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REPORT ON INVESTIGATION OF FORMER GOVERNOR CHIEF OF STAFF, ANTHONY J. SILVA, IN CONNECTION WITH HIS APPLICATION TO ALTER FRESHWATER WETLANDS

In late August 2021, Governor Daniel J. McKee asked this Office and the Rhode Island State Police to review the conduct of his then Chief of Staff, Anthony J. Silva, relating to a proposed real estate project in Cumberland, Rhode Island. The proposed project involved the development of unimproved property consisting of mostly wetlands and, thus, subject to Rhode Island Department of Environmental Management (“DEM”) regulations. The proposed project had raised objections from abutters, and, ultimately, the Town of Cumberland.

Our investigation, now complete, was conducted by prosecutors from this Office’s Public Integrity Unit, and Rhode Island State Police detectives and investigators (collectively, “the Investigative Team”). Over several months, the Investigative Team interviewed nineteen witnesses, including DEM and Cumberland officials. The Investigative Team also obtained and reviewed records related to the proposed project, the approval process regarding it, and records of communications between Mr. Silva and various state and local officials. Obtaining these records included the use of court-authorized search warrants.

Our investigation’s focus was not on whether Mr. Silva exercised good judgment or acted as he should have in connection with this matter, though, as will be seen below, we do offer our opinion on that issue. Rather, given our role as Rhode Island’s sole criminal prosecutorial office, we undertook to establish whether Mr. Silva’s conduct constituted a crime, and if so, which criminal laws were broken. To that end, we examined Mr. Silva’s interactions with state and local officials while seeking approval for his development project, to determine whether Mr. Silva had unlawfully exerted influence, or attempted to do so, over the approval process in violation of Rhode Island law.

Our investigation established that Mr. Silva, while serving as Chief of Staff to then Lieutenant Governor McKee, frequently contacted DEM and Town of Cumberland officials in an attempt to advance the DEM regulatory approval process. Indeed, in our view, Mr. Silva’s conduct can be fairly characterized as persistent, and then some. He seemingly threw his weight around or tried to. But, as we describe below, Rhode Island’s bribery and extortion laws require more. Bribery requires an offer of something of value in exchange for official action. Extortion requires a threat, and an apparent ability to deliver on it.

With respect to a potential bribery charge, none of the witnesses involved in the DEM regulatory approval process told the Investigative Team, and no other evidence was developed, that Mr. Silva offered anything of value to secure DEM approval for this project. Nor did any

DEM official or employee tell the Investigative Team that Mr. Silva expressly or implicitly threatened them in an effort to secure DEM approval. None of the documentary evidence in this matter contradicted these denials. Turning to the Town of Cumberland, no one has alleged, and there is no evidence, that Mr. Silva offered any town official anything of value in exchange for the Town withdrawing its opposition to the project. With respect to a potential charge of extortion, at no time did Mr. Silva have any authority over town officials, and, thus, even if his conduct rose to the level of a threat (and we are unconvinced that it did), he had no apparent or actual ability to deliver on it. Accordingly, Rhode Island's bribery and extortion laws are not implicated here.

While it is a somewhat closer question, neither did Mr. Silva's conduct while dealing with DEM officials constitute a criminal violation of the Rhode Island Code of Ethics. The Ethics Code, as relevant here, directs its focus to conflicts of interest. It is thus violated when: 1) a government official has a personal matter before a government agency; 2) the government official has official authority over the government agency; and 3) the government official uses his official authority to affect the outcome of the government agency's decision-making regarding his personal matter. The official authority – and hence the ability to direct the outcome – is what is missing here. At the time of his communications with DEM officials, Mr. Silva was Chief of Staff to the *Lieutenant Governor*, as opposed to the Governor, and he, thus, had no express or implied authority or ability to direct that agency to take any particular action, as a criminal violation of the Ethics Code requires.

Likewise, Mr. Silva's communication with Town of Cumberland officials, though in our view heavy-handed in some instances and certainly ill-advised in others, did not violate the Ethics Code. Mr. Silva did not hold a position with the Town of Cumberland that related in any way to the permitting process at issue here. While, theoretically, Mr. Silva's position as the Governor's Chief of Staff at the time of his communications with the Mayor could be seen as seeking to use his political influence with the Town, that alone cannot support a criminal charge under the Ethics Code. Again, actual authority is the key under the Code. Mr. Silva had no authority over the Town of Cumberland, and the Town of Cumberland had no authority over his project. That absence of authority dooms a criminal ethics charge here.

Everything we have said so far describes what Rhode Island criminal law does and does not require, and we could simply stop there. Yet, having completed an in-depth investigation and legal analysis over many months, we believe that Rhode Islanders are entitled to the full weight of this Office's opinion about what transpired here. And so we add that from our vantage point, Mr. Silva exercised very poor judgment in involving himself in a personal matter before a state regulatory agency while serving as a high-ranking state official, whether he had official authority over that state agency or not. Indeed, this matter illustrates why public officials should take great care when entangling their public positions with their personal business. When high-ranking public officials like Mr. Silva, who by virtue of their public office have a voice or footprint that everyday Rhode Islanders do not, seek to capitalize on their insider access, Rhode Islanders lose. They lose because the regulatory playing field is no longer even. They lose because the professionalism of a government agency is threatened. They lose because public confidence in government is undermined. Such conduct by a public official may not amount to a crime under Rhode Island law. But plainly, it is best avoided, and it should have been avoided by Mr. Silva here.

I. BACKGROUND

Mr. Silva served as Chief of Staff to then Lieutenant Governor McKee from January 2014 until March 2, 2021. In early January 2021, President Joe Biden announced that he would nominate Governor Gina M. Raimondo as the next Secretary of Commerce. As a result, Lieutenant Governor McKee began preparing to assume the position of Governor by, among other things, establishing a transition committee in late January 2021. Mr. Silva was one of the “organizing directors” of that committee. Mr. Silva assumed the position of Governor’s Chief of Staff when Lieutenant Governor McKee was sworn in as Governor on March 2, 2021. In late March of 2021, Governor McKee also tasked Mr. Silva with serving as the Lead Covid Administrator. Mr. Silva remained in these positions until his resignation on August 30, 2021. Mr. Silva also served as Deputy Emergency Management Director for the Town of Cumberland for several years until his resignation on August 31, 2021.

A. Purchase of 45 Canning Street, Cumberland, Rhode Island

On June 17, 2017, Mr. and Mrs. Silva entered into a purchase and sale agreement (“PSA”) with Joan M. Mooney for the purchase of 45 Canning Street, Cumberland, Rhode Island for \$45,000. The PSA was amended on January 3, 2018, where the purchaser and seller agreed on a price reduction to \$22,000. The PSA was contingent on obtaining the necessary regulatory approval from DEM to develop the land and extended the closing date to August 31, 2018 in order to allow the buyer to obtain such approval.

45 Canning Street is a 5,600 square foot wooded lot, much of which can fairly be described as swamp or wetlands. Topographically, it is the lowest point within the surrounding area and has effectively served as a receptacle for stormwater runoff for the neighborhood. This area of Canning Street has historically plagued residents with flooding issues. In an interview with the State Police, its owner, Joan M. Mooney, and her husband indicated their surprise that anyone was interested in purchasing the property because they did not believe anyone would ever build on it. Mooney Tr. at 10.

Following the execution of the PSA, Mr. Silva retained Timothy Behan, P.E., of Commonwealth Engineers & Consultants, Inc. (“CEC”), to assist him with obtaining the necessary approvals to develop the lot from the DEM. While formally the applications submitted to DEM in connection with this project were all filed in Mrs. Mooney’s name, as she was the property owner, Mr. Silva (as the purchaser) was the real party in interest behind the applications. Thus, it was Mr. Silva and his engineer, Mr. Behan, who most frequently communicated with DEM about this matter.

While DEM’s review of the wetlands alteration application for 45 Canning Street was pending, Mr. and Mrs. Silva executed eight additional amendments to the PSA, each time extending the closing date due to the ongoing DEM review. The amendment executed on April 20, 2020 between Mr. and Mrs. Silva and Mrs. Mooney reduced the purchase price to \$17,500.

B. DEM’s Review of the First Application to Alter Wetlands

Mr. Behan filed a Request for Preliminary Determination for the 45 Canning Street property with the DEM on June 22, 2018. The purpose of this Request was to determine whether the proposed development would more than minimally change the wetlands on the property. If so, DEM would require a formal Application to Alter Freshwater Wetlands and review before any development would be approved.

