

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-1833-24T5

STATE OF NEW JERSEY,

Plaintiff-Appellant,

V.

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

Defendants-Respondents.

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.

AMENDED BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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2T - Arraignment transcript, August 7, 2024¹
3T - Case Management Conference transcript, September 10, 2024
4T - Conference transcript, October 16, 2024
5T – Motion Hearing transcript, January 22, 2025

¹ All defendants but Sidney R. Brown were arraigned on July 9, 2024. (1T). Brown was arraigned on August 7, 2024. (2T).

PRELIMINARY STATEMENT

After a five-month presentation of evidence, totaling over 2,000 pages of testimony and including some 341 exhibits, a New Jersey grand jury found probable cause to charge six defendants with crimes. Most centrally, the Indictment alleges that defendants conspired to extort and coerce others using threats, including threats to inflict reputational harm and to cause officials to take or withhold action if victims did not relent. The grand jury alleged that they did so primarily to obtain property they could use to exploit lucrative state tax credits they helped shape. The trial court, over the State's objections, refused to review any of the evidence presented to the grand jury, and instead granted a facial dismissal, based on its weighing of only the evidence described in the Indictment. This Court should reverse.

Most importantly, the trial court erred in undertaking a type of review of an indictment that does not exist in criminal practice. There are two basic types of motions to dismiss in criminal practice: a facial motion and a "some evidence" motion. The first, a facial motion, asks whether defendants received adequate notice, or whether a conviction is legally impossible—either because the facts are agreed to through a stipulated record, or if guilt hinges entirely on a matter of statutory interpretation or a dispute over whether a statute is unconstitutional. In each of those cases, facial review is appropriate because there is no possibility

that further evidence—no matter how extensive—could yield a conviction under that indictment. The second kind of motion, a “some evidence” motion, asks if sufficient evidence was presented at this early stage for the criminal case to proceed. But because a criminal indictment is not like a civil complaint—the latter can be filed at will by any party, but the former requires the approval of the grand jury—a “some evidence” motion looks to what was presented to the grand jury before a court can dismiss the grand jury’s Indictment.

The trial court granted a third kind of motion entirely—one that does not exist in our law or any other. The trial court did not identify legal defects that would make a conviction impossible with more evidence. Instead, the trial court simply asked whether there was sufficient evidence cited in the Indictment itself, without reviewing the reams of testimony and exhibits the grand jury saw. The court determined that it could engage in this sufficiency-of-the-evidence-on-the-face-of-the-Indictment review because the grand jury had issued a speaking indictment and thereby “open[ed] the door” to this sort of analysis, but the court cited no authority for that proposition, logic and overwhelming precedent refute it, and adopting this vague and inadministrable approach would work mischief in future cases. Defendants remain free to make a “some evidence” motion—and can do so on remand—but the trial court was not free to refuse to review the record before the grand jury entirely. (Point I.A.)

In any event, even accepting this unprecedented form of review, the trial court erred in finding the Indictment facially invalid. For one, the trial court repeatedly drew inferences against the State and failed to accept all facts as true. (Point I.B.) And that error further infected its analysis of the crimes charged. Defendants were properly charged with extortion and coercion conspiracies for having agreed to threaten not just economic but reputational and governmental harm to victims, which is squarely covered by New Jersey law. The trial court concluded otherwise only by mistakenly pegging its analysis entirely to a line of cases addressing ordinary economic jockeying, which themselves confirm that these kinds of threats—including threats to use governmental power to deny a victim “a level playing field”—are contrary to law. (Point II.) Finally, while this Court likewise need not reach them if it reverses on Point I, the court’s various charge- and defendant-specific holdings were also erroneous, and thus similarly require reversal—particularly at this premature stage. (Point III.)

Although the facts of this corruption case are complex, the legal errors on which the decision below rests are straightforward. And though defendants are prominent individuals, the rules that dispose of their facial motion are properly applied in courts across our State and country every day, to defendants from all walks of life. For any or all of these reasons, the Indictment should be reinstated, and defendants may proceed with a some-evidence dismissal motion on remand.

STATEMENT OF FACTS ALLEGED IN THE INDICTMENT

As alleged by the grand jury, from 2012 until at least 2024, George Norcross led an enterprise whose members agreed to extort and coerce others through threats of reprisals from public officials, as well as economic and reputational harm, to obtain property on the Camden waterfront and associated tax credits. (Pa1-2). The Enterprise laid the groundwork for these schemes by rewriting tax-credit legislation to tailor it to their preferences, with George Norcross saying that the resulting Economic Opportunity Act (EOA) “is for our friends.” (Pa15). To capitalize on that law, the Enterprise agreed to use George Norcross’s “control of the Camden government,” (Pa61), to extort and coerce Developer-1 to relinquish valuable property rights, and to extort and coerce Cooper’s Ferry Partnership (CFP) and its CEO to partner with a developer of the Enterprise’s choosing to purchase a building and ultimately sell CFP’s rights to the building for far less than it would have otherwise received. (Pa2-6); see (Pa3-7). The victims relented and surrendered their property to Enterprise-controlled entities, which then used these properties to obtain tax credits that they then sold for over \$50 million. (Pa2-7, 77-80).

The Indictment names George Norcross, Executive Chairman of the insurance firm Conner Strong & Buckelew (CSB) and Chair of the board of trustees of Cooper University Health Care (Cooper Health), as leader of the

Enterprise. (Pa7). The Indictment also names as members: Philip Norcross, Chair of the Board of the Cooper Foundation and George Norcross's proxy; William Tambussi, who served as George Norcross's personal attorney and whose law firm served as outside counsel to the Camden Redevelopment Agency (CRA); Dana Redd, the then-Mayor of Camden; and Sidney Brown and John O'Donnell, businessmen with interests in the entities at issue. (Pa7-9).

A. Triad1828 Centre & 11 Cooper Conspiracy.

As Defendants searched for sites that could support awards of EOA tax credits, George Norcross learned that Developer-1 held a view easement limiting the height of structures in front of Developer-1's Victor Lofts property. (Pa16, 40-41). That view easement conflicted with the Enterprise's plans to build and obtain tax credits for two buildings: the Triad1828 Centre (eventual headquarters of three entities controlled by Enterprise members), and 11 Cooper, an apartment building. (Pa39, 66-67). Developer-1 also owned the residential redevelopment rights for the planned site of 11 Cooper. (Pa37-38).

Defendants agreed to extort Developer-1 into relinquishing his rights. (Pa37-39, 84). As alleged, in 2015 the Liberty Property Trust (LPT), an entity represented by Philip Norcross, approached Developer-1 to discuss potential Camden redevelopment projects. (Pa45). LPT told Developer-1 that he would have to partner with The Michaels Organization (TMO), an entity led by

O'Donnell. (Ibid.) For months, Developer-1 negotiated with LPT, and with George Norcross directly, but negotiations broke down when Developer-1 grew uncomfortable with the level of control TMO sought. (Pa45-46).

When Developer-1 resisted releasing his easement and development rights on George Norcross's preferred terms, Norcross threatened him, telling Developer-1 in the summer of 2016 "if you f**k this up, I'll f**k you up like you've never been f**ked up before. I'll make sure you never do business in this town again." (Pa39, 47). "Developer-1 took this threat seriously," believing that if he did not acquiesce to Norcross's terms, his "ability to conduct business in Camden and his financial interests in general would be in jeopardy." (Pa47). In a subsequent call, George Norcross "again threatened Developer-1 that there would be consequences" if he did not agree to release his view easement and transfer his related redevelopment rights and tax credits. (Pa53). George Norcross later, on a recorded call, admitted he had told Developer-1 "'this is unacceptable. If you do this, it will have enormous consequences.'" [Developer-1] said, 'Are you threatening me?' I said, 'Absolutely.'" (Pa53-54).

The Enterprise conspired not only to threaten direct harm, but also to threaten to cause city officials to take or withhold official actions against Developer-1 to coerce him to relinquish his property rights. (Pa39-40). Though the plot was ultimately abandoned, defendants agreed to cause the CRA to file

a lawsuit seeking a judgment declaring that the CRA had the right to condemn the view easement, (Pa50-53), intended to pressure Developer-1 into a “drastically different position” given the implicit threat of eminent domain, (Pa57-58). Enterprise members further pressured Developer-1 by causing Redd to stop communicating with Developer-1 when he sought assistance on unrelated matters, (Pa49-50), and they plotted for city officials to publicly accuse Developer-1 of being “not a reputable person,” (Pa39). And they targeted Developer-1’s unrelated Radio Lofts project. (Pa39, 74-75, 97-98). In a call explaining these efforts, George Norcross stated that “you can never trust [Developer-1] until you got a bat over his head”; explained he wanted Developer-1 to “cry uncle”; and identified Developer-1’s unrelated Radio Lofts project as “another point of attack on this putz.” (Pa57, 59, 72).

“As a result of these threats and actions,” in October 2016, Developer-1 sold to LPT “tax credits and residential development rights and property he did not want to sell—forgoing his own opportunity to further develop the Camden waterfront—and extinguished his view easement, all for a price below where he valued this property.” (Pa3-4, 39-40, 61-62). The Enterprise then built the Triad1828 Centre and 11 Cooper and applied for and received tax credits for these buildings—with CSB, NFI, and TMO receiving over \$240 million in tax credits. (Pa63-68). These entities sold Triad1828 Centre tax credits beginning

in 2022, obtaining more than \$26 million. (Pa64-65). George and Philip Norcross, Brown, and O'Donnell all financially profited from these efforts, receiving millions from their respective entities (Pa68-69, 77, 80).

