

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

GEORGE E. NORCROSS, III,
PHILIP A. NORCROSS, WILLIAM
M. TAMBUSI, DANA L. REDD,
SIDNEY R. BROWN, and JOHN J.
O'DONNELL,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1833-24T5

Criminal Action

On Appeal from a Final Order of the
Superior Court of New Jersey, Law
Division, Mercer County, Dismissing the
Indictment Without Prejudice.

Sat Below:
Hon. Peter E. Warshaw, Jr., P.J.Cr.

**BRIEF OF AMICI CURIAE NEW JERSEY NAACP STATE
CONFERENCE, NEW JERSEY STATE AFL-CIO, AND NEW
JERSEY BUILDING AND CONSTRUCTION TRADES
COUNCIL ON BEHALF OF DEFENDANTS**

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PRELIMINARY STATEMENT

Pursuant to New Jersey Court Rule 1:13-9(a), the New Jersey NAACP State Conference, the New Jersey State AFL-CIO, and the New Jersey Building Trades and Construction Council (collectively, “*Amici*”), appear as *amicus curiae* and file this brief in support of affirming the trial court’s dismissal of the Indictment filed against Defendants.

Amici’s members are dynamically involved with efforts in New Jersey to redevelop impoverished areas of inner cities. Like the Defendants named in the dismissed indictment, they attempt to acquire real property, lobby municipal, county and state agencies for assistance with redevelopment projects, lobby the New Jersey Legislature for legislative action that might benefit redevelopment projects, and therefore benefit the municipalities in which redevelopment is intended. In doing so, it is sometimes necessary to negotiate in a hard-ball fashion to accomplish the goals of proposed redevelopment. The conduct required for effective redevelopment is the conduct for which Defendants were criminally charged. The Indictment used conclusory language to allege criminal conduct, but the facts alleged do not constitute criminal conduct. Rather, they constitute constitutionally protected activity and routine business conduct related to redevelopment in New Jersey. Citing facts, and then in a conclusory fashion alleging them to be criminal, is not

sufficient to sustain the validity of an indictment. If an indictment does not, on its face, allege facts that constitute criminal conduct, it makes no difference what evidence was presented to a grand jury. The four corners of the Indictment here support its dismissal. Accordingly, the effect of this speaking Indictment has chilled *Amici's* members from utilizing necessary business acumen to achieve the public policy surrounding municipal redevelopment.

Amici, like Defendants, risk financial loss when they attempt to participate in or instigate municipal redevelopment projects. Because of the improvidently issued Indictment, they are fearful that they now may risk loss of their freedom as well. Loss of liberty requires the highest form of due process, which the subject Indictment does not provide. *Amici*, like Defendants, also wish to achieve financial gain as a result of the risks they take in order to achieve success with their municipal redevelopment projects. That part of the financial gain may be in the form of tax credits is of no moment. Obtaining profit through regularly accepted business conduct simply is not a crime.

The central questions present in the State's prosecution are whether criminal extortion and coercion statutes can be stretched to encompass conventional negotiating tactics, constitutionally protected lobbying activities, and criminalize legal redress. Members of the *Amici* groups have cause to file this brief because the

State's theory places a direct chilling effect on their ability to advocate in the political arena, bargain for fair working conditions, and redevelop blighted communities. The conduct alleged in the Indictment is part and parcel of lawful redevelopment in New Jersey and elsewhere. This prosecution created a "chilling effect" amongst *Amici* and their members. It was properly dismissed, and that dismissal should be affirmed.

STANDARD OF REVIEW

A dismissal of a criminal indictment by a trial court "will only be reversed when it constitutes 'an abuse of discretion that results in a manifest injustice.'" *State v. Zagroda*, 25 N.J. 114, 131 (2023) (citing *State v. Harvey*, 151 N.J. 117, 205 (1997)); *see also State v. Wambrun*, 277 N.J. Super. 51, 60 (App. Div. 1994) ("A trial court's exercise of this discretionary power will not be disturbed on appeal 'unless it has been clearly abused.'") There has been no such abuse here.