The Request for Preliminary Determination was assigned to DEM biologist Daniel M. Kowal for review. Mr. Kowal was interviewed by the State Police on September 17, 2021. Mr. Kowal was a 33-year veteran of the Freshwater Wetlands Division at DEM and had reviewed over 100 applications over his career. Mr. Kowal stated that he was skeptical of the application to develop this lot due to its history of flooding. Mr. Kowal visited 45 Canning Street on two occasions in July and August of 2018. DEM biologist Jane Kelly accompanied him on the second visit. Mr. Kowal told the State Police that his first impression upon seeing this lot was: “You’ve got to be kidding me.” Mr. Kowal’s inspection report determined that development of this lot would constitute a major alteration to wetlands. Specifically, the report provided that, “The proposed activity would eliminate a portion of a swamp, possibly undesirably affecting the hydrology of the remaining swamp, and permanently change the characteristic of the 50-foot perimeter wetland; thereby reducing the natural values associated with the wetlands.” Based on this finding, Mr. Kowal recommended that the DEM issue a “significant alterations letter.” Mr. Kowal also noted in his report that, during his site visit, several neighbors informed him of historic flooding issues in the area.

Mr. Martin Wencek, Permitting Supervisor at the Freshwater Wetlands Program at DEM, issued the significant alterations letter to Mrs. Mooney, copied to Mr. Behan, on August 9, 2018. The letter advised that the project could proceed only following submission of an Application to Alter Freshwater Wetlands and receipt of a permit from DEM.

It appears that an Application was not submitted until April 4, 2019 (“First Application”), some eight months later. The First Application was found to be deficient and additional information was requested by DEM in May 2019. In September 2019, Mr. Wencek issued a letter indicating that the First Application was complete and ready for public notice. The 45-day public comment period commenced on October 11, 2019. During this period, DEM received seven objections to the First Application from abutting property owners, as well as from the Town of Cumberland through its Planning Director, Jonathan Stevens.

On December 13, 2019, DEM Program Engineer Nicholas Pisani completed his report on the First Application. Mr. Pisani’s report identified two areas of concern. The first was the lack of “sufficient information” regarding what impact filling a portion of the wetlands would have on adjacent properties due to any increase in “flood elevation.” The second was the impact that the project would have on water run-off from “up-gradient areas” across Canning Street and onto the property. The DEM engineer specifically noted the presence of a closed drainage system, including a culvert that ran under Canning Street, and recommended further analysis of the proposed project’s impact on flooding in the area. During his interview with the State Police, Mr. Pisani told investigators that he was not comfortable with approving the First Application due to these concerns, and he recommended that the applicant provide a hydrology report to assist with a more thorough review.

The State Police interviews of Mr. Pisani, Mr. Kowal and Mr. Wencek revealed that during this initial application period – from the time the Preliminary Determination Request was filed in June 2018 through the end of December 2019 – they were not aware that Mr. Silva was the interested party behind the First Application or that the applicant held any particular position in state government. None of the DEM staff reported interacting with Mr. Silva directly during this timeframe or receiving any outreach from DEM leadership in connection with the First Application during this stage of the review. Indeed, up until that point, the process appears to have proceeded in the ordinary course.

C. Mr. Silva's Outreach to DEM

The investigation revealed that Mr. Silva first began reaching out to then Deputy Director Terrence Gray¹ to inquire about the permitting process for 45 Canning Street in late 2018 or early 2019. Mr. Silva did so despite being represented by an attorney and an engineering firm. The evidence demonstrates that this outreach was done by phone, through his official government email, and by personal email.

Director Gray was interviewed by the Rhode Island State Police on November 8, 2021. During the interview, Director Gray recalled that Mr. Silva, whom he knew to be the Lieutenant Governor's Chief of Staff, first called him at around the time DEM issued the Preliminary Determination Request letter informing the applicant that a formal Application to Alter Freshwater Wetlands was required. Gray Tr. at 9. Mr. Silva asked about the status of his wetlands application and what he could do to keep "the process" moving forward. Director Gray recalled that Mr. Silva told him that he was under time pressure to secure financing for the project. Gray Tr. at 7. Director Gray stated that he did not find the inquiry to be out of the ordinary and he followed up with Eric Beck, Administrator for Groundwater and Freshwater Wetlands. Gray Tr. at 5-8. According to Director Gray, when he first inquired about the application within DEM, he took care not to mention Mr. Silva's name. Director Gray stated that he advised Mr. Silva that he would need to file a formal application to develop the property as it required a "significant alteration permit" and Mr. Silva would have to retain an engineering consultant for assistance.

In January 2020, shortly after the public comment period on the First Application closed, Mr. Silva reached out to Deputy Director Gray again to inquire about its status. In an email to Mr. Wencek and his supervisor, Mr. Beck, on January 28, 2020, Mr. Gray wrote, "We need to move on this one. The application has been in for a long time and the applicant is under a ton of pressure from his financing companies to get this done." Mr. Gray did not identify the applicant by name in his email. Email from Gray to Wencek (Jan. 28, 2020, 9:26 p.m.). The following day, Mr. Wencek responded that the Canning Street file was behind some other applications in line for review.

On February 13, 2020, Deputy Director Gray again emailed Mr. Wencek requesting an update. The same day, Mr. Wencek replied to Gray that the First Application received "substantive comments" during the public notice period and the applicant had three options: (1) withdraw the application, (2) proceed with the process and request a public hearing, or (3) submit additional information to address the comments and then re-submit for public notice. Email from Wencek to Gray (Feb. 13, 2020, 11:22 a.m.). Mr. Wencek stated that DEM would send the applicant a letter informing them of these options. When Mr. Wencek was referring to "the applicant," he was referring to Mrs. Mooney, in whose name the Application was filed.

¹ Terrence Gray was confirmed by the Rhode Island Senate as DEM Director on May 18, 2022. Director Gray has worked at the DEM for his entire 34-year career. He became Deputy Director for Environmental Protection in 2018 under Director Janet Coit. Mr. Gray was appointed Acting DEM Director by Governor McKee on June 21, 2021 following Director Coit's departure to assume a position as the head of the National Marine Fisheries Service. At all times relevant to this investigation, Director Gray served as Deputy Director.

The following day, Deputy Director Gray responded to Mr. Wencek as follows:

Thank you. I passed this news on to the applicant, along with electronic copies of the comments we received on the application. I did not get into the specific alternatives outlined below, but did communicate that he will need to meet with permitting staff to figure out the path forward. You may want to include the town in that meeting. I made it very clear that we would not be meeting his target dates and that no schedule or expectations could be set out until that meeting happens, at a minimum. Stay tuned.

Email from Gray to Wencek (Feb. 14, 2020, 10:51 a.m.).

There is no evidence that Deputy Director Gray identified Mr. Silva, or his official position, to Mr. Wencek in connection with the First Application. In his interview with the State Police, Director Gray stated that it was not unusual for applicants or purchasers to inquire or press about the status of their applications. However, he did indicate it was “a bit unusual” for him to request copies of the public comment letters for the application. Typically, a person wishing to view the public comment would need to respond to DEM to view those comments. In this case, Deputy Director Gray provided copies of the comments to Mr. Silva.

On February 14, 2020, DEM issued a formal letter to the applicant, Mrs. Mooney, with a copy to Mr. Behan, formally advising her of the options outlined above. Nowhere does the letter reference Mr. Silva. The letter informed Mrs. Mooney that she had thirty days from receipt of the notification to request a public hearing and remit a \$2500 check as payment for such a hearing. On March 23, 2020, Mr. Silva emailed then Deputy Director Gray seeking an extension due to the Covid-19 epidemic and the fact that municipal employees were working remotely. There does not appear to be an email response to this request.

On March 26, 2020, the deadline to request a public hearing, Mr. Silva went to DEM’s offices on Promenade Street in Providence. Mr. Wencek described this encounter during his interview with the State Police on October 7, 2021. According to Mr. Wencek, Mr. Silva identified himself as the purchaser of the 45 Canning Street property and asked Mr. Wencek whether he should pursue the public hearing. Mr. Wencek responded that Mr. Silva must make that determination himself and that Mr. Wencek could not provide him with any advice. After Mr. Wencek, once again, explained the options to Mr. Silva, Mr. Silva submitted a \$2,500 bank check and a letter from Mrs. Mooney authorizing the public hearing. According to Mr. Wencek, he did not know who Mr. Silva was, nor did he know of his government employment at the time. Wencek Tr. at 75-77.