B. Radio Lofts Conspiracy.

Between 2018 and 2023, Defendants worked together to use their control over Camden government to leverage Developer-1's interests in the Radio Lofts and Victor Lofts properties. (Pa72-74). Developer-1 intended to sell the Victor Lofts to a real-estate investment trust, but this required transferring a payment-in-lieu-of-taxes (PILOT) agreement with the City to the would-be buyer, which in turn required approval by the City Council. (Pa72-73). When Developer-1 sought that approval, Philip Norcross instructed local officials to slow down the approval and treat it as a "package deal" with Developer-1's option to redevelop Radio Lofts. (Pa49, 72-74). Philip Norcross stated that the purpose of linking the two interests was to cause Developer-1 to forfeit his Radio Lofts redevelopment option (Pa74), which George Norcross had earlier identified as "another point of attack on" Developer-1, (Pa59, 72).

The officials did as instructed: the City withheld approval for the PILOT transfer, and in April 2018, the CRA moved to terminate Developer-1's option agreement to redevelop Radio Lofts. (Pa4-5, 74-75). In response, Developer-1 filed a lawsuit against the City, CRA, and related officials, which culminated in

a 2023 settlement in which Developer-1 forfeited his Radio Lofts option, sold a parking lot to the City for \$1, and agreed to pay \$3.3 million to the City. (Pa4-5, 75-76). Developer-1 settled despite believing he was in the right. (Pa76).

C. The L3 Complex Conspiracy.

The Enterprise also conspired to extort property from CFP, a redevelopment nonprofit. (Pa16, 21-34). CFP had begun discussions to purchase a waterfront property known as the L3 Complex when Redd's mayoral chief of staff (CC-2) informed CFP's CEO that he should meet with Philip Norcross and herself to ensure that CFP had the approval of George and Philip Norcross for its future projects. (Pa22). Although neither George nor Philip had any formal role at CFP, CFP's CEO knew that the Camden government had cut funding to CFP after CFP's founder had previously a dispute with George Norcross years earlier, and he knew of an incident in which Norcross had pressured a councilman in Palmyra to fire a municipal employee. (Pa23). CFP's CEO thus began meeting regularly with Philip Norcross and CC-2. (Pa24).

CFP entered an agreement in January 2014 to buy the L3 Complex from the Economic Development Authority (EDA) at a discounted price, allowable due to CFP's nonprofit status, and planned to work with a partner of its choosing. (Pa24). Cooper Health CEO-1—who co-chaired CFP with Redd—told both CFP's CEO and CFP's President that George Norcross was angry that CFP was

purchasing the L3 Complex and that they had to meet with Philip Norcross about it. (Pa24-25). CFP's CEO and President met with Philip Norcross, who told them that CFP should not be involved in development and should turn over the deal to Investor-1, who had a financial relationship with George Norcross. (Pa25). CFP was not interested in working with Investor-1, but at Philip Norcross's urging signed a non-disclosure agreement to permit discussions about the deal with an entity controlled by Investor-1. (Pa26).

CFP nevertheless agreed in principle with a different partner, Keystone Property Group and Mack-Cali Realty Corporation (KPG/MC), to buy the L3 Complex as a joint venture. (Pa26-27). George and Philip Norcross quickly learned of this agreement. (Ibid.) Days later, Cooper Health CEO-1 told CFP's CEO and President that Philip Norcross was "torqued" about CFP "blowing off" Investor-1, adding, "Handle that gingerly." (Pa27). Two days later, Philip told CFP's CEO that CFP "was not allowed to use KPG/MC" and should use only Investor-1, which the CEO perceived as a threat. (Pa28). CFP thus partnered with the Enterprise's chosen investor and another associated investor, with its President describing the decision as a "false choice." (Pa29). It was also a much worse deal for CFP, which stood to earn millions and share in future profits under its prior agreement with KPG/MC. (Pa27). By contrast, under the Norcross-directed deal, CFP received a net \$125,000 and no share in future

profits. (Pa32); see also (Pa29-30). Recognizing how disadvantageous this was to CFP, CFP's CEO had asked Redd and CC-2 for help during negotiations, but both told him that CFP "had to deal with" Philip Norcross and that the CFP CEO's job "was in jeopardy." (Pa30).

The deal was highly advantageous for the Enterprise's chosen developer, however, because it could obtain the L3 Complex at a "much lower" price available only because of CFP's nonprofit status—roughly \$20 million less than the property's appraised value. (Pa28-29, 32-33). Meanwhile, Cooper Health came to own 49 percent of the entity that owned the L3 Complex and, from 2016 to 2022, received over \$27 million in tax credits by leasing space in the building, which it sold for more than \$25 million. (Pa31-33, 105). It also received 49 percent of profits from the entity that owned the L3 Complex. (*Ibid.*) During this time, George Norcross was chairman of Cooper Health's board and used the organization to enhance his influence within the Camden area. (Pa78-79, 105).

After wresting the L3 Complex from CFP, the Enterprise pressured CFP's CEO to resign through threats of adverse government actions and false reputational harm. (Pa6-7, 69-72). In mid-2017, CFP's CEO was told by Individual-2 (then-CEO of Cooper Health) and another individual that George Norcross "disapproved of [him] remaining as the CEO of CFP." (Pa69). In December, an unindicted co-conspirator (CC-1)—CEO of the Cooper

Foundation, which Philip Norcross chaired, and recently installed by the Enterprise as a co-chair of CFP—told CFP’s CEO that he needed to resign because Redd “needed a place to go” when her mayoral term ended and would replace the then-CEO of the Rowan University-Rutgers Camden Board of Governors, who would take the CFP CEO’s job. (Pa6, 69).

When CFP’s CEO resisted, CC-1 threatened “harm to his reputation and termination for cause if he did not resign.” (Pa6-7, 69-70). CC-1 noted that Tambussi had reviewed CFP’s CEO’s employment contract “and said they could ‘drive a truck through it,’” and that if he did not resign, “they” would make something up to have him terminated for cause. (Pa69-70). When CFP’s CEO asked CC-1 to restructure his severance package instead of terminating him, CC-1 responded, “It doesn’t give me cover with [George Norcross] ... You can’t go there. You don’t want that fight. Believe me when I tell you. If you don’t think he can get to anybody he wants to, you’re kidding yourself.” (Pa71).

Due to these threats, CFP’s CEO resigned at the end of 2017. (Pa72). The Enterprise replaced him with the then-CEO of the Rowan-Rutgers Board whose position was filled by Redd, just as CC-1 had indicated. (Pa72). This yielded a significant financial benefit to Redd, thanks in part to new legislation shepherded by George Norcross’s close ally in the State Senate, which allowed Redd and only a few others to re-enter a prior, more favorable pension system.

(Pa70-71). Redd held that position until 2022. (Pa8).

PROCEDURAL HISTORY

On June 13, 2024, after a five-month presentation generating more than 2,000 pages of transcripts and involving over 300 exhibits, (4T15-9 to -10, 19-3 to -4; 5T42-11 to -14), a state grand jury returned Indictment No. 24-06-00111-S. The thirteen-count Indictment charges George Norcross, Philip Norcross, Tambussi, Redd, Brown, and O'Donnell directly or vicariously, see N.J.S.A. 2C:2-5, -6, with several crimes, (Pa81-110):

- Racketeering conspiracy, N.J.S.A. 2C:41-2(d) (Count 1) (all defendants);
- Extortion/coercion conspiracies, see N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5, as to the L3 Complex (Count 2) (George and Philip Norcross, Redd, Tambussi); Triad1828 Centre and 11 Cooper (Count 3) (all defendants); and Radio Lofts, (Count 4) (George and Philip Norcross, Tambussi);
- Financial facilitation of criminal activity, N.J.S.A. 2C:21-25(a), (c), for Triad1828 and 11 Cooper tax credits (Counts 5-6, 9-10) (all defendants) and L3 Complex tax credits (Counts 7-8) (George and Philip Norcross, Tambussi, Redd);
- Misconduct by a corporate official, N.J.S.A. 2C:21-9(c), for use of Cooper Health (Count 11) (George and Philip Norcross, Tambussi, Redd), and Triad1828 Centre and 11 Cooper companies (Count 12) (all defendants);
- Official misconduct, N.J.S.A. 2C:30-2(a) (Count 13) (all defendants).

A. Defendants' Motions To Dismiss.

At defendants' July 2024 arraignment, their attorneys stated that they would move jointly to dismiss. (Pa124; 1T33-24 to 35-25). Defendants stated that their forthcoming motions would ask the trial court to limit its legal analysis to the face of the Indictment—i.e., to determine the legal sufficiency of the

Indictment without regard to the 2,000+ pages of grand-jury transcripts and 300+ exhibits the grand jurors saw. (Pa124; 3T6-3 to -5, 8-14 to -24; 4T6-1 to -24, 17-20 to 18-18). They stated that if these motions were denied, they would then file a second round of motions to dismiss, which would challenge the sufficiency of the evidence the grand jury reviewed and considered. (4T11-8 to -19). As proposed, George Norcross filed an omnibus motion to dismiss, joined by all co-defendants, each of whom also filed supplemental briefs. (Pa124).