ARGUMENT

I. THE INDICTMENT CHILLS AMICI'S ROUTINE CONDUCT

The Indictment begins by asserting that George Norcross's threats to Carl Dranoff constituted criminal coercion and extortion. However, the threats the Indictment recounts, including Mr. Norcross's boast to Mr. Dranoff that he would "f**ck you up like you've never been f**ked up before," and his warning Mr.

Dranoff that he would never do business in Camden again, in addition to the vague “enormous consequences” Mr. Dranoff would suffer if he did not relinquish a view easement to facilitate redevelopment, do not constitute extortion or criminal conspiracy under federal or state law. However jarring to the uninitiated, Mr. Norcross’s alleged conduct is conventional hard bargaining endemic to the give-and-take of economic redevelopment. Such “hard bargaining” was precipitated by Mr. Dranoff leveraging his view easement, threatening the redevelopment of the Camden waterfront.

The Attorney General’s labeling of vague threats by a sophisticated businessman as criminal extortion, if endorsed by this Court, would penalize tough economic bargaining that is unavoidable in a free market economy and place a chilling effect on the ability of *Amici’s* members to advocate for equality, safe workplace positions, and underserved communities.

New Jersey extortion statutes are narrowly crafted to prohibit only unlawful activity distinct from the conventional negotiations of commercial and political life. *State v. Roth*, 289 N.J. Super. 152, 158 n.4, 162-63 (App. Div. 1996). For example, a person is guilty of theft by extortion if he purposely threatens to “[i]nflict bodily injury or physically confine or restrain anyone or commit any criminal offense.” N.J.S.A. § 2C:20-5(a). New Jersey law prohibits only the use of threats to

“unlawfully” obtain property or restrict action. *N.J.S.A.* 2C:13-5; *N.J.S.A.* 2C:20-5. At the federal level, the Hobbs Act defines extortion as “the obtaining of property from another with his consent” but “induced by wrongful use of actual or threatened force, violence, or fear, under color of official right.” 18 U.S.C. § 1951(b)(2).

Relevant to *Amici*, the New Jersey Legislature did not intend for every threat to constitute criminal wrongdoing. *State v. Monti*, 260 N.J. Super. 179, 185 (App. Div. 1992). As stated by the Appellate Division, “[d]aily human affairs include a multitude of benign threats, express or implied, designed to coerce people to behave or refrain from behaving in certain ways-sometimes for their own benefit, sometimes for mutual benefit, sometimes for the benefit of others. Hence, the statute requires that the purpose of the threat be unlawful, not benign.” *Ibid.*

Before the trial judge, the Attorney General acknowledged that its entire case rests on its contention that Defendants engaged in extortion. But neither Mr. Norcross’s threats nor Mr. Dranoff’s attempt to monetize his view easement by threatening to use it to thwart the redevelopment of Camden, Indict. ¶¶ 117, 118, 137, was extortion. Rather, it was aggressive bargaining performed by two sophisticated parties that transpired during months of negotiations. In essence, all the Indictment reveals is that *both* sides engaged in normal business negotiations,

and *both* sides referenced their ability to exercise valid legal rights to drive what they thought was a proper business outcome. *See Monti*, 260 N.J. Super. at 185.

Amici would be particularly harmed by the State's theory of extortion. Their members regularly engage in speech and conduct concerning high stakes issues. In the context of redevelopment, collective bargaining often entails harsh, protracted collective bargaining negotiations with contractors and developers to ensure the safety, fair wages, and equal opportunity of its members. If state and federal entities were permitted to proceed with criminal charges as a result of such threats and heated rhetoric, public interest organizations would be unable to safely advocate for their causes through heated rhetoric because of fear of unfounded prosecutions.