In April and May of 2020, DEM personnel worked to schedule and conduct the public hearing for 45 Canning Street. This process was significantly complicated by the advent of the Covid-19 pandemic. It was also complicated by the fact that DEM personnel were unfamiliar with the public hearing process for this type of application. According to Mr. Wencek, the last public hearing he had was some 30 years ago. Wencek Tr. at 82. According to Mr. Wencek and Mr. Beck, it is more common for an applicant to amend their application in response to any concerns raised by DEM or any objectors and resubmit for public comment if necessary. DEM emails show that DEM staff agreed that if the applicant withdrew his application and submitted a revised application, the new application would be reviewed “through the normal formal process again” but “without being placed in the queue behind other applications.” Email from Beck to Gray (May 7, 2020, 7:28 p.m.); see also, Wencek Tr. at 83-86.

In late May 2020, Mr. Beck emailed Deputy Director Gray, copying Mr. Wencek, several times regarding “Joan Mooney.” In those emails, Mr. Beck suggested that Mr. Gray communicate with “the applicant” to see if “they” have addressed the drainage issues raised by the Town of Cumberland. If so, a hearing could be avoided, and the First Application would simply be re-noticed. Emails from Beck to Gray (May 7, 14, and 21, 2020). Deputy Director Gray indicated that he would text “him” to discuss. Email from Gray to Beck (May 21, 2020, 11:20 a.m.). While Mr. Silva is not referenced by name in any of these communications, it appears that Mr. Beck knew that Deputy Director Gray was communicating with someone other than Mrs. Mooney.

In a May 27, 2020 email chain, Mr. Beck requested an update from Deputy Director Gray regarding his communications with the applicant. Mr. Beck wanted to know whether “they have addressed with town,” and whether DEM needed to proceed to a hearing. Mr. Beck also offered to follow up with “the applicant.” Email from Beck to Gray (May 27, 2020, 8:27 a.m.). Mr. Gray responded, “see the text I just sent you.” Email from Gray to Beck (May 27, 2020, 8:49 a.m.). Mr. Beck emailed back that he would “follow up from here.” Email from Beck to Gray (May 27, 2020, 10:35 a.m.). In his interview with the State Police, Director Gray stated that he likely texted Mr. Silva’s contact information to Mr. Beck at that time. Gray Tr. at 41-42.

In his interview with the State Police, Director Gray acknowledged that, during this period of time, Mr. Silva had been contacting him “a lot” and he wanted to extricate himself from these communications. Gray Tr. at 26. Director Gray stated that he wanted to push Mr. Silva down to deal with the staff. Director Gray indicated that this was primarily because “I was getting sick of getting the calls from Tony, all right. That’s the God’s honest truth. I wanted out of it. I mean it’s one thing if somebody calls you and asks the status, you give them the status and then they move on. It’s another thing if they call you again and again, want to know the status, want to get advice. Eventually, it’s like, look, this isn’t my job. . . .” Id. Thereafter, Mr. Silva predominantly dealt with Mr. Beck.

During his interview with the State Police, Mr. Beck recounted a conversation with Mr. Silva, which was likely the first time he learned of Mr. Silva’s position as the Lieutenant Governor’s Chief of Staff and his connection to the First Application. Beck Tr. at 23. Mr. Beck explained to investigators that he spoke with Mr. Silva in anticipation of a public hearing. Mr. Silva provided Mr. Beck with “his story,” recounting the various positions Mr. Silva had held in state and municipal government. According to Mr. Beck, Mr. Silva reassured Mr. Beck that he was not seeking any favors. Mr. Silva told Mr. Beck that he suspected local politics were at play as to Cumberland’s opposition to his application. Beck Tr. at 24-27.

On May 28, 2020, Mr. Behan emailed Mr. Beck to inform him that they would be withdrawing the application and will resubmit another application. On June 3, 2020, Mr. Beck advised his team at DEM that the application will be withdrawn and resubmitted and asked to be advised when that happened. He also asked Mr. Wencek to “let me know when we receive and please remember we agreed to look at it out of sequence.” He asked that the application be assigned to Mr. Pisani and that he be asked “to expedite.” Email from Beck to Wencek (June 3, 2020, 12:07 p.m.). When interviewed by the State Police, Mr. Beck explained that this was appropriate as DEM was already familiar with the First Application and it had been pending for a significant amount of time. Mr. Beck also stated that he felt DEM bore some of the responsibility for the delay due to the confusion around the public hearing process. Beck Tr. at 89.

On July 27, 2020, Mr. Silva, using his official government email, reached out to Deputy Director Gray to advise him that he intended to withdraw the First Application and submit a new application but that he had some questions about the process. Email from Silva to Gray (July 27, 2020, 11:32 a.m.). Mr. Gray responded, copying Mr. Beck, and asked Mr. Silva to communicate directly with Mr. Beck about the next procedural steps. Email from Gray to Silva (July 27, 2020, 12:29 p.m.). Mr. Silva then responded with another email, again sent from his official government email account, to Deputy Director Gray and Mr. Beck restating his request. Email from Silva to Gray and Beck (July 27, 2020, 3:20 p.m.). Two minutes later, he sent another email apologizing for using his official government email and providing his personal email. Email from Silva to Gray and Beck (July 27, 2020, 3:22 p.m.). All subsequent emails with Mr. Silva were sent from his personal email account.

On July 31, 2020, Attorney Scott Partington sent a letter to DEM formally withdrawing the First Application on behalf of Mrs. Mooney.

D. Second Application

In September 2020, Mr. Silva reached out to Mr. Beck multiple times via phone and email to discuss resubmission of the wetlands application, as well as how to go about obtaining a refund of the \$2,500 he paid for the public hearing, which never took place. Mr. Beck connected Mr. Silva with DEM staff to address the refund issue. He also told Mr. Silva that he should involve an engineering consultant in preparation of a second application and that, once received, it would not go to the back of the line. Beck Tr. at 28-29. In an email to Mr. Silva, Mr. Beck stated that “the biology will not need to be re-reviewed and it will only be a drainage design review. We will be able to process it very quickly even given the current circumstances.” Email from Beck to Silva (Sept. 11, 2020, 5:25 p.m.). Mr. Beck provided Mr. Silva with his cellphone number and asked Mr. Silva to copy him on correspondence when he submitted his new application. Id. Phone record analysis of Mr. Silva’s cellphone number shows multiple calls between Mr. Silva and Mr. Beck between September 11 and September 15, 2020. Mr. Beck also informed Mr. Behan and Mr. Silva that the second application should be submitted as a formal application. Emails from Mr. Beck to Mr. Behan and Mr. Silva (Sept. 23, 2020).

Mr. Wencek was either forwarded or was copied on various emails between Mr. Beck and Mr. Silva or Mr. Behan during this time period. Accordingly, at least as of September 2020, Mr. Wencek also knew that Mr. Silva was the interested party in connection with this Application. However, it is unclear whether Mr. Wencek knew that Mr. Silva was the Lieutenant Governor’s Chief of Staff. In his interview with the State Police, Mr. Wencek acknowledged that, ordinarily, Mr. Beck would not be involved in communicating with an applicant or consultant directly unless it was a “high profile” case. Wencek Tr. at 127. According to Mr. Wencek “if the guy’s got weight or clout, you know, I think Eric [Beck]’s got a responsibility to be responsive to the director’s office and if the director’s office has shown all this interest to the file, you know, to facilitate it.” Wencek Tr. at 127.

On November 4, 2020, a new Application to Alter Freshwater Wetlands was filed in Mrs. Mooney’s name (“Second Application”). The Second Application included a hydrology report, which addressed flooding issues in the area surrounding the property. On November 20, 2020, Mr. Silva emailed Mr. Beck requesting that he “follow up with the supervisor” reviewing the Second Application. Mr. Silva also asked whether the engineering could be “expedite[d]” as the review had been going on for about “20 months.” Email from Silva to Beck (Nov. 20, 2020, 5:33 p.m.). In his interview with the State Police, Mr. Beck indicated that “at this point . . . my feeling

about it is, the guy shouldn't be talking to me at all, you know . . . It became weird for, ever since that July email . . . At that point you're going, well, why are you . . . You should be smarter than to be involved with something like this. 'Cause appearances are everything, you know, and you're in a position where you shouldn't, shouldn't be doing that kind of stuff . . ." Beck Tr. at 113. At the same time, Mr. Beck stated that he understood Mr. Silva's frustration that the process had taken so long, and he was still trying to treat the Second Application the same as other applications and get it to move forward. Id. According to Mr. Beck, he was simply trying to provide Mr. Silva with "good customer service." Beck Tr. at 155-57.