The State objected to the approach taken by the omnibus motion. (Pa212). As the State later noted, defendants' briefs did not argue that the terms of the Indictment precluded guilt. Instead, the briefs invited the judge to draw defense-favorable factual inferences and to second-guess the grand jury's assessment of the subset of evidence included in the Indictment. (Pa212-13). So while only Tambussi cited the grand-jury materials, the remaining briefs still implicated the evidence put before the grand jury, the weight to be given to that evidence, and the inferences to be drawn. (Pa212). The State thus observed that it could not "appropriately oppose [the] motions without directing the Court to the entirety of the grand jury presentment." (Pa213). Defendants maintained that the judge must decide the motion without the transcripts and exhibits. (Pa214-218).

Soon after, at a conference, the State reiterated its objection. (4T8-12 to 9-6, 13-14 to 14-3). The defense urged the judge not to look past the Indictment

to the evidence presented. (4T18-11 to 19-10, 30-5 to -12). The court rejected the State’s request that it consider the grand-jury evidence, (4T14-13 to 16-9), likening its review of the indictment to review of “a search warrant and a search warrant affidavit,” (4T33-15 to 33-22, 34-19 to 35-8), and thus never received or reviewed the testimony or exhibits before the grand jury, (Pa124-25).²

At argument, the State maintained that defendants’ motion to dismiss was improper and premature. (5T37-12 to 16, 47-12 to 19, 50-5 to 18, 97-16 to 98-2, 97-16 to 98-2). The State contended, inter alia, that the defense incorrectly urged the judge to treat the Indictment as comprising all the evidence on which the grand jury relied and overlooked inconvenient allegations, urged defense-favorable inferences, and injected new facts. (5T37-12 to 38-6, 39-25 to 42-10, 309-14 to 310-17). The State argued as well that a grand jury’s decision to return a speaking indictment does not permit the type of facial-sufficiency review defendants sought. (5T43-8 to 23, 111-22 to 112-19).

B. The Trial Court’s Decision.

On February 26, 2025, the trial court granted defendants’ facial motion to dismiss the indictment as to all defendants on all counts. (Pa112-13).

1. The court began by addressing the parties’ dispute over the facial

² The trial judge thus did not consider the portions of Tambussi’s brief that cited the grand-jury transcripts and evidence, and the State did not respond to them. (4T20-9 to 21-19, 22-8 to 23-12, 31-22 to 36-3; Pa125).

standard, acknowledging that “courts reluctantly and sparingly review the grand jury’s actions to protect its independence,” and will intervene “only on the clearest and plainest grounds, and only when the indictment is manifestly deficient or palpably defective.” (Pa150). The court acknowledged that the general standard of what must be included in an indictment under Rule 3:7-3(a) is quite lenient: only a “written statement of essential facts constituting the crimes charged,” sufficient to provide notice, rather than a comprehensive recitation of all evidence before the grand jury. (Pa150-51). And the trial court agreed that defendants did “not dispute notice.” (Pa151).

But the trial court concluded that the rules changed for this speaking Indictment. While noting that “[a]n exception exists when the government has made what can be described as a full proffer of the evidence it intends to present at trial,” (Pa151), the court recognized that “this speaking indictment is not a full proffer of the State’s case,” (Pa152). Still, it concluded, “the speaking indictment does open the door to the facial challenge,” and there was thus no need “to review the entire grand jury proceeding” and the other evidence presented to evaluate defendants’ motion attacking the entire case. (Pa152).

2. As to the substance of defendants’ motion, the trial court first held that the Indictment’s allegations did “not constitute extortion or criminal coercion as a matter of law” and that this was a basis to dismiss every count. (Pa153-56).

The court focused on George Norcross's statement to Developer-1, "if you f**k this up, I'll f**k you up like you've never been f**ked up before. I'll make sure you never do business in this town again." (Pa161-63). The court opined, based on its reading of the Indictment, that "[c]learly, this is a steel cage brawl between two heavyweights," and argued that "Developer-1 handles himself ably and gives as good as he gets." (Pa161-62); see also (Pa162) ("This sabre-rattling sounds much like 'this town ain't big enough for the two of us.'"). Ultimately, the court found that this statement was "the sort of economic coercion" that is exempt from criminal liability. (Pa163). The court also found that the other "threats" concerning Developer-1 alleged by the Indictment were "not a threat of any kind." (Pa163-64). It found "no illegal exploitation of Developer-1's fear of potential economic harm," but rather "negotiations and hard bargaining, which cannot be considered wrongful under the facts alleged." (Pa172).

Turning to the L3 Complex scheme, the court found that the "only" relevant threat alleged in the Indictment was Philip Norcross's instruction to CFP's CEO "that CFP was not allowed to use KPG/MC and it should only use" the Enterprise-chosen investor. (Pa168). The court found that this threat "must be construed as one which is purely economic in nature, just hard bargaining," reasoning that it "was not an express threat" and that Philip Norcross did not specify "what [he] would actually do about non-compliance." (Pa170-71).

Finding that every charge rested on establishing “unlawful threats,” the court held that the entire Indictment was subject to dismissal on this basis. (Pa174).

The court also held the racketeering enterprise alleged “does not and cannot legally exist.” (Pa178). Not addressing George Norcross himself, the court concluded that Brown and O’Donnell “did nothing criminal” and that there “is no evidence that they were part of any ‘enterprise.’” (Pa185). The court also held the Indictment did not validly allege that Tambussi or Philip Norcross were part of an enterprise, finding that they engaged only in routine lawyering and petitioning. (Pa185-92). It held Redd was “not a member of any enterprise,” finding that “the Mayor’s chief of staff, not the Mayor, told CFP CEO-1 that he should meet regularly with Philip Norcross,” (Pa195), and finding it “unclear” whether the latter had in fact “brief[ed] the Mayor” on the eminent-domain plan.

The court also found that Redd “did not commit official misconduct” under N.J.S.A. 2C:30-2(a) because the actions charged were not independently “unauthorized” and she did not act with intent to benefit herself or anyone else, as she may have received the new job only “because she was qualified” and not “because of fealty and devotion to the machine or the ‘Enterprise[.]’” (Pa199).

3. Finally, the court held the charges facially time-barred. (Pa200). The court first concluded that, while the Indictment alleged that the RICO conspiracy continued through the date of the Indictment and the Enterprise had objectives

that extended into the limitations period, these were not factual allegations to be accepted as true at this stage, but rather “allegations, assertions, and, ultimately, conclusions.” (Pa202). The court then found that any extortion occurred outside the limitations period and defendants did not pursue any of the conspiratorial objectives during the limitations period. (Pa200-209). The court also rejected the allegations that the official-misconduct charge continued into the limitations period, reasoning that while the State maintained Redd’s new job and “improved pension” were “a reward for faithful service and fidelity to the Enterprise,” the Indictment did “not consider whether Redd was competent and capable,” and its “theory that the job was a quid pro quo and a financial reward for corrupt participation” was a “conclusory supposition” rather than “a fact which the court must accept as true.” (Pa209-210). The State timely appealed.

LEGAL ARGUMENT

Reviewing de novo, State v. Twiggs, 233 N.J. 513, 532 (2018), this Court should reverse the trial court’s extraordinary facial dismissal for multiple independent reasons. To start, the court’s ruling was procedurally untenable, mistaking “a fight about what happened” for a pure “question of law.” (Pa210-11). The court effectively created a new sufficiency-of-the-evidence-on-the-face-of-the-indictment test for speaking indictments—contravening blackletter law and inviting mischief in future cases. Moreover, the court erred when

engaging in that sufficiency review, failing to construe the Indictment's allegations in the light most favorable to the State. And even accepting the trial court's premature and fact-laden approach, the Indictment validly charges the offenses alleged within the applicable limitations periods, and the trial court's conclusions to the contrary misunderstand or overlook core issues of both fact and law—including the plain text of New Jersey extortion and coercion statutes under which defendants are charged, which the trial court failed to address in substance. This Court should reverse on any, or all, of these grounds.

POINT I

THE TRIAL COURT'S FACIAL APPROACH WAS UNPRECEDENTED AND ERRONEOUS. (Pa149-211).

Despite acknowledging that the Indictment did not discuss all (or even nearly all) the evidence the grand jury saw and heard, the trial court inappropriately judged the Indictment's validity based solely on the sufficiency of the facts detailed therein. The trial court's sole justification for proceeding that way was that the grand jury returned a "speaking indictment" and therefore "open[ed] the door" to this sufficiency-of-the-evidence-in-the-indictment analysis. (Pa152). But no one has ever identified a case that supports that rationale, and none exists. The trial court instead conflated the rule that a defendant can obtain facial review on the theory that an indictment's allegations

have rendered a conviction legally impossible with an unprecedented test that a criminal defendant can challenge the sufficiency of “every factual allegation in the Indictment” standing alone in a speaking-indictment case—regardless of the actual trove of evidence that went before the grand jury. (Ibid.) On this basis, this Court should reverse the facial dismissal and remand for the trial court to analyze a renewed motion to dismiss given the thousands of pages of grand-jury transcripts and exhibits that the trial court refused to review.

