempts to induce an individual who turns out to be a minor from the defendant who, through dumb luck, mistakes an adult for a minor." Meek, 366 F.3d at 718. As the Ninth Circuit noted, "[t]o hold otherwise would bestow a windfall to one defendant when both are equally culpable" and frustrate the ability of law enforcement officers to police effectively the illegal inducement of minors for sex. Id. at 718-19.

Finally, the court notes that other state and federal courts have upheld similar statutes in similar circumstances against constitutional challenges. See id. at 720-22 (upholding constitutionality of 18 U.S.C. § 2422(b) on overbreadth challenge where undercover officer posed as a minor); Dhingra, 371 F.3d at 561-65 (upholding constitutionality of 18 U.S.C. § 2422(b) on facial challenge); United States v. Bailey, 228 F.3d 637, 639 (6th Cir. 2000) (upholding constitutionality of 18 U.S.C. § 2422(b) on overbreadth challenge); Backlund, 672 N.W.2d at 438-442 (upholding constitutionality of "luring" statute on free speech challenge under the North Dakota and Federal Constitutions); Robins, 646 N.W.2d at 295-98 (upholding Wisconsin child enticement statute as applied to enticements initiated over the internet against First Amendment challenge); Foley, 94 N.Y.2d at 674, 677-80 (upholding constitutionality of New York law

enacted to "address the convergence of predatory pedophile activity with Internet technology" on overbreadth challenge).

For example, in Meek, the Ninth Circuit considered an as-applied challenge to the constitutionality of 18 U.S.C. § 2422(b), which provides that:

> Whoever, using the mail or any facility or means of interstate commerce . . . knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

366 F.3d at 718 (quoting § 2422(b)) (emphasis removed).

The court upheld the constitutionality of the statute. Id. at 722. In doing so, the court reasoned that the statute was not overly broad because it did not prohibit legitimate conduct among adults. Id. The statute did not jeopardize legitimate speech because it "criminalize[d] conduct …[and] speech [was] merely the vehicle through which a pedophile ensnares the victim." See id. at 721 (citation omitted). The Meek court further found that someone may violate § 2422(b) where that person "believes he is inducing a minor, but the object of his inducement is really an adult." See id. at 717-18.

The language of 18 U.S.C. § 2422(b) closely parallels the language of RSA 649-B:4, I. Having reviewed Meek and Dhingra, the court concludes that the Ninth Circuit's analyses in these cases are equally applicable to the constitutional challenges to RSA 649-B:4 in the instant case. See Meek, 366 F.3d at 722; Dhingra, 371 F.3d at 562-63. As did the Ninth Circuit, this court finds that "[t]he inducement of minors to engage in illegal sexual activity enjoys no First Amendment protection." Meek, 366 F.3d at 721; cf.

Robins, 646 N.W.2d at 297 ("[T]he First Amendment does not protect child enticements, whether initiated over the internet or otherwise.").

For the reasons stated above, the court concludes that RSA 649-B:4 is not facially overbroad in violation of the defendant's rights under the State or Federal Constitutions. Accordingly, the defendant's Motion to Dismiss No. 2 is DENIED.

So ordered.

May 8, 2008

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ROBERT J. LYNN
Chief Justice