Mr. Beck did follow up with Mr. Wencek and Mr. Pisani on December 1, 2020 to remind them that that the Second Application would need an engineering review but not a biology review. Mr. Beck wrote that "we promised the applicant that if they withdrew [the First Application] saving us the effort of a public hearing, we would pick it up right away and not require it to go through the queue again." Email from Beck to Wencek (Dec. 1, 2020, 8:12 a.m.). Although Mr. Beck continued to refer to "the applicant" in these emails, he was actually speaking about Mr. Silva. In his interview with the State Police, Mr. Beck explained that there was no need to redo the biology review as that has not changed since the original application. However, the design has changed, and the "engineering had to satisfy the town." Beck Tr. at 115-16.

In his interview with the State Police, Mr. Wencek stated that he asked DEM engineer, Mr. Pisani, and DEM biologist, Ms. Kelly, to review the Second Application again as they would in the ordinary course. Wencek Tr. at 133-136.

On December 4, 2020, DEM sent a letter to the applicant, Mrs. Mooney, with a copy to Mr. Behan, informing her that there were technical deficiencies in the Second Application and that the DEM engineer required more information. On February 15, 2021, Mr. Behan submitted a response addressing the technical deficiencies.

On February 17, 2021, Mr. Beck emailed Mr. Wencek, Ms. Kelly and Mr. Pisani asking for an update on the "Mooney permit," and again reminding the team that they agreed to give "the application" "priority." It appears that the email was likely prompted by a call from Mr. Silva to Mr. Beck. Phone record analysis of Mr. Silva's cellphone number shows an exchange of calls between Mr. Silva and Mr. Beck on February 10 and 11, 2021. Shortly thereafter, Ms. Kelly responded that the application was forwarded to Mr. Pisani for review. The same day, February 17, 2021, Mr. Pisani submitted his final review of the Second Application. Mr. Pisani found that the flooding and drainage issues had been sufficiently addressed in the Second Application.

In an email exchange between Mr. Wencek and Mr. Beck, Mr. Wencek noted that the design would not exacerbate the flooding issue "PROVIDED the culvert in the street is functioning as it was originally intended." Email from Wencek to Beck (Feb. 17, 2021, 5:08 p.m.) (emphasis in original). Mr. Wencek noted that the applicant should have obtained an assessment from the Town (or conducted their own assessment) that the culvert was in good working order. He noted that it does not appear that the applicant communicated with the Town about that issue and expressed concern that this might cause new substantive comments to be filed. Id. Neither the Town nor Mr. Silva addressed the deficiency with the culvert before the Second Application was approved.

On March 10, 2021 – about a week after Governor McKee took his oath of office – DEM issued a letter to Mrs. Mooney informing her that the Second Application was complete and ready for public notice. DEM's website was also updated to indicate that the Second Application

was ready for public notice. This update prompted an inquiry from Jonathan Stevens, the Cumberland Town Planner, to Mr. Wencek. In an email exchange between Mr. Wencek and Mr. Stevens on or about March 12-15, 2021, Mr. Wencek told Mr. Stevens that the Second Application would be posted for public notice soon and asked whether the Town and the applicant met to discuss the Town's objections. Mr. Stevens responded that the Town was not provided with any updated plans and did not have any discussion with the applicant since the previous summer or fall. Email from Stevens to Wencek (Mar.15, 2021, 11:24 a.m.).

On March 24, 2021, Mr. Beck emailed Ms. Kelly and Mr. Wencek, asking to be notified when the Second Application was posted for public notice so he could reach out to the Cumberland Town Planner to discuss it and address any concerns. Email from Beck to Wencek (March 24, 2021). Subsequent emails among DEM staff indicate an urgency to post the public notice for this application "ASAP." An email from Mr. Beck to Mr. Wencek and Ms. Kelly directed them to issue the public notice for the application. According to Mr. Beck, "the applicant has informed me that they are in jeopardy of losing the project." Email from Beck to Wencek (Mar. 30, 2020, 2:29 p.m.). Again, although Mr. Beck was referring to Mr. Silva, he did not mention him by name. In his interview with the State Police, Mr. Wencek acknowledged that there was some "extra urging" from his supervisor, Mr. Beck, to get the public notice on the Second Application out. Wencek Tr. 175-176.

On March 30, 2021, the Second Application was posted for public notice for a period of 45 days. Director Coit and Deputy Director Gray were emailed a copy of the public notice for the Second Application. According to Mr. Beck and Mr. Wencek, notifying the Director of the posting of a public notice was standard operating procedure. Wencek Tr. at 178.

In his interview with the State Police, Mr. Beck initially stated that he must have had additional communications with Mr. Silva regarding the status of the Second Application and his financing concerns prior to the March 30, 2021 email with Mr. Wencek and Ms. Kelly. However, upon further questioning by the State Police, Mr. Beck recalled that he likely spoke with Ross Silva, Mr. Silva's son, at that time. According to Mr. Beck, at some point during Mr. Silva's transition from his position as Chief of Staff to the Lieutenant Governor to Chief of Staff to the Governor, Mr. Silva told Mr. Beck that his son, Ross, would become the point of contact on the Second Application. Beck Tr. at 143. Mr. Beck located a text message from Ross Silva to him, sent on March 3, 2021, the day after Dan McKee was sworn in as Governor, in which Ross Silva introduced himself to Mr. Beck, references a conversation Mr. Beck had with Mr. Silva "the week before," and asking for an update on the Second Application. Beck Tr. at 147. According to Mr. Beck, any communications regarding the Second Application after that date took place with Ross Silva, not Mr. Silva. *Id.* Mr. Silva's cellphone records do not show any calls between him and Mr. Beck after February 11, 2021.²

Once the public notice on the Second Application was issued, DEM provided the Town and one of the abutters with a copy, noting that the Second Application was modified in response to the previous objections. Mr. Wencek offered to be available for comments or questions. Email from Wencek to Ms. Burgoyne (Mar. 31, 2022). The Town and abutters again submitted comments objecting to the development of the property. The Town continued to object on the basis that the plan "still proposes to disturb an astonishing 93% of existing wetlands on the lot." The Town's letter also noted that while, ordinarily, a landowner's proposal to install a drainage pipe and drainage swale channel at their own expense would alleviate the

² There are also no calls between Mr. Silva and Deputy Director Gray between September 2020 and June 4, 2021 (the day after the permit issued).

Town's concerns, "this principle did not apply in this case" because it would benefit only the landowner and would have only "a negligible beneficial effect on the stormwater ponding and potential flooding" at the location. Letter of Jonathan Stevens (April 22, 2021).

On April 27, 2021, Mr. Behan of CEC submitted a substantive response in support of the Second Application addressing the Town's objections. The letter states that CEC met with Cumberland's Department of Public Works in March 2020 to address their concerns regarding the original application and the Second Application incorporated agreed-upon revisions including: (1) a 10' wide drainage easement; (2) paved water way from Canning Street to start of drainage swale; (3) replacement of metal pipe with HDPE pipe; and (4) installation of a rail fence along the proposed drainage easement. Additionally, the response indicated that the hydrology report demonstrated that the flooding area was located "up-gradient of the subject property" and the proposed development would not "adversely affect" the "drainage characteristics in the area." Letter of Timothy Behan (April 27, 2021).

E. DEM's Decision to Grant the Permit

On May 26, 2021, Mr. Beck emailed Mr. Wencek and asked to discuss "the Mooney application" with him and whether any "substantial comments" were received. Mr. Beck asked, "when do you think it will be issued?" Email from Beck to Wencek and Kelly (May 26, 2021).

On or about May 28, 2021, Ms. Kelly completed her biology review and submitted her inspection report. She found that the proposed development constituted a "significant alteration" to the freshwater wetlands, but she deferred to her supervisor for a determination on the Second Application. In her interview with the State Police, Ms. Kelly expressed that she was disappointed by the eventual approval of the Second Application. Mr. Wencek told the State Police that Ms. Kelly did not provide a recommendation to him, though he understood she was "a little disappointed that we were gonna approve this project." Wencek Tr. at 185. According to Mr. Wencek, Ms. Kelly wanted more "protection" for the wildlife and vegetation; but he did not agree that this development was going to make a significant difference to the surrounding area which was "already a fully developed neighborhood." Wencek Tr. at 187.

On June 1, 2021, Mr. Wencek emailed Ms. Kelly thanking her for her review and indicating that he will be "getting this out per Eric [Beck]'s directive." Email from Wencek to Kelly (June 1, 2021). Mr. Beck concurred with Mr. Wencek's assessment that the permit should issue.