A. The Trial Court Announced A New And Improper Form Of Facial Review For Speaking Indictments. (Pa149-53, 173).

1. Dismissal of an indictment returned by a duly constituted grand jury is a “draconian remedy,” State v. Williams, 441 N.J. Super. 266, 271 (App. Div. 2015), to be granted “‘only on the clearest and plainest ground,’ and only when the indictment is manifestly deficient or palpably defective,” Twiggs, 233 N.J. at 531-32. For good reason: it is the grand jury that serves the “crucial function in our criminal justice system” of ensuring “adequate basis for bringing a criminal charge,” State v. Saavedra, 222 N.J. 39, 56 (2015) (citation omitted), and “the whole history of the grand jury institution demonstrates that a challenge to the reliability or competence of the evidence supporting a grand jury’s finding of probable cause will not be heard,” Kaley v. United States, 571 U.S. 320, 328 (2014). That is, “[t]he grand jury gets to say—without any review, oversight, or second-guessing—whether probable cause exists to think that a person

committed a crime.” Ibid. Accordingly, in our State, a motion to dismiss is proper only when it is “capable of determination without trial of the general issue,” R. 3:10-1—that is, without “evidence relevant to the question of guilt or innocence,” United States v. Pope, 613 F.3d 1255, 1259 (10th Cir. 2010) (analyzing corresponding Federal Rule) (citation omitted).

Given those principles, our law has recognized only narrow and carefully delineated pathways for a defendant to seek pretrial review of an indictment, and none applies here. Most notably, defendants can obtain dismissal where an indictment fails to provide adequate notice of the charges they face—the core purpose of the criminal indictment. State v. Ball, 268 N.J. Super. 72, 126 (App. Div. 1993), aff’d, 141 N.J. 142 (1995). Courts have therefore held indictments defective when they lack sufficient detail to ensure the accused can (1) prepare a defense, (2) avoid double jeopardy upon conviction or acquittal, and (3) protect against a substitution of a different offense in the State’s presentation to the petit jury. Ibid. So a defendant can raise a facial motion if an indictment does not provide enough specificity, see State v. Dorn, 233 N.J. 81, 94 (2018), or fails to recite the proper elements, see State v. Algor, 26 N.J. Super. 527, 531 (App. Div. 1953). But all agree this Indictment provides notice. E.g., Pa151.

The other circumscribed bases for seeking facial dismissal are similarly inapposite. Certain forms of prosecutorial misconduct may support such

motions, as those motions do not turn on the strength of the evidence in an indictment, but on the prosecutor's decision to withhold exculpatory evidence from the grand jury, State v. Hogan, 144 N.J. 216, 237 (1996); to obtain an indictment strictly because an accused has exercised a legal right, see State v. Zembreski, 445 N.J. Super. 412, 425 (App. Div. 2016); or to engage in discriminatory or selective enforcement, see State v. Perry, 124 N.J. 128, 167-69 (1991). Others "simply do not implicate the general issue at all" because they focus on facts "entirely segregable from the evidence to be presented at trial," Pope, 613 F.3d at 1260 (quoting United States v. Barletta, 644 F.2d 50, 58 (1st Cir. 1981)), as with "some speedy trial violations," ibid. No one suggests any of these exceptions applies here either.

As for challenges to the substance of the charges themselves, the law recognizes just two kinds of motions under Rule 3:10-1. First, a defendant can argue the "indictment on its face appears incapable of supporting a judgment of conviction." State v. Shipley, 10 N.J. Super. 245, 250 (App. Div. 1950) (citing State v. Riggs, 91 N.J.L. 456, 458 (1918)). Call this a "facial impossibility" motion. Second, a defendant can dispute that the grand jury was presented with "some evidence" to "make out a prima facie case." Saavedra, 222 N.J. at 56-57. Call this a "some evidence motion."

Start with the first. For a facial-impossibility motion, a defendant argues

not that an indictment lacks enough evidence to support a crime, but that the facts alleged or agreed upon themselves disprove the possibility of a crime—regardless of what other evidence exists. This is crucial: “an indictment is subject to dismissal where it alleges conduct ‘inconsistent with’ the charged crime (i.e., conduct that shows that the crime did not occur),” but an indictment is not to be dismissed merely where the facts offered in the indictment “are insufficient, in and of themselves, to unequivocally show that a crime did occur.” United States v. Sittenfeld, 522 F. Supp. 3d 353, 367 (S.D. Ohio 2021). Far from a civil motion to dismiss, which judges a civil complaint based upon the sufficiency of the allegations, this motion must claim impossibility.

A proper facial-impossibility motion can arise in a few contexts. It could involve an undisputed universe of facts, as with a stipulated record or “full proffer” of the evidence. E.g., United States v. Sampson, 898 F.3d 270, 283 (2d Cir. 2018); see also United States v. Phillips, 690 F. Supp. 3d 268, 278 (S.D.N.Y. 2023) (discussing the “benefits to the Government of providing a full proffer of the evidence before trial”).³ That is permissible, as then-Judge Gorsuch explained, as it does not “require a trial of the general issue”: it hinges entirely on the “legal adequacy” of an undisputed record, such that it is “clear from the parties’ agreed representations ... that a trial of the general issue would serve no

³ No one claims that the State made such a proffer here. (Pa151).

purpose.” Pope, 613 F.3d at 1260-61. Or it could involve a matter that hinges entirely on statutory interpretation. E.g., State v. Mason, 355 N.J. Super. 296, 305 (App. Div. 2002) (whether government contractors can be “public servants” under official-misconduct statute). Or it could involve a claim that the underlying statute itself is unconstitutional. E.g., State v. Higginbotham, 257 N.J. 260, 270 (2024). In each of those scenarios, the common thread is the same: a defendant asks a court to rule, on a stipulated and closed universe of facts, “that the charged crime necessarily did not occur.” Sittenfeld, 522 F. Supp. 3d at 367 (emphasis added). No such challenge was presented below.

Absent a stipulated record, however, a facial motion to dismiss cannot serve as an occasion “to weigh the evidence that the Government has presented.” Phillips, 690 F. Supp. 3d at 284; see also, e.g., State v. W.S.B., 453 N.J. Super. 206, 237 (App. Div. 2018); State v. Nicholson, 451 N.J. Super. 534, 542 & n.3 (App. Div. 2017). Indeed, “courts routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind an indictment’s allegations.” United States v. Guerrier, 669 F.3d 1, 4 (1st Cir. 2011) (collecting cases and observing defendant “cites no cases supporting his position, and, unsurprisingly, we know of none either”); see also, e.g., United States v. DeLaurentis, 230 F.3d 659, 660 (3d Cir. 2000); Sampson, 898 F.3d at 282-83; Yakou, 428 F.3d at 247; State v. Taylor, 810 A.2d 964, 980 (Md. 2002); State

v. Colville, 687 S.W.3d 637, 639 (Mo. 2024); State v. Bisbee, 69 A.3d 95, 99 (N.H. 2013); 2 Orfield’s Criminal Procedure Under the Federal Rules § 12:84 (2024). The State is not aware of any precedent countenancing such an approach in a circumstance remotely like this one—whether in New Jersey or elsewhere.

Instead, when a defendant wants to challenge whether a duly returned indictment lacks a sufficient basis in evidence, he must bring a “some evidence” motion. Given the crucial differences between a civil complaint (which any party can file at will) and an indictment (which requires a presentation to, and approval by, the grand jury), such a challenge requires the trial court to view the evidence and all rational inferences “in the light most favorable to the State,” and to ask only whether the grand jury was presented with “some evidence” to “make out a prima facie case.” Saavedra, 222 N.J. at 56-57 (citation omitted). The State has never disputed that defendants could bring this type of motion here, and indeed objected that it is what the court should have required once it became clear what their “facial” motion was. Such a motion would allow the State to rely upon, and the trial court to review (as it has not yet done), the trove of evidence—some 2,000+ pages of transcripts, including 300+ exhibits—presented to the grand jury over five months in 2024, and on which the grand jury relied in charging defendants with the crimes alleged. But no such motion has yet been brought; instead, defendants have stated their intent to still bring

such a motion if this facial motion is denied.

2. The decision below is irreconcilable with these established limits on criminal motions to dismiss. The grand jury charged defendants, centrally, with engaging in a complex criminal conspiracy, both by entering into a racketeering conspiracy (Count 1) and by engaging in conspiracies to unlawfully extort and coerce victims into giving up property (Counts 2-4). See (Pa81-98). The trial court, looking only at the Indictment, concluded that the factual allegations did not alone suffice to establish the charged crimes. See, e.g., (Pa173) (stating that Indictment’s “factual allegations do not constitute extortion or criminal coercion as a matter of law”). And the court’s conclusions about the sufficiency of the facts included in the Indictment were part and parcel of its entire opinion. For instance, whether a defendant has agreed to commit extortion turns primarily on factual questions about what exactly defendants agreed to and communicated, what they intended to communicate, and why—as even the trial court seemed to agree. See infra Point II. “It goes without saying that [such] matters of intent are for the jury to consider,” McCormick v. United States, 500 U.S. 257, 270 (1991), and that a judge hearing pretrial motions “therefore cannot resolve [them] on the jury’s behalf,” Sampson, 898 F.3d at 278.⁴ But the trial court

⁴ See also, e.g., State v. Cain, 224 N.J. 410, 420 (2016) (“Whether defendant had the requisite state of mind to commit the offense—the intent to distribute—

made determinations throughout its opinion on what it viewed as defendants' likely intent based on its review of only the Indictment, effectively rejecting the grand jury's more-informed view. See, e.g., (Pa161-62) ("Clearly, this is a steel cage brawl between two heavyweights ... Developer-1 handles himself ably and gives as good as he gets."); (Pa170) ("CFP CEO-1 believed he was being threatened. Was he? Was the effort by Philip Norcross, allegedly doing the bidding of George Norcross, something which constitutes the required purposeful state of mind for Theft by Extortion or Criminal Coercion? ... The court finds that the answer to these questions is no."); (Pa171) (finding Philip Norcross's conduct in the Indictment "does not constitute extortion or criminal coercion"); (Pa184-85) ("[F]or Brown and O'Donnell, this was about getting the buildings built and making money and that is all they did.").