The action and rhetoric alleged in the Indictment are classic examples of hard bargaining performed by sophisticated businessmen engaged in high-stakes commercial negotiations, with Mr. Dranoff referencing his claim of an easement to drive his own position. Indict. ¶¶ 118, 151. In counter-threatening economic pressure, Mr. Norcross was lawfully employing the use of a legal tool *Amici's* members have been free to employ to ensure all manner of benefits for their members, including safe working conditions, nondiscrimination in hiring, fair wages, and safe communities. The enormous good that can flow from hard bargaining threats of the type alleged in the Indictment would be lost if such threats were deemed crimes.

Furthermore, by classifying exploitation of a party's economic fear in a commercial negotiation as criminal extortion and coercion, the State's prosecution impedes the First Amendment ability of *Amici* to advocate for their members and constituencies. See *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't, AFL-CIO*, 770 F.3d 834, 838-39 (9th Cir. 2014). In *United Brotherhood*, the Ninth Circuit held that an intense economic pressure campaign, even one using wrongful means – *such as filing frivolous regulatory claims, or misusing confidential membership information* – was not enough to plead the predicate elements of extortion under state and federal law. 770 F.3d at 838-39. *Amici's* ability to negotiate on behalf of its members is, thus, directly implicated by the State's contravention of federal precedent, as the same economic threats Mr. Norcross employed against Mr. Dranoff are endemic to collective bargaining negotiations. Indeed, labor-management relations are often rife with conflict, with union leaders often threatening strikes and lockouts in order to obtain better conditions for workers. Civil rights groups have historically resorted to similarly unorthodox tactics, famously in the form of the Montgomery Bus Boycott, to ensure equality. In the context of redevelopment, minorities and African Americans are disproportionately affected by "white flight" and the scarcity of community.

Accordingly, *Amici* urge the Court to affirm the trial court’s dismissal of Appellant’s Indictment because the Indictment creates unreasonable doubt about the ability of *Amici*’s members to engage in routine conduct. The risk of criminalizing such conduct also serves to further impede redevelopment of underserved communities, which is a public policy goal the U.S. Supreme Court has heralded as a salutary public good. *See Kelo v. City of New London*, 545 U.S. 469, 502 (2005) (holding that private benefit and incidental public benefit are merged in redevelopment, and that any boon for “a plan developer is difficult to disaggregate from the promised public gains in taxes and jobs.”). Redevelopment in New Jersey is hard enough to accomplish without an indictment calling into question the manner in which redevelopment can be negotiated and achieved. Developers need to be encouraged to make the significant investments, financial or otherwise, to achieve the many goals redevelopment can achieve for a community. This Indictment does the opposite and thus impedes public policy.

II. THE INDICTMENT ALSO CHILLS *AMICI*’S RIGHTS TO SEEK PUBLIC REDRESS

Appellant’s Indictment characterized persuading a governmental entity to initiate a valid legal action as extortion, undermining civil liberties and chilling the right of *Amici* and its members to seek public redress. In addition, the Indictment’s description of a former public official’s coordination with stakeholders as

constituting official misconduct not only fails to articulate facts necessary for the crime but also infringes on the right to petition. Specifically, the Indictment couches ethical concerns pertaining to former City of Camden Mayor Dana Redd as being criminal in nature. However, by characterizing conventional civic activities as criminal in nature, the Indictment encompasses the lobbying and legislative activities of *Amici*.

The conduct the Indictment attempts to criminalize directly implicates constitutional liberties, including the right to counsel, and to petition for public grievances. These actions include Mr. Norcross and his legal counsel discussing (1) potential ways to persuade the City of Camden to initiate valid legal action, (2) the condemnation's likelihood of success, and (3) how the potential court action would affect Mr. Dranoff as an adverse party should valid litigation be pursued. Indict. ¶¶ 141-150. The right to engage in these discussions is protected by the United States and New Jersey Constitutions. *See* U.S. Const. Amend. I; N.J. Const., art. I § 18. The specific right to petition a governmental entity to pursue eminent domain is also constitutionally protected. *See Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510-511 (1972) (holding that the “right to petition” protects use of “state and federal agencies and courts to advocate . . . business and economic interests”). Whether the purpose of eminent domain is to undercut an opposing party is

immaterial. The United States Supreme Court instructed: “The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend on their intent in doing so.” *E.R.R. Conf. v. Noerr Motors*, 365 U.S. 127, 139 (1961).