Mr. Wencek wrote a Supervisor's Determination setting forth the bases for his approval of the permit. Mr. Wencek stated that he reviewed the reports and findings of the technical staff, as well as the materials submitted by the applicant, he discussed the Application with the Associate Chief for Water Resources (Charles Horbert) and had determined that "there will be no serious adverse impacts to the functions and values of the subject wetlands as a result of this proposal." Mr. Wencek determined that the Second Application included supporting documentation establishing that the proposed development would not worsen the flooding issue. He found that the revised plans addressed the abutters' and town planner's concerns regarding flooding and, therefore, their letters did "not constitute an objection of a substantive nature." As a result, he determined that no public hearing was required.

On June 3, 2021, DEM issued a Permit to Alter Freshwater Wetlands to Mrs. Mooney, signed by Mr. Wencek. The Permit contained numerous conditions that the applicant must satisfy in order to develop the property.

Shortly after the Permit issued, Cumberland Town Planner, Mr. Stevens, emailed Mr. Wencek asking why there was no public hearing on the Second Application. Mr. Wencek responded that there was no need for a hearing because there were “no SUBSTANTIVE comments” and “[a]ll concerns raised by the commenters were addressed by the applicant in the design” Email from Wencek to Stevens (June 14, 2021) (emphasis in original).

Ross Silva purchased 45 Canning Street on July 14, 2021. The Town followed by filing suit on July 29, 2021. Shortly thereafter, Ross Silva announced that “his family” decided to donate the property to the Town and not develop it. Ethan Shorey, *Silva says family is donating Canning Street Property*, Valley Breeze (Aug. 13, 2021).

F. State Police Interviews

During their interviews with the State Police, Director Gray, Administrator Beck, and Permitting Supervisor Wencek all stated that at no time did Mr. Silva seek to influence their decision-making with respect to the Application. Director Gray and Administrator Beck stated that their conversations with Mr. Silva focused on process and timing, and in that, they were not so unusual as many applicants are eager to move their process along. Director Gray stated that he did not discuss Mr. Silva’s application with then DEM Director Janet Coit and that, by the time the Second Application was submitted, he essentially extricated himself from the process. According to Director Gray, Mr. Silva “did mention that he didn’t want any special treatment. He was pretty up front about it. I mean other than the fact that he’s calling me as Deputy Director, he didn’t want us doing anything outside the ordinary on this. He was pretty conscientious about that.” Gray Tr. at 47. Director Gray also stated that he never communicated with Ross Silva or anyone else on Mr. Silva’s behalf. Gray Tr. at 51-52. Director Gray flatly denied that Mr. Silva pressed him to grant the Application or promised him any benefits (including a promotion) for doing so. Id.

According to Mr. Wencek, he did not realize who Mr. Silva was until one of the objectors called Mr. Wencek after the Permit issued to say that Mr. Silva was “a connected politician.” According to Mr. Wencek, “it didn’t matter in my mind.” Wencek Tr. at 89. Mr. Wencek told the State Police that by the time the Second Application was submitted, he “already knew where [he] was going with this if engineering was addressed properly.” Wencek Tr. at 128. In Mr. Wencek’s opinion, “this was a very straightforward application process” Wencek Tr. at 129. Mr. Wencek did not recall any specific interactions with Mr. Silva over the course of DEM’s review, save for the time he met him to collect the check for the public hearing. At the same time, Mr. Wencek also acknowledged to the State Police that he knew that the applicant must have some “clout” in light of the fact that then Deputy Director Gray and his supervisor, Mr. Beck, communicated with the applicant directly. Mr. Wencek stated that “[e]veryone [was] interested in this file. You know, no one’s telling me to do anything crazy, but there certainly is interest, but that’s not . . . that’s not out of this world.” Wencek Tr. at 138. The State Police also asked whether Mr. Beck’s requests to Mr. Wencek and his staff to expedite the application were unusual. According to Mr. Wencek, almost all applicants had project and financing deadlines and that requests to expedite were not unusual.

Mr. Beck was also asked whether “he was ever pressured to get this through and approve the permit because [Mr.] Silva was Chief of Staff for the Lieutenant Governor and then Governor?” Mr. Beck answered, “No. Now, I’ll say that with conviction.” Beck Tr. at 154. Mr. Beck pointed to the fact that he was careful never to refer to the applicant by name in any of his emails with DEM staff. According to Mr. Beck, none of his staff members knew of Mr. Silva’s connection to this Application. Beck Tr. at 154-55. As just discussed, it appears that Mr.

Wencek did know that Mr. Silva was the interested party in this transaction at least since he dropped off the check for the public hearing in March 2020, and certainly as of September 2020, when Mr. Silva engaged in an email exchange with DEM personnel regarding resubmission of the application. See, *supra*, at 8. However, it is not clear that Mr. Wencek knew what position Mr. Silva held in state government. It also does not appear that Ms. Kelly or Mr. Pisani ever learned of Mr. Silva's connection to the Application or what position he held. At the same time, there is also little doubt that DEM staff knew that this Application garnered the attention of DEM senior staff and was to be "prioritized."

Finally, the State Police interviewed both Governor McKee and Assistant Secretary Coit in connection with the investigation. As will be discussed in greater detail below, both denied any knowledge of or involvement in Mr. Silva's efforts to obtain a wetlands alteration permit for the 45 Canning Street Property.

G. Silva's Outreach to Town of Cumberland Officials

The State Police interviewed Cumberland Mayor Jeffrey Mutter on August 26, 2021, and Town Solicitor Kelly Morris-Salvatore on August 31, 2021, about Mr. Silva's interaction with town officials regarding the 45 Canning Street development. According to Mayor Mutter, Mr. Silva had a number of conversations with him from 2019 through 2021 about this matter. After Town Planning Director Jonathan Stevens submitted a letter to DEM in November 2019 setting forth the Town's objection, Mr. Silva contacted Mayor Mutter and asked whether the Town was steadfast in its objection. Mr. Silva explained to Mayor Mutter that he was concerned about the cost of fees associated with continuing to pursue the Application through a public hearing. Mayor Mutter informed Mr. Silva that the Town intended to maintain its objection.

Solicitor Morris-Salvatore told the State Police that during March of 2020, Mr. Silva also sent multiple texts to her about the Application. Mr. Silva questioned the basis for the Town's objection – drainage and stormwater issues – and indicated that it was the Town that created the drainage problem. He indicated to Ms. Morris-Salvatore that the Mooney's "are gonna sue the town." Morris-Salvatore Tr. at 6. Mr. Silva indicated to Ms. Morris-Salvatore that he was willing to discuss improvements to property to address the situation.³ Morris-Salvatore Tr. at 5-6. Notably, in their interview with the State Police, Mr. and Mrs. Mooney credibly denied ever contemplating a lawsuit against the Town in connection with this property or speaking to Mr. Silva about such a lawsuit. Mooney Tr. at 6.

After the Second Application was submitted, Mr. Silva, this time acting through his attorney, Scott Partington, again reached out to the Town seeking to meet. A meeting with Mayor Mutter, Mr. Silva and Attorney Partington took place on October 5, 2020. According to Mayor Mutter, they again discussed the Town's objection to the Application.

On March 31, 2021, Mr. Silva texted Mayor Mutter and requested a private meeting at Phantom Farms in Cumberland, Rhode Island. Based on Mr. Silva's role as Cumberland's Deputy Director of Emergency Management and his recent appointment as Chief of Staff to the

³ From the State Police interviews with Mayor Mutter and Ms. Morris-Salvatore, it appears that the Town was under the misapprehension that the First Application for wetlands alternations for 45 Canning Street was denied by the DEM. In fact, the First Application was withdrawn, thereby obviating the need for a public hearing, and then resubmitted.

Governor, Mayor Mutter told the State Police that he believed they were meeting to discuss government matters. Instead, according to Mayor Mutter, Mr. Silva engaged in an effort to convince him to drop the Town's objection to the 45 Canning Street Application. According to Mayor Mutter, Mr. Silva said to him, on at least two occasions, that he should fire Mr. Stevens, Cumberland's Planning Director. According to Mayor Mutter, Mr. Silva said, "If I was you, and that was my Planning Director, he wouldn't work for me anymore." Mayor Mutter characterized that statement as "a quasi, quasi-threat as far as firing my Planning Director." Mutter Tr. at 2-3.