Nor can the decision below be squared with any established exception. This case involves no stipulated record or "full proffer of the State's case": as the court acknowledged, (Pa151), the State vigorously disputed that all evidence

was an ultimate issue of fact to be decided by the jury."); Policano v. Herbert, 825 N.Y.S.2d 678, 686 (N.Y. 2006) ("the question of intent can never be ruled as a question of law, but must always be submitted to the jury"); United States v. Wright, 665 F.3d 560, 569 (3d Cir. 2012) ("Inferring mental state from circumstantial evidence is among the chief tasks of factfinders."); United States v. Clemens, 738 F.3d 1, 13 (1st Cir. 2013) ("Whether a statement constitutes a threat is an issue of fact for the trial jury, involving assessments of both credibility and of context.") (cleaned up).

before the grand jury was contained in the Indictment it issued. The case is not one of pure statutory interpretation with “pellucid, one-dimensional facts,” United States v. Xiong, No. 06-cr-72, 2006 WL 3025651, at *2 (W.D. Wis. July 7, 2006),⁵ as the trial court’s 96-page opinion—heavily laden with its own factual parsing—underscores. And defendants did not claim the underlying statutes to be unconstitutional. Nothing about the Indictment introduces a “fatal flaw” that more evidence—specifically, the evidence that went before the grand jury—“necessarily” could not cure. Sittenfeld, 522 F. Supp. 3d at 367.

Instead, the trial court engaged in the sort of sufficiency-of-the-evidence-included-in-the-indictment test that courts have “routinely rebuff[ed]” in criminal cases, Guerrier, 669 F.3d at 4, throwing out the grand jury’s months-long work without reviewing the voluminous evidence it saw and heard. As explained, supra at 27-28, courts recognize that such determinations not only “invade the province of the ultimate finder of fact,” Sampson, 898 F.3d at 281 (citation omitted), but can also prematurely and unreliably short-circuit the fact-finding process itself, Pope, 613 F.3d at 1259. In short, not a single case supports the trial court’s facial approach, and reams of published cases contradict it. A reversal and remand is appropriate on this basis alone, at which

⁵ This unpublished opinion is attached at (Pa225). As with other unpublished cases attached, the State is aware of no contrary opinions. See R. 1:36-3.

point defendants will continue to have every right to press a traditional sufficiency motion based on the evidence before the grand jury, and in response to which the State will be permitted to rely on that evidence.

Nor is this merely an abstract procedural problem: the trial court's choice to assess the sufficiency of only the evidence included in the Indictment, without looking at the evidence before the grand jury, kept from its review substantive materials that both colored and provided context for the facts the Indictment alleges. In addition to the testimony each witness gave, the evidence repeatedly showed the immense amount of control over Camden government that George Norcross exercised, and that the City was replete with people who feared him and his associates because they understood them to use the very sorts of methods alleged here—including weaponizing government tools (like permitting and approvals) that are supposed to be available on “a level playing field,” and exacting harm to people's reputations and livelihoods if they crossed him. See infra at 52-58. Particularly given the contextual, fact-sensitive inquiry that goes into assessing whether a particular statement or act qualifies as a threat under binding precedent, the court could not justify setting all this testimony before the grand jury off to the side. See supra at 29-30 & n.4; infra at 47-52.

3. The trial court's basis for its unprecedented form of review is unavailing. Although the court seemed to recognize the extraordinary nature of

reviewing a criminal motion to dismiss based on the sufficiency of the evidence included in the Indictment alone, it justified its decision entirely by reasoning that the grand jury “open[ed] the door” by issuing a “speaking indictment.” (Pa152). But a “speaking indictment” is just a form of indictment that gives more detail than necessary to satisfy the bare-bones requirements for facial validity, see supra at 25-26; it is not a “full proffer” of the State’s evidentiary case, and it need not be, Phillips, 690 F. Supp. 3d at 278. Using a speaking indictment gives a defendant more notice than required and can serve to head off a motion for a bill of particulars, which defendants sometimes improperly use “as a general investigative tool,” United States v. Feola, 651 F. Supp. 1068, 1123 (S.D.N.Y. 1987). Indeed, the trial judge acknowledged that the Indictment in this case was “not a full proffer of the State’s case and that it was, at least in part, intended to serve as a bill of particulars.” (Pa152).

No prior case, however, concludes that issuing a speaking indictment “open[s] the door” to the type of review defendants sought and the trial court gave. Rather, courts confronted with such arguments uniformly hold that a grand jury “is permitted to give a defendant more detail regarding the evidence against him without assuming the risk that a court will treat such detail as a proffer of all of the evidence,” Phillips, 690 F. Supp. 3d at 278, and that courts therefore should not subject a speaking indictment to “a more exacting standard”

than a “‘barebones’ indictment,” Sittenfeld, 522 F. Supp. 3d at 365; see also, e.g., id. at 366 (“The Court is unaware of any authority that explicitly recognizes this asserted distinction between a ‘speaking indictment’ and a ‘non-speaking indictment.’”); United States v. Ji, No. 21-265, 2022 WL 595259, at *6 (E.D.N.Y. Feb. 28, 2022) (Pa233) (calling “plainly incorrect” argument that because indictment contained “substantially more alleged facts than are typically required, the Court must treat the supplemental allegations as the entirety of” the prosecution’s case); United States v. Arshad, F. Supp. 3d 695, 699 n.23 (E.D. La. 2018) (rejecting claim that speaking indictment should be subject to a “heightened” standard and observing defendants “did not offer any case law to support this assertion, and the Court ... has uncovered none”); United States v. Murgio, 209 F. Supp. 3d 698, 711 (S.D.N.Y. 2016) (similar).

Instead, courts can find that speaking (and non-speaking) indictments are facially invalid where the facts alleged necessarily entail the conclusion “that, as a matter of law, the charged crime did not occur”—the impossibility test detailed above. Sittenfeld, 522 F. Supp. 3d at 366. After all, only where the prosecution effectively “pled itself out of court” by alleging or stipulating to a set of “facts showing that the charged crime necessarily did not occur” does it make “sense to nip a case in the bud.” Id. at 367. On the other hand, “where the concern is that there are not yet enough facts in a speaking indictment, the

same result does not follow,” because even a lack of sufficient supporting evidence “does not foreclose the possibility that the record, by the time the matter goes to a [petit] jury, will contain enough evidence to support a conviction.” Ibid. That makes sense in our adversarial criminal justice system, which vests the fact-finding power in jurors, not judges, and thus draws a line between holding that the facts alleged foreclose the charge as a matter of law (appropriate) and holding that the facts do not yet sufficiently prove it (inappropriate). The use of a speaking indictment does not alter that dichotomy.

Logic also forecloses the trial court’s differential treatment of speaking indictments. To start, the State has its own trial rights, and is not capped by the quantum of inculpatory (or exculpatory) evidence discovered at the time of indictment—it too has a right to investigate its case, to engage in discovery practice, and to call witnesses to the stand to develop its evidence at trial. So, without a stipulated record or full proffer, there is no reason for a court to short-circuit a prosecution simply because it concludes the indictment has not itself articulated enough evidence to establish guilt. Further, in the kinds of complex cases in which speaking indictments are more common, no speaking indictment will exhaust the evidence on which the grand jurors relied in voting to indict, and it makes little sense to have the case’s progression turn on what evidence was included in the indictment. Moreover, prosecutors often have good reasons

for leaving information out of speaking indictments—for instance, protecting the identity of certain witnesses. And finally, the trial court’s line—where the legal tests vary based on whether an indictment was a “speaking” indictment or not—is inadministrable: the trial court did not offer a standard for deciding how much information opens the door to such a motion, and the State has no way of knowing in the future (nor did it have notice that a court could engage in this mode of analysis here). Indeed, allowing such a test will only encourage endless pretrial litigation over what degree of detail “opens the door.”⁶

This case illustrates these problems well: the grand jurors heard evidence over five months, resulting in over 2,000 pages of testimony, (4T15-9 to 10, 19-3 to 4; 5T42-11 to 14), and the State turned over in discovery more than 4.3 million files, more than 6,000 wiretap recordings and at least 700 hours of audio recordings, including the interviews of about 100 people, (Pa219). Yet if the approach below were permissible, two otherwise-identical defendants would be treated differently based on nothing more than the happenstance of how much detail went into the indictment the grand jury issued. And even more perversely, the defendant to receive a windfall—by getting to bring a such a facial challenge while blocking the State from relying on any evidence that did not make it into

⁶ This problem will likely be particularly acute in threats and conspiracy cases—both implicated here—because of how context-dependent and fact-intensive such cases are. See infra at 50-52 & n.14 (discussing binding precedent).

the indictment—would be the one who had received greater notice.⁷ Not only does that make little sense, but it would produce untenable incentives: prosecutors seeking to avoid such a premature and asymmetrical battle would have every reason to provide less notice, or else to pursue 1,000-page speaking indictments, so as not to be forced to oppose such a challenge without the benefit of the lion’s share of the evidence—and with it, face the risk of prematurely revealing witness identities or other sensitive information. And they would have to make these decisions against the backdrop of an undefined test, never knowing how much information is sufficient to give adequate notice but not to trigger this unprecedented type of facial-sufficiency review. That serves no one.