Perhaps most troubling is that by prosecuting the act of petitioning a public entity to file suit as a crime, the State is arrogating the right to distinguish between legitimate from egregious political influence—which federal courts have expressly cautioned prosecutors against. *See Percoco v. United States*, 598 U.S. 319, 330 (2023); *Boone v. Redevelopment Agency of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988). Such power in the hands of a prosecutorial entity would have devastating implications for *Amici* and their ability to advocate.

In *Percoco*, the Supreme Court rejected as overly vague a bribery theory pursued by prosecutors that treated those who dominated and controlled any government business as public officials, finding the line between corruption and strong influence too vague to survive scrutiny under the Fourteenth Amendment. 598 U.S. at 331. The Supreme Court warned that pursuing such novel theories would constrain civil liberties because prosecuting those who dominate government business with conspiracy and extortion lacks “sufficient definiteness such that ordinary people can understand what conduct is prohibited” and encourages

“arbitrary and discriminatory enforcement.” *Ibid.* (citing *McDonnell v. United States*, 579 U.S. 550, 576 (2016) (internal quotation marks omitted)).

By failing to identify any legal duty former Mayor Redd breached or failed to perform, instead alleging breaches of general ethical conduct, the Indictment fails to provide adequate notice of what constitutes a crime. The crux of Count 13’s official misconduct charge rests on a series of meetings Mayor Redd held with stakeholders, including a refusal to take the phone call of one rival developer. Indict. ¶ 240. The State’s criminalization of petitioning public entities and meeting with stakeholders has foreboding implications for *Amici* and all civic groups seeking to conduct outreach on important policy issues. As one example, enforcement of state and federal civil rights law requires coordination not only with the Equal Employment Opportunity Commission but with a wide array of Fair Employment Practice Agencies in state and territorial government to pursue litigation. Enforcement of fair wages, fair trade rules, safe workplace conditions, and equitable labor relations similarly requires local and large collective bargaining units to petition a surplus of state and federal enforcement agencies to initiate legal action. If the State’s prosecution were to proceed, and a state or federal prosecutorial entity were permitted to not only criminalize petitioning for public redress, but also to determine when and how the extent of a civic group’s influence over the public entity

constitutes a criminal conspiracy, the ability of *Amici* to advocate for safe workplace conditions, the interests of their communities, and the civil rights of all Americans would be chilled beyond repair.

Similarly, meetings with stakeholders and public officials are essential to *Amici*'s work, particularly in promoting policy and legislative priorities on behalf of laborers and minorities. The NAACP alone focuses on a wide array of policy issues, including voting rights, healthcare, gun violence, and student debt. The AFL-CIO not only engages in organizing efforts but also in educational campaigns and lobbying on policy issues. To place public officials in fear of official misconduct prosecution would not only compromise the ability of civic minded groups to petition their government and highlight pertinent public policy issues, but also would pose precisely the “breathtaking expansion of public corruption law” that would chill officials’ interactions with the people they serve and thus damage their ability “effectively to perform their duties.” *McDonnell*, 579 U.S. at 575. To characterize such civic participation as criminal would permanently undermine and deter civic participation. *Id.*

A public official like Mayor Redd should not be compelled to ignore her relationships with stakeholders who share her interests in pursuing the public good.

Such relationships allow multiple stakeholders to seek the legal redress to which they are entitled, which is of great importance to *Amici*.

In short, the trial court's dismissal should be sustained to avoid the inevitable "chilling effect" on the ability of parties such as *Amici* to seek legal redress, including their members' ability to associate with different types of stakeholders that could share the same public interests, regardless of whether they hold a political office.

CONCLUSION

For the reasons stated above, *Amici* respectfully requests the Court uphold the trial court's dismissal of Appellant's Indictment.

Respectfully submitted,

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