After the meeting, Mr. Silva informed Mayor Mutter that Mr. Silva would arrange for his son, Ross Silva, to purchase and develop the lot. Mr. Silva sent a text message to Mayor Mutter stating "therefore I won't be connected to it at the time of the sale. Hopefully, this makes it easier for you at Town Hall." Mutter Tr. at 15. According to Mayor Mutter, this was the first time Mr. Silva indicated that his son would be the purchaser of the property. Mayor Mutter told the State Police that he was concerned about the veracity of this representation when he saw news reports in the summer of 2021 where Mr. Silva told the press that he and his wife transferred their interest in the property to their son in April 2020.⁴ Mutter Tr. at 2-3. See, e.g., Antonia Noori Farzan, *Records highlight McKee advisor's involvement in controversial Cumberland wetlands plan*, Providence Journal (Aug. 23, 2021).

Mayor Mutter told the State Police that he "was uncomfortable with the meeting because I don't think it's appropriate. I'm on the public dime, he's on the public dime, we're not talking about anything here but a personal interest." Mutter Tr. at 2. While it was clear to Mayor Mutter that Mr. Silva wanted to persuade him to drop the Town's objections, and Mayor Mutter was concerned about the impact of saying no to the Governor's Chief of Staff, he stood by his staff's recommendation. Other than the comments concerning Mr. Stevens, Mayor Mutter did not relay any other statements by Mr. Silva that could be construed as threats, promises, or inducements to get the Town to change its position.

H. Ethics Commission Investigation

On August 26, 2021, Suzanne M. Cienki, Chairwoman of the Rhode Island GOP, filed a complaint against Mr. Silva with the Ethics Commission for failing to disclose his interest in the 45 Canning Street Property on his Financial Disclosure Statements for 2017-2020. The Commission conducted an investigation into the allegation, which concluded on December 23, 2021. On January 11, 2022, the Commission held a probable cause hearing in the matter. The Commission dismissed the complaint, having determined that Mr. Silva "did not commit a knowing and willful violation of the Financial Disclosure Mandate, as a buyer's interest in a

⁴ The only information we identified in support of Mr. Silva's contention to the media that his interest in 45 Canning Street was transferred to Ross Silva in April 2020 was a letter that was produced to the Ethics Commission by Mr. Silva's attorney as part of the Ethics Commission investigation of Mr. Silva for failure to disclose his interest in 45 Canning Street on his financial disclosure reports. The letter, which was dated April 21, 2020, signed by Mr. and Mrs. Silva and addressed to Ross Silva, states that "[we] wish to transfer and/or assign our interest in this purchase to you . . ." In response to a request for additional information from the Commission, Mr. Silva's attorney acknowledged that this letter had not been delivered to anyone nor recorded anywhere. We note that only Mr. and Mrs. Silva are listed on the Amendment to the purchase and sale agreement with Mrs. Mooney, which was executed only a day earlier, on April 20, 2020. The earliest reference we could find connecting Ross Silva to this transaction was March 3, 2021, when he texted Mr. Beck to say that "my father and I are under contract for [45 Canning Street]" and asking for an update. Beck Tr. at 147. This was the day after Mr. Silva became the Governor's Chief of Staff.

purchase and sales agreement is not listed as an interest that requires disclosure in the relevant statute, regulation, the real estate question on the financial disclosure form, or the accompanying instructions.” In Re: Anthony Silva, Decision and Order No. 2021-3.

II. ANALYSIS

Every experienced federal and state prosecutor understands that all public corruption cases necessarily come down to this: Was money or something else of value offered to a public official in exchange for official action (bribery), or did a public official threaten to use their official power against someone unless that person took action for the public official’s personal benefit (extortion)?

Accordingly, we carefully considered whether Mr. Silva’s actions potentially violated any of the following relevant Rhode Island criminal statutes: bribery (R.I. Gen. Laws § 11-7-4), extortion and blackmail (R.I. Gen. Laws § 11-42-2), and extortion by a public official (R.I. Gen. Laws § 11-42-1.10), all of which are felonies under Rhode Island law. While typically the province of the Rhode Island Ethics Commission, we also examined whether Mr. Silva’s conduct violated the Rhode Island Code of Ethics (R.I. Gen. Laws § 36-14-5, *et seq.*), a misdemeanor.

A. Bribery and Extortion

To convict a person of bribery, the State must prove beyond a reasonable doubt that the person: (1) corruptly gave or offered to give; (2) any gift or valuable consideration; (3) to a public employee or official; (4) as an inducement or reward for doing or forbearing to do any act in relation to the business of the state, city, or town for which he or she is a public official. R.I. Gen. Laws § 11-7-4.

To convict a person of extortion or blackmail, the State must prove the following two elements beyond a reasonable doubt: “(1) an oral or written threat to harm a person or property; (2) accompanied by the intent to compel someone to do something against his or her will.” *State v. Price*, 706 A.2d 929, 933 (RI 1998); R.I. Gen. Laws § 11-42-2. The crime of extortion by a public official incorporates all the elements of extortion. It also requires proof that the accused was an elected or appointed official or employee of the state. R.I. Gen. Laws § 11-42-1.10.

First, with respect to bribery, the investigation produced no evidence that Mr. Silva offered any financial or other inducements to DEM or Cumberland town officials in furtherance of his objective to have the First or Second Applications expedited and granted. While Mr. Silva clearly advocated to DEM administrators on his own behalf, none of the emails or witness testimony included any promises or other statements that could support a bribery charge. No money changed hands. No promises of better or higher public employment were offered. For example, had Mr. Silva told Mr. Gray or any other DEM employee that a promotion would be in the offing if the application process went faster, or smoother, that would constitute a crime, even if the DEM employee would never have considered doing so. But our investigation revealed no evidence of that here, and as noted, every DEM employee, including Mr. Gray, told the Investigative Team that no such thing happened. Federal and state law make plain that a bribery charge requires a *quid pro quo*. There is no *quid* here.

Similarly, the State did not uncover any evidence to support an extortion charge. There is no question that to be chief of staff to any one of the five constitutional officers in Rhode Island, including to the Lieutenant Governor and even more so the Governor, is a position of

great authority. True or not, at a minimum, there is a perception within government and in the public's mind that the chief of staff speaks for and has the ear of the elected official he or she serves. Undoubtedly, by virtue of his position, Mr. Silva had much more access to the DEM officials, including at the highest levels, than everyday Rhode Islanders. Was it good judgment to take advantage of that access for the benefit of a personal real estate development project? In our view, it was very poor judgment. And did his persistence – to the point of annoyance – place additional pressure on DEM employees simply attempting to do their jobs in the ordinary course? The inescapable conclusion is that it did. Yet, the law of extortion requires more. It requires a threat, express or implied. Not mere persistence. Not mere pressure. It requires the black-hearted promise of a very unhappy consequence to the person to whom it is directed, and our investigation developed no such evidence here. No DEM employee told the Investigative Team that they received any type of threatening communication—verbal or written—from or on behalf of Mr. Silva, and we could uncover no evidence to contradict these denials.

We recognize that DEM's grant of the permit, after some of DEM's own staff expressed concerns about it, could be seen by some as "evidence" that Mr. Silva improperly influenced the regulatory review. Certainly, we do not need a "smoking gun," nor must we rely solely on direct evidence to bring a charge—but *some* evidence, other than mere inferences, is necessary. *Cf. DiPrete v. Morsilli*, 635 A.2d 1155, 1166 (R.I. 1994) (finding that a general expectation of contributions is insufficient but that some evidence of a *quid pro quo* is necessary to demonstrate that an understanding, even a tacit one, existed between the Governor and a business associate that campaign contributions would result in awarding of a contract). It is true that some line DEM staff were initially skeptical of the Application in that the lot in question consisted mostly of wetlands. But on the other side of the ledger, DEM *did* require the submission of not one but two formal applications before the project was approved. It subjected the First and Second Applications to thorough vetting, requesting additional information, studies, and technical corrections throughout the process. It followed the public notice requirements in its regulations and pressed Mr. Silva to address the Town's comments. Mr. Silva had to make alterations to the original plan and agree to install a new pipe, rail fencing, pave a water way, and increase the drainage set-offs in order to obtain approval. Though reasonable minds might disagree with the outcome of the permitting process, there is nothing in the Application files or statements by DEM witnesses to Investigators which would allow us to conclude, let alone attempt to prove beyond a reasonable doubt, that the approval was granted because of the payment of a bribe or the delivery of a threat.⁵