The three New Jersey cases cited by the trial court do not justify its approach either. (Pa152-53, 173). Those cases are State v. Brady, 452 N.J. Super. 143 (App. Div. 2017); State v. Perry, 439 N.J. Super. 514 (App. Div. 2015); and State v. Riley, 412 N.J. Super. 162 (Law Div. 2009). Importantly, none of them holds or even suggests that a speaking indictment opens the door to a different form of motion to dismiss. (Pa152). Moreover, considering those cases in turn makes clear that none supports the approach below. Instead, each

⁷ The trial court’s logic would even suggest that upon facing such a facial motion in response to a speaking indictment—or even if such a motion had already been granted—the State could simply pursue a barebones superseding indictment and thereby ensure a more favorable result. That cannot be the law.

involved matters of pure statutory interpretation applied to a fixed universe of uncontested facts—and indeed, two actually reviewed the grand-jury transcripts.

In Brady, a grand jury charged a judge with Official Misconduct under N.J.S.A. 2C:30-2(b) for not enforcing an arrest warrant. 452 N.J. Super. at 154-55. N.J.S.A. 2C:30-2(b) applies if a defendant has “knowingly refrain[ed] from performing a duty which is ... clearly inherent in the nature of his office,” and the court’s analysis therefore hinged on whether enforcing an arrest warrant was a duty “clearly inherent” in the defendant’s position as a judge—a purely legal question. 452 N.J. Super. at 163-64. And further, this Court in Brady considered the evidence presented to the grand jury, assessing whether the “absence of any evidence to support the charges” rendered the indictment defective, id. at 158—and not whether “the allegations” in the indictment alone failed to establish the crime, cf. (Pa152). Brady provides no support for the approach below.

So too Riley, a case that asked whether an unauthorized-computer-access law, N.J.S.A. 2C:20-25(a), covers employees who have been granted access to computerized information and then viewed or used such information contrary to their employer’s policies. 412 N.J. Super. at 165-68. The case thus similarly hinged on a matter of pure statutory interpretation, to which further evidence would have been irrelevant; whether the defendant’s conduct was covered by the statute turned on the meaning of the phrase “without authorization or in

excess of authorization,” and not on any contested facts regarding his conduct. Id. at 166, 171, 190-91. But whether defendants here are covered by the statutes charged in the Indictment does not turn solely on the meaning of those statutes—it turns in significant part on what exactly they said, meant, and intended. See, e.g., (Pa163) (“This can be perceived as a ‘threat’, but to do what?”); (Pa170) (“This was not an express threat so what is to be implied by it?”); supra at 29-30 & n.4; infra Point I.B. In any event, Riley reviewed both the indictment and the grand-jury transcripts, unlike the decision below. See id. at 167, 169.

Finally, in Perry, defendants were charged with driving under a drunk-driving-related suspension. 439 N.J. Super. at 519, 522-23. The wrinkle was that, even as alleged, each defendant’s period of court-imposed suspension had ended before the conduct occurred; liability turned entirely on whether the law criminalized driving under an ongoing period of administrative suspension, before defendants had their licenses reinstated. Id. at 519, 525-26. Again engaging only in pure statutory interpretation based on those simple and undisputed facts, the court ruled that the statute did not cover driving under administrative suspensions, see id. at 526-27, 530, 532—meaning that, no matter how much more evidence came to light, the indictment was “incapable of supporting a judgment of conviction,” see Shipley, 10 N.J. Super. at 250. Here, no such impossibility exists—and if the trial court doubted whether sufficient

evidence supported the Indictment, the proper course was to direct defendants to file a some-evidence motion and to allow the State to rely in turn on the full panoply of grand-jury evidence in response.⁸ The court’s failure to do so alone requires reversal of the decision below.

B. Even Accepting The Trial Court’s Unprecedented Form Of Review, Its Analysis Was Legally Flawed. (Pa153-211).

Even if our law could permit a novel facial-sufficiency analysis like that conducted below, the decision below would still require reversal. For a some-evidence motion that takes the full range of grand-jury evidence into account, a judge must both accept all factual allegations as true and view that “evidence in the light most favorable to the State,” Saavedra, 222 N.J. at 56-57, and deny the motion unless the indictment is “manifestly deficient or palpably defective,” Twiggs, 233 N.J. at 531-32. While the court below noted these blackletter rules, including its duty to give the grand jury “the benefit of every positive inference,” (Pa184); see (Pa125, 150, 152), its analysis failed to apply them.

Copious examples illustrate this global defect in the court’s analysis. As

⁸ The court also cited State v. Schneiderman, 20 N.J. 422, 426 (1956), to note that “whether the indictment charges a crime is for the court’s determination.” (Pa153). Yet Schneiderman, an appeal challenging jury instructions, simply notes that “where no disputed question of fact [is] material ... ‘whether an act is illegal is a question of law to be settled by the court.’” Id. at 426. That sheds no light on when courts can assess fact questions that do exist based on the evidence included in the Indictment alone.

explained above, a central fact dispute between the parties—that would no doubt be a hotly disputed issue at trial, with competing fact witnesses—concerns whether George Norcross unlawfully threatened Developer-1. See supra at 5-11; infra Point II. In considering that question in light of (only) the evidence in the Indictment, the court asked, “How is this to be interpreted?” (Pa161); see also (Pa162) (“what does it mean to be told he would be ‘f**k[ed] up like [he] [has] never been f**ked up before’ and that he will ‘never do business in this town again?’ Does it mean anything at all?”). In answering its own question, it interpreted both the facts and the law, concluding that Developer-1 and George Norcross were “two heavyweights” and that Developer-1 “gives as good as he gets,” (Pa161-62)—hardly a favorable inference to the grand jury’s allegations that these men were not on equal footing, and that George Norcross in reality controlled the Camden government and thus held power over permitting and eminent-domain decisions that are not part of normal hard-bargaining, (Pa50, 53). Similarly, the trial court equated George Norcross’s threats to mere “sabre-rattling,” and questioned whether they “mean[t] anything at all,” (Pa162)—but again, that is the court’s factual interpretation of the language a defendant used.

So too for the trial court’s response to its own question of what to make of “the amorphous threat to make sure you never do business in this town again?” (Pa163). “This can be perceived as a ‘threat’,” the court wrote, “but to

do what?” (Pa163). The State-favorable inference is that it can be perceived as a threat by George Norcross at a minimum to leverage his “control of the Camden government” to unlawfully deny the developer fair access to government permits, contracts, or services. (Pa61). The court, by contrast, “f[ound] that this statement” was simply “economic coercion ... incident to free bargaining.” (Pa163). Leaving aside the problems with the court making any “find[ings]” at all about motives at this stage, see supra at 29-30 & n.4, that conclusion does not view the evidence in the light most favorable to the State.

The same problem recurred during the trial court’s assessment of the Indictment’s reference to George Norcross’s statement that Developer-1 was “gonna come under some very serious accusations from the City of Camden.” (Pa163). The court reasoned that the “representatives of the City”—the municipality the grand jury alleged George Norcross exercised de facto control over—were “entitled to speak up.” (Pa164). That is true enough, but plainly a defense-favorable gloss. Moreover, the court surmised that while there was “no explanation as to what those serious accusations even were, ... they were not coming from George Norcross.” (Pa163-64). But had the court reviewed the evidence the grand jury saw, it would have seen the prima facie case that those threats were coming from George Norcross. See also (Pa57) (George Norcross saying, following the “very serious accusations” comment, that “you can never

trust [Developer-1] until you got a bat over his head”). The court’s interpretation flipped the grand jury’s entitlement to all reasonable inferences on its head. See also, e.g., (Pa200) (“The inferences the State asks the court to draw, while theoretically feasible, are not supported by the evidence.”).

The court’s impermissible evidence-weighting did not end there. The court questioned whether, “[w]hen Developer-1 asks George Norcross if he is threatening him,” he was “really ... seek[ing] to confirm that he is, indeed, in physical or other danger,” rather than “goading and needling his adversary?” (Pa162). The State-favorable inference is the former—danger of harm from government action, reputational damage, and economic harm—and there is no basis in the Indictment itself to conclude that this was mere goading. See (Pa61) (alleging the threats “led Developer-1 to conclude that remaining in the project ... would lead [George Norcross] to use his control of the Camden government” to inflict financial and reputational harm).⁹ The court similarly rejected the grand jury’s allegation that CFP CEO-1 was a victim, concluding entirely on its own that CFP CEO-1 simply made “his choice ... and let the dominoes fall.” (Pa170). But the grand jury concluded otherwise, alleging that defendants agreed to deprive CFP CEO-1 of a free choice. (Pa34).

⁹ Again, of course, the evidence presented to the grand jury would further confirm the validity of this allegation and likely resolve the trial court’s uncertainty—but the trial court declined to review it.

The list goes on. The court dismissed the possibility Philip Norcross’s pressure could have been more than “preemptory and imperious,” emphasizing that there was “never even a line drawn between the alleged threat and what [he] would actually do about non-compliance.” (Pa170-71); see also (Pa170) (“This was not an express threat so what is to be implied by it?”). But the grand jury—the relevant factfinder—reasonably found that George and Philip Norcross did not need to draw such a line, given the “control of the Camden government” the Indictment alleges was at their disposal, e.g., (Pa61), and the “muscle and brass knuckle vindictiveness” the court itself acknowledged, (Pa170). Faced with a question about which inference to draw, binding precedent required the court to draw the State-friendly conclusion. E.g., Saavedra, 222 N.J. at 57-58.

In considering the eminent-domain scheme, the court also doubted whether the CRA “was a hostage,” chided the grand jury for failing to draw any “conclusion as to how much direct client contact was necessary to prepare the legal documents,” (Pa187), and concluded the use of the word “hoped” in one sentence “indicate[d], by simple definition, George Norcross’s understanding that whether the city went to court was not up to him,” (Pa183). But the grand jury could reasonably conclude that defendants schemed to use the CRA for their own purposes, that “hoped” was a euphemism, and that the CRA was not truly driving the process, given the evidence before them and even in the Indictment.

E.g., (Pa52) (referencing plan “to brief the Mayor”); (Pa59) (Philip Norcross saying “the best shot at the head shot is exactly what Bill [Tambussi] mentioned ... Kill [Developer-1’s] view easement”); (Pa60) (Brown agreeing the group should “go ahead and let [Tambussi] get this thing done”).

The court engaged in similar defense-favorable inferences as to the other defendants. Of Brown and O’Donnell, the court found it was “clear that Brown and O’Donnell [were] simply listening to experienced counsel discuss a legal strategy which could ultimately make them money” and that this was “their sole apparent purpose for being involved in any of this.” (Pa184); see also (Pa184-85) (“Two sophisticated businessmen backed the right horse when it came to selecting an investment partner. ... [F]or Brown and O’Donnell, this was about getting the buildings built and making money and that is all they did.”). But setting aside how the court determined their “sole apparent purpose” without hearing any of the evidence, that is not what the grand jury found, and nothing renders its conclusion untenable—least of all without seeing what else the grand jury heard.¹⁰

¹⁰ As one example, the court stated—of the conversation in which George Norcross threatened Developer-1 that he would “f**k you up like you have never been f**ked up before”—that “[t]here is no indication Brown or O’Donnell participated in this conversation or even knew of it.” (Pa181). That is an accurate description of the Indictment, (Pa47), but not true of the evidence the grand jury heard. To be clear, the State is not urging this Court to consider

Similarly, the Court made sweeping conclusions about what motivated Redd and Tambussi, again based only on the Indictment.¹¹ Here too, had the court reviewed the grand-jury materials pursuant to a some-evidence motion, it could have assessed—and might well have been persuaded by—the State’s explanation of why these inferences were substantively (as well as procedurally) inappropriate, especially given the many witnesses providing context on how both Camden government and members of the Enterprise operated. But it never gave the State that chance—instead concluding that “[t]he inferences the State asks the court to draw, while theoretically feasible, are not supported by the evidence,” (Pa200), all without having reviewed that very evidence.

The trial court also erred in failing to identify the Indictment’s factual allegations as such. The court reasoned that “[t]he alleged time frame and the alleged purposes of the enterprise are not facts,” but mere “allegations, assertions and, ultimately, conclusions.” (Pa202). But a defendant’s subjective

information outside the Indictment at this premature stage, but rather reinforcing that this stage is premature, and that there are good reasons no precedent supports the facial-sufficiency approach the trial court undertook.

¹¹ See (Pa187-88) (concluding an “effort to keep a jury from hearing the Norcross name was simply a reasoned legal decision”); (Pa197-98) (discussing allegations that Philip Norcross was to brief Redd on the eminent-domain scheme but emphasizing “[i]t is unclear whether this conversation ... ever occurred”); (Pa198) (“A mayor has the right to hedge her bets in an effort to keep the City’s redevelopment moving forward. A mayor has the right to join forces with coalitions which she believes have the best chance of prevailing.”).

intent and the scope of a conspiratorial agreement are quintessential factual questions, e.g., supra at 29-30 & n.4, as is the “time frame” during which a defendant possesses that intent or is party to such an agreement. So too with the grand jury’s ostensibly “conclusory supposition” that the Enterprise rewarded Redd for her loyalty with a remunerative position on the Rowan-Rutgers Joint Board. (Pa209-10). That the court doubted the grand jury’s factual allegation, see also (Pa199) (suggesting Redd received her position “because she was qualified”), does not render the allegation any less factual. See also (Pa205) (discounting grand jury’s charge that defendants unlawfully conspired for purpose of obtaining tax credits on the basis that “[o]ne must think that the State would have the ability to deny payments if it, for any reason, concluded there was a crime actively being committed”).¹² In short, even accepting (contrary to precedent and logic) that a trial court could put aside the evidence presented to the grand jury and engage in a kind of facial-sufficiency review just because a grand jury issues a speaking indictment, the trial court’s analysis failed on its own terms by failing to accept all facts as true and to give the State all reasonable inferences. This improperly fact-laden approach likewise requires reversal.

¹² As with myriad fraud cases, that an agency has paid out funds in no way undermines subsequent allegations of wrongdoing. What governments usually do when an investigation suggests that has occurred is what the State did here: present the evidence to a grand jury. See also (Pa111) (forfeiture allegation).

POINT II

THE INDICTMENT VALIDLY ALLEGES EXTORTION AND COERCION CONSPIRACIES. (Pa153-74).

Even accepting the trial court’s unprecedented form of facial review, its substantive analysis of extortion and coercion—the only holding that could justify its global dismissal of all counts and all defendants, (Pa155-56, 173-74)—merits reversal. The grand jury charged defendants with conspiring to commit both state-law extortion, see N.J.S.A. 2C:20-5, and state-law criminal coercion, see N.J.S.A. 2C:13-5 (Counts 2-4).¹³ In deeming the threats exclusively “hard bargaining,” or finding that they were not threats at all, the trial court both misconstrued the law and made improper factual findings and inferences. Each of these errors likewise requires reversal.

¹³ Those offenses also serve as predicates for racketeering conspiracy under N.J.S.A. 2C:41-2(d) (Count 1), alongside other predicates, including Hobbs Act extortion under 18 U.S.C. § 1951. See (Pa85-86, 120); infra Point III.A. Though the Hobbs Act, unlike state law, does not enumerate specific types of behavior that qualify as extortionate threats, compare 18 U.S.C. § 1951(b)(2), with N.J.S.A. 2C:20-5, the same basic arguments support the Hobbs Act predicate to Count 1 on this facial posture. E.g., infra at 65-66 (discussing Hobbs Act cases confirming fear of adverse government action or lack of a “level playing field” qualifies); accord (Pa172) (trial court addressing Hobbs Act and state-law extortion in tandem). In the interests of avoiding repetition, the State therefore incorporates and preserves the same arguments as to the Hobbs Act for purposes of this appeal. Defendants of course would have the right to challenge both predicates separately via a some-evidence motion on remand.

A. The Law Of Extortion And Coercion.

For purposes of this appeal, state-law extortion and coercion can be considered together. A person commits theft by extortion if he “purposely and unlawfully obtains property of another” by “purposely threaten[ing] to” undertake one of several types of actions. N.J.S.A. 2C:20-5. The types of actions that these defendants are charged with threatening to undertake fall within subsections (c), (d), and (g). Those subsections cover threats to:

- c. Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
- d. Take or withhold action as an official, or cause an official to take or withhold action; ... or
- g. Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

[Ibid.] That is, defendants were charged with agreeing to purposely obtain their victims’ property by threatening to: inflict reputational harm (subsection (c)); cause a government official to take or not take official action (subsection (d)); and inflict “any other harm” that would not benefit them but would hurt others (subsection (g)). Any one of these three types of threats would suffice.

The criminal coercion statute is “very closely related.” (Pa158). A person commits criminal coercion “if, with purpose unlawfully to restrict another’s freedom of action to engage or refrain from engaging in conduct, he threatens”—

as with extortion—to undertake one of several types of actions. N.J.S.A. 2C:13-

5. The types of actions these defendants are charged with threatening to undertake fall within subdivisions (a)(3), (a)(4), and (a)(7). Much like the extortion statute, those subdivisions cover threats to:

(3) Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) Take or withhold action as an official, or cause an official to take or withhold action; ... or

(7) Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

[Ibid.] Here too, defendants were charged with agreeing to purposely restrict their victims’ freedom of action by threatening to: inflict reputational harm (subdivision (a)(3)); cause a government official to take or not take official action (subdivision (a)(4)); and “[p]erform any other act” that would not substantially benefit them but would be likely to substantially hurt others (subdivision (a)(7)). Again, any of these three can support the relevant charge.

“The only real difference” between extortion and coercion lies in whether the defendant sought to obtain the victim’s property (extortion), or to restrict the victim’s freedom of action (coercion). Cannel, N.J. Crim. Code Annotated, cmt. 2 on N.J.S.A. 2C:13-5 (2024) (Cannel); see also State v. Monti, 260 N.J. Super.

179, 185 (App. Div. 1992); (Pa158-59). And because no one disputes the grand jury validly alleged that defendants sought both property and to restrict others' freedom of action, the analysis here hinges on what the statutes have in common: the existence of purposeful threats to undertake the relevant behavior (reputational damage, causing official action/inaction, or other acts that do not benefit the threatener but harm others).