Nor does the available evidence support a bribery or extortion charge based on Mr. Silva's interaction with Cumberland officials. There is no evidence that Mr. Silva offered Mayor Mutter or any other town official money or anything else of value to induce them to withdraw the Town's objection to the Application, nor did Mr. Silva attempt to extort the Town into withdrawing its objection. The closest Mr. Silva's conduct came to that line is his fabricated assertion that the Mooneys might bring legal action against the Town based on the Town's failure to properly manage the flooding in the area. But those statements, made to the town solicitor, without more, are insufficient to support an extortion charge. Even if the threat of suit was an empty one, as a matter of law, threat of litigation cannot support an extortion charge. *See, e.g., Langan v. Smith*, 312 F.Supp.3d 201, 205-06 (D. Mass. 2018) ("Federal courts have

⁵ If there is something to criticize in DEM's process here, it is likely its failure to hold a public hearing on the Applications. It is apparent that DEM was unaccustomed to the procedure for holding a public hearing in this context. While their reluctance to do so during the onset of the Covid-19 pandemic in May 2020 was understandable, their failure to hold one in the Spring of 2021 was not, and it likely contributed further to public skepticism of the result.

overwhelmingly rejected attempts to base extortion claims on litigation conduct, even when that conduct is abusive or undertaken in bad faith.”) (citing cases). That the caselaw in this area is well-settled is hardly surprising. Given the ever-increasing litigiousness of our society, finding criminal misconduct whenever someone threatened to sue someone else would render many Americans extortionists.

Likewise, Mr. Silva’s statement to Mayor Mutter suggesting that, if Mr. Silva was the mayor, Mr. Stevens “wouldn’t be working for me much longer,” while intemperate and beyond inappropriate, cannot support an extortion charge. Mr. Silva did not convey that sentiment directly to Mr. Stevens nor did it appear to be designed to compel Mr. Stevens to commit an act against his will. Although Mayor Mutter characterized this comment as a “quasi threat,” Mayor Mutter knew that Mr. Silva had no ability to hire or fire any town employee, and it was quite apparent that Mr. Silva did not have the authority to induce anyone else to do so. Mayor Mutter was right to be offended, and properly stood his ground. Mr. Silva, whatever his level of frustration with not getting what he wanted, should have chosen a more appropriate way to convey his disagreement with the Town’s position. But his words do not amount to the kind threatening statement, with a promise of an unhappy consequence if the demand is not met, that the law of extortion requires.

B. The Rhode Island Code of Ethics

i. Legal Standard

As a state and municipal employee, Mr. Silva was subject to the Rhode Island Code of Ethics. R.I. Gen. Laws § 36-14-4. Moreover, as the Chief of Staff to the Lieutenant Governor and, later, the Governor, Mr. Silva occupied a “major decision-making position” such that he had additional requirements under the Code, including filing an annual ethics disclosure. R.I. Gen. Laws § 36-14-2(14). Two closely related provisions of the Code are relevant to our analysis of Mr. Silva’s conduct.

The first requires the State to prove beyond a reasonable doubt that an individual subject to the code of ethics: (a) have “an interest, financial, or otherwise,” in a transaction; (b) which was in “substantial conflict;” (c) with the “proper discharge of his or her duties or employment in the public interest” R.I. Gen. Laws § 36-14-5(a). “Substantial conflict” is defined in relevant part as “*reason to believe or expect* that he or she or any person within his or her family . . . will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, *by reason of his or her official activity.*” R.I. Gen. Laws § 36-14-7(a). The second provision provides that, “No person subject to this code of ethics shall use in any way his or her public office . . . to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family” R.I. Gen. Laws § 36-14-5(d).

Simply put, these provisions are intended to guard against a conflict of interest between a person’s public office or official duties and responsibilities, on the one hand, and their personal obligations, transactions, or business on the other. Such a conflict arises when the person could derive a financial benefit or loss as a result of an official action which they have authority over. A public official or government employee cannot use their public office for financial gain, and, if the scope of his/her duties or responsibilities directly conflicts with a private matter, they must take steps to recuse pursuant to the provisions set forth in the Code.

The Rhode Island Supreme Court has found that all that is required to show “official action” is some formal or informal act or exercise of power taken “by an officer in his official capacity under color and by virtue of his office.” *DiPrete*, 635 A.2d at 1161-62 (citing *Celona v. Rhode Island Ethics Commission*, 544 A.2d 582, 585 (R.I.1988)). In *DiPrete*, the Supreme Court upheld the Ethics Commission’s finding that an informal note or verbal recommendation by Governor DiPrete to Department of Transportation Director Matthew Gill to hire a law firm which was a business associate of DiPrete constituted an “official act.” *Id.*

ii. Analysis

As a longtime state and municipal employee, Mr. Silva undoubtedly knew that he was subject to the state’s ethics code. As such, Mr. Silva needed to ensure that there was no substantial conflict between his official positions in state and municipal government and his personal interest in obtaining permission to develop 45 Canning Street. In other words, he could not use his official position to obtain a benefit for himself, a family member or a business associate. When analyzing Mr. Silva’s conduct under Sections 5(a) and 5(d) of the Code of Ethics, there are two distinct time periods to consider: the time Mr. Silva served as Chief of Staff to the Lieutenant Governor, and the time he served as Chief of Staff to the Governor. This is because Mr. Silva’s relationship with the DEM, the agency charged with reviewing and deciding whether to grant the Applications, changed significantly with each position.

While he was Chief of Staff to the Lieutenant Governor, there was no “substantial conflict” between Mr. Silva’s official duties and his private interest in securing a wetlands alteration permit for his property because the Office of the Lieutenant Governor had no authority over DEM. The Director of DEM is appointed by the Governor, reports to the Governor, and serves at the pleasure of the Governor. By contrast, the Office of Lieutenant Governor has no oversight responsibilities or authority over any of the executive agencies, including DEM. Notably, the Rhode Island office of the Lieutenant Governor is extraordinarily small (consisting of roughly ten people), has no official portfolio and no authority whatsoever over any state agency. Indeed, while the office may attempt to advance some important policy-related issues, and, of course, is arguably necessary for a smooth transition of gubernatorial power should the Governor be sidelined for some reason, at bottom, the office is effectively powerless. Thus, as Chief of Staff to the Lieutenant Governor, Mr. Silva had no authority over DEM whatsoever. He had no power to take an official act in connection with the Application. Accordingly, there was no “conflict,” substantial or otherwise, between Mr. Silva’s official duties and his interest in the Application and, therefore, this essential element of § 36-14-5(a) cannot be met. Mr. Silva’s conduct while he was Chief of Staff to the Lieutenant Governor is not worthy of applause. But given his lack of authority over DEM at the time, it does not constitute a violation of the Rhode Island Ethics code.

Where the rubber meets the road is when Mr. Silva became Chief of Staff *to the Governor* on March 2, 2021, and so it is to that point in time that we turn our most critical eye. Mr. Silva’s official relationship with DEM in that instant changed, in that the Governor oversees DEM and appoints its Director. As the Governor’s right hand man, the Chief of Staff frequently communicates with DEM leadership and is undoubtedly involved, to some degree, in the most significant decisions undertaken by the agency. If nothing else, the agency’s budget must, in the first instance, be approved and supported by the Governor and his or her staff. As such, we conclude that the duties of the Governor’s Chief of Staff are sufficiently related to DEM’s regulatory process that they could give rise to the type of conflict contemplated by the Ethics Code.

The investigation established, however, that *all* of Mr. Silva's communications with the DEM occurred while he was the Lieutenant Governor's Chief of Staff and *before* he became the Governor's Chief of Staff on March 2, 2021. Whether this was a conscious decision by Mr. Silva with the Ethics Code in mind or was motivated by something else remains unclear. But the legal import of these facts is significant because what it means is that at no point during his extensive outreach to the DEM described above did Mr. Silva have any authority or ability to impact DEM's permitting process. A summary of the evidence on this point, or the absence of it, is set forth below.

Mr. Beck told the State Police that he recalled that during the time of Mr. Silva's transition from the Lieutenant Governor's Office to the Governor's Office, Mr. Silva "handed off" communications to his son, Ross Silva. It appears that the last direct communications between Mr. Silva and Mr. Beck took place in February 2021, while Mr. Silva served on Governor McKee's transition team. Certainly, by the time Mr. Silva became the Governor's Chief of Staff, his connection to the Application was well-known to DEM leadership. But the investigation did not elicit any evidence that either Mr. Silva or any of his colleagues in the Governor's office took any action, formal or informal, to impact the permitting process after March 2, 2021. No DEM official could recall communicating directly with Mr. Silva about the permit after he became the Governor's Chief of Staff, and the investigation did not identify any emails or phone calls between Mr. Silva and DEM staff about the Application during that timeframe.

The State Police interviewed Assistant Secretary of Commerce Janet Coit regarding any interactions she had with Mr. Silva regarding the Applications for 45 Canning Street when she was the Director of DEM. Assistant Secretary Coit did not recall having knowledge of the matter at the time or discussing it with Mr. Silva, the Governor, or Mayor Mutter. Phone record analysis of Mr. Silva's cellphone shows multiple calls between Mr. Silva and Director Coit during the time Mr. Silva was the Governor's Chief of Staff and while the Applications were pending. This is not surprising as Assistant Secretary Coit was the Director of DEM and communications between the Director and Governor's Chief of Staff would be expected. Additionally, Assistant Secretary Coit told the State Police that, at that time, she and Mr. Silva were both tasked with pandemic response duties and communicated frequently about those subjects. Mr. Silva's cellphone records do not list any calls with then Deputy Director Gray between September 10, 2020 and June 4, 2021, the day after the Permit was approved by DEM.

Additionally, there is no evidence that Governor McKee had any involvement in advocating on behalf of Mr. Silva on this matter at any time. The State Police interviewed Governor McKee regarding this matter on December 8, 2021. Governor McKee credibly denied any knowledge of Mr. Silva's interest in the 45 Canning Street property. Governor McKee further stated that Mr. Silva never asked the Governor to intercede on his behalf with DEM or with anyone in the Town of Cumberland. Governor McKee stated that the first time he learned of this issue was following media reports in the Valley Breeze newspaper. We found no evidence to contradict these assertions.

While the investigation did not uncover evidence of direct communications between Mr. Silva and DEM employees once he became the Governor's Chief of Staff, it did reveal that Ross Silva, Mr. Silva's son, reached out to Mr. Beck on March 3, 2021 and thereafter, and presented himself as the new point of contact on the Second Application. Presumably, this was Mr. Silva's attempt to get around the conflict problem. A better approach would have been simply to leave communications to the engineering consultant, as is customary in these cases. But evidence of the extent and nature of communications between Mr. Beck and Ross Silva is limited. Mr. Beck claimed that Ross Silva reached out to him to get an update on the Application. Beck Tr. at 147. Absent any evidence that Ross Silva used his father's name or newly-found authority as a

member of the now-Governor's team in an attempt to improperly influence DEM's process – and there is not a single witness or record that provides such evidence – there is no criminal ethics misconduct that can be imputed from Ross Silva to Mr. Silva.

Finally, Mr. Silva's interactions with Cumberland officials do not run afoul of the Ethics Code either. As the Governor's Chief of Staff, Mr. Silva had no authority over the Town's decision to submit or withdraw an objection to the Application. Neither did he have such authority in his role as the Town's Deputy Director of Emergency Management. Thus, his personal interest in the development of 45 Canning Street and his official duties as Chief of Staff to a *state* public official did not come into conflict with one another in the context of his dealings with the Town. Violation of the Ethics Code requires the bad actor to have the official authority to move the needle his way. And with respect to the Town of Cumberland, Mr. Silva never, at any time, had such authority.

III. CONCLUSION

Based on the facts as we found them and the law as it presently exists, some may take no issue with Mr. Silva's conduct. While we find no evidence to support a criminal charge, we nevertheless offer our view – and it is a critical one – of Mr. Silva's conduct in this matter and the impact of that conduct on confidence in government.

Mr. Silva plainly capitalized on his position and his insider knowledge of government. Director Gray and Mr. Beck told the Investigative Team that Mr. Silva's outreach focused on process and timing, not substance, i.e., whether or not his project should be approved. In that sense, Director Gray, Mr. Beck and Mr. Wencek described Mr. Silva as not unlike many applicants who are eager to secure financing and get their projects off the ground. But other applicants do not hold important government positions, and it is equally obvious to us – as it likely was to the officials in DEM – that Mr. Silva also wanted to put his Application on DEM's "radar screen." He did so to obtain a financial benefit for himself and his family. Undoubtedly, the minimal purchase price for this small plot of land in Cumberland reflected the fact that it was mostly wetlands, and, therefore, its development would be, at best, an uphill climb. By securing a permit to significantly alter the wetlands, however, Mr. Silva stood to substantially increase the value of the property. He had invested significant time and money in this venture and was determined to see it through. He clearly wanted it to be known that this was *his* project, perhaps hoping – even if it was left unsaid – that if there was a scale to be tipped, it would tip in his favor. Mr. Silva's name does not appear anywhere on the Application and his connection to it would not have been known to DEM *unless* he told them about it.

Had Mr. Silva contacted Deputy Director Gray, or Mr. Beck, only once or twice to learn the status of the Application, we likely would not be here. Even better, he could have easily left all communications to his environmental consultant or his attorney, which is customary in these cases. Instead, he contacted Deputy Director Gray so frequently about it that Mr. Gray became annoyed with the badgering (our characterization) and was determined to hand off communications to Mr. Beck and professional permitting staff at DEM and extricate himself from the process. After all, this was a single-family home development on a small plot of land. Was it *really* necessary to involve the Deputy Director of DEM in this type of matter?

Upon being handed off to Mr. Beck, as described above, Mr. Silva felt it necessary to give Mr. Beck his biography. Plainly, this was an "I'm an important guy" moment. Mr. Beck undoubtedly already knew of Mr. Silva's position in the Lieutenant Governor's Office, if not from Deputy Director Gray, then from the email Mr. Silva sent in July 2020 using his

government email account. Although Mr. Beck denied that Mr. Silva asked for “special treatment” or pressed DEM to grant his Application in violation of or disregard for DEM’s rules or regulations,⁶ Mr. Silva’s persistent outreach, knowing that he held an important government position, could be interpreted otherwise. For example, Mr. Silva, in a November 2020 email to Mr. Beck, asked him to “follow up with the supervisor” reviewing the application and alluded to the possibility of expediting the DEM engineering review as the Application has been pending for about twenty months. (We note that much of that time is attributable to delays by Mr. Silva’s team.) And the following statement from Mr. Beck to the State Police speaks volumes: “At this point . . . my feeling about it is, the guy shouldn’t be talking to me at all, you know . . . It became weird for, ever since that July email . . . At that point you’re going, well, why are you . . . You should be smarter than to be involved with something like this. ‘Cause appearances are everything, you know, and you’re in a position where you shouldn’t, shouldn’t be doing that kind of stuff . . .” Beck Tr. at 113. We could not agree more.

The picture that all this paints is one consistent with what many Rhode Islanders believe happens routinely: a government insider who, because of his position as the Lieutenant Governor’s Chief of Staff, was able to have the ear of top DEM officials and put his Application on their radar screen. His persistence put state regulatory officials and employees – and not all of them were at high levels of the agency – in very difficult and unenviable positions, in that they knew they were dealing with an important political figure and yet had rules and regulations to follow. He pressured Town of Cumberland officials, and whether he intended to play the role of the heavy or not, that is plainly how his conduct was interpreted. He threatened litigation on behalf of the actual owners of the property (the Mooneys), who had never threatened any such thing. That is bad enough, but in doing so, he also potentially damaged the Mooney’s reputation with Town officials. At bottom, in our view, Mr. Silva exercised very poor judgment. As a person with power, he should have distanced himself from a matter before a state agency in which he had a personal interest, whether he had the authority to control the ultimate outcome or not.

We come back to where we began. No laws were broken here, based on the facts as we found them and the applicable Rhode Island law. But this debacle wasted plenty of government time and contributed to a reduction of the public’s faith in government, and that is an unhappy consequence for Rhode Island.

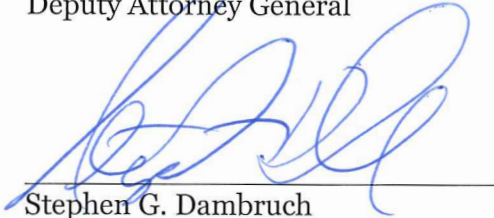


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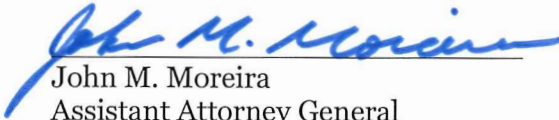
⁶ Mr. Beck told the State Police, “I think the real reason [Mr. Silva] reached out to me [in May] is [to let me know] . . . ‘I’m only checking the status of this. I’m not asking for you to do anything different or any favors.’ You know, I took it for what it’s worth, but I just wanna let you know, that’s what he said.” Beck Tr. at 149-150.



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