Both laws also reference defendants acting "unlawfully." To be clear, that does not mean a defendant's threatened act, in the abstract, must be unlawful, "since many of the threats criminalized by the statute 'would be perfectly appropriate if made without a demand for property.'" State v. Roth, 289 N.J. Super. 152, 158 n.4 (App. Div. 1996) (quoting Cannel, cmt. 3 on N.J.S.A. 2C:20-5); see II Final Report of the New Jersey Criminal Law Revision Comm'n, Commentary 228 (1971) (1971 Commentary) (giving example of a policeman who threatens to arrest "unless the arrestee pays him money," even though the arrest is lawful); accord (Pa42). Instead, the term most likely serves simply "to avoid prosecution of individuals who make legitimate demands" related to the object they seek, S. Judiciary Comm. Statement to S. 3203, at 8, consistent with the statutes' affirmative defenses for honest claims of right to restitution or similar corrective action, see N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5. Thus, threatening to stop shopping at a business unless it issues a fair refund for a

damaged product is not unlawful, even if it involves threatening economic harm to obtain property. But threatening to “report violations which might lead to large non-criminal penalties” unless the business hands over property is unlawful, even if the threatener is a private citizen who is not “himself an official.” 1971 Commentary at 229 (discussing N.J.S.A. 2C:20-5(d)).

Finally, whether someone made a threat is a highly contextual, fact-intensive inquiry, with both objective and subjective components.¹⁴ “A threat need not be express,” 1971 Commentary at 227, and may be “implied from the surrounding circumstances,” Model Jury Charges (Criminal), “Theft by Extortion (N.J.S.A. 2C:20-5)” (rev. June 5, 2006). “For example, ‘[u]ttered in one context, an apparently innocent statement such as, ‘I’d be careful crossing the street if I were you’ can be merely helpful advice to a senior citizen[,]” but “[u]ttered in another context it may well be correctly perceived by reasonable persons to be intended as a threat.” State v. Crescenzi, 224 N.J. Super. 142, 147-48 (App. Div. 1988). “This is another way of saying that context matters,” and “entails consideration of prior interactions between the parties” and other

¹⁴ So too with the law of conspiracy. See, e.g., State v. Samuels, 189 N.J. 236, 245-46 (2007) (explaining that conspiracies “may be proven circumstantially” and “inferred from the facts and circumstances” based on “logic and common sense,” even where actions “when separated from the main circumstances and the rest of the case, may appear innocent”). “[T]he quantum of evidence required as to each element [in a conspiracy charge] is not great.” State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984).

circumstances, State v. Fair, 256 N.J. 213, 238, cert. denied, 144 S. Ct. 2572 (2024), such that “the possibility of ... serious adverse consequences may be inferred from the circumstance of the threat or the reputation of the person making it,” United States v. Boggi, 74 F.3d 470, 477 (3d Cir. 1996).

By the same token, “a defendant who threatens a victim in esoteric, veiled, or elliptical language need not offer a simultaneous translation or define his terms, as long as he thinks or should think the victim understands what has been said.” United States v. Hairston, 46 F.3d 361, 365 (4th Cir. 1995) (citation omitted); see also, e.g., United States v. Coppola, 671 F.3d 220, 241 (2d Cir. 2012); United States v. DiSalvo, 34 F.3d 1204, 1212-13 (3d Cir. 1994). Such inquiries will often hinge on determinations of what a speaker intended and, though the surrounding circumstances, intimated—factual questions that cannot be resolved without weighing evidence (let alone on the face of an indictment). See, e.g., Hogan, 144 N.J. at 236.¹⁵

Just last year, the U.S. Supreme Court emphasized the “fact-intensive” considerations that federal courts apply to deciding whether a communication is “permissible persuasion” or a “coercive threat.” Nat’l Rifle Ass’n of Am. v.

¹⁵ As to the Hobbs Act (a predicate for Count 1), a defendant need not have even issued an implicit threat, so long as he “exploited existing fear with the specific purpose of inducing another to part with property.” Coppola, 671 F.3d at 241. That further supports Count 1, but is unnecessary as to Counts 2-4, because defendants are alleged to have agreed to issue threats that were at least implicit.

Vullo, 602 U.S. 175, 189-90 (2024). As the Court explained, this analysis requires accounting for a multitude of factors, such as (1) word choice and tone, (2) whether the speech was perceived as a threat, (3) whether the speech refers to adverse consequences, (4) the actor’s authority, (5) the content and purpose of the actor’s communications, and more. Id. at 189-90 & n.4 (collecting federal cases). The fact-driven nature of this assessment is why courts recognize that whether a statement amounts to a threat is a question of fact that cannot be resolved by looking only at the face of an indictment. E.g., Crescenzi, 224 N.J. Super. at 147; Brewington v. State, 7 N.E.3d 946, 965 (Ind. 2014) (noting “inherent fact-sensitivity of implied threats”); supra at 29-30 & n.4.

B. The Indictment Charges Extortion And Coercion Conspiracies.

Under these principles, the trial court erred in ruling that the Indictment does not facially allege conspiracies to extort and criminally coerce. Most simply, the Indictment charged these conspiracies under not just the “catch-all” provisions in N.J.S.A. 2C:20-5(g) and N.J.S.A. 2C:13-5(a)(7), but also the specific provisions involving threats to inflict reputational harm under subsection (c) and subdivision (a)(3), and to “cause an official to take or withhold action” under subsection (d) and subdivision (a)(4). So while the Indictment would be facially valid even if it relied in relevant part only on subsection (g) and subdivision (a)(7), see infra at 54-56, 62-65, this Court need

not even reach those provisions to reverse, because the grand jury charged defendants with agreeing to threaten to expose victims to reputational and governmental harm, which makes the Indictment independently valid under subsections (c)-(d) and subdivisions (a)(3)-(4) respectively.¹⁶

The text and commentaries to N.J.S.A. 2C:20-5(d) and related provisions are particularly striking in showing the lack of facial invalidity. Under that subsection, a “person extorts if he purposely threatens to ... cause an official to take or withhold action.” Ibid. The 1971 Commentary confirms that this provision extends to threats by private citizens with causal influence over government action, observing that “[a] threat to bring about adverse official action may, of course, be made by one who is not himself an official.” 1971 Commentary at 229. And the Commentary to Model Penal Code Provision § 223.4—from which N.J.S.A. 2C:20-5(d) stems—is in accord, explaining that “[a] threat to bring about adverse official action may also be made by one who

¹⁶ Whether defendants indeed agreed to use their control over local government to cause officials to take (as with eminent domain) or withhold (as with holding up approvals or access to other government benefits) official action to those victims’ detriment, with the requisite intent, is of course a context-sensitive and factual question, appropriate for a grand or petit jury but unsuited to this facial motion. See Crescenzi, 224 N.J. Super. at 147-48; supra at 29-30 & n.4, 51-52. But all this Court needs confirm to resolve this appeal is the lack of facial invalidity, which is especially pronounced given the fact-intensive nature of the crimes charged (unlike whether a statute covers administrative license suspensions, see supra at 38-39).

is not himself an official, as where a political leader threatens to use his power over officeholders to the disadvantage of a person who refuses to pay him.” Am. Law Ins., Model Penal Code Commentaries, Part II, § 223.4, p. 217 (1980) (MPC Commentaries). And here, “a political leader [who] threatens to use his power over officeholders to the disadvantage of a person who refuses to pay him” is an apt description of what the grand jury charged.

Nor is New Jersey out of step in prohibiting such threats. As with a political spouse or associate who demands a payoff for government access, e.g., United States v. Collins, 78 F.3d 1021, 1030 (6th Cir. 1996) (eligibility to bid for state contracts); United States v. Rashad, 687 F.3d 637, 642-43 (5th Cir. 2012) (ability to engage in municipal housing development); United States v. Edwards, 303 F.3d 606, 635-37 (5th Cir. 2002) (eligibility to compete for casino licenses), or a union boss who demands the same for the ability to run a shipping business on the waterfront, e.g., United States v. Clemente, 640 F.2d 1069, 1071 (2d Cir. 1981), criminalizing this kind of conduct does not target ordinary economic bargaining or being an “influence peddler,” but instead covers those who “exact tribute from their victims in exchange for agreements either to exercise or refrain from exercising the corrupt influence they have acquired.” Id. at 1078. In those instances, a victim is not subject to mere economic jousting, but to a threat to be deprived of “the opportunity to compete ... on a level playing

field, an opportunity to which they were legally entitled.” See Collins, 78 F.3d at 1030; accord United States v. Albertson, 971 F. Supp. 837, 825 (D. Del. 1997), summarily aff’d, 156 F.3d 1225 (3d Cir. 1998).¹⁷

Even accepting the trial court’s unprecedented approach, the facts alleged in the Indictment are wholly in accord, and confirm that the extortion (and coercion) charges are proper under subsections (c) and (d) (and subdivisions (a)(3) and (a)(4)), as well as under subsection (g) (and subdivision (a)(7)). The Indictment alleges explicit and implicit threats conveyed by or on behalf of George Norcross, as well as the instillation and exploitation of fear that any similarly situated victim, familiar with the surrounding context, would have felt (context that can be assessed at this stage only by reviewing the evidence presented to the grand jury). As to the Triad1828 and 11 Cooper conspiracy, George Norcross threatened Developer-1 with economic and reputational harm at the hands of local government when he did not get his way. (Pa3). With Philip Norcross on the line, George Norcross said, “If you f**k this up, I’ll f**k you like you’ve never been f**ked up before.” (Pa47). He added that the developer “would never do business in this town again” and he would suffer “enormous consequences” for not complying with Norcross’s wishes. (Pa47,

¹⁷ Indeed, for that reason, even if subsection (d) and subdivision (a)(4) did not exist, these charges would be proper under subsection (g) and subdivision (a)(7).

53-54). On a recorded call, he admitted: “I said ... ‘this is unacceptable. If you do this, it will have enormous consequences.’ [Developer-1] said, ‘Are you threatening me?’ I said, ‘Absolutely.’” (Pa53-54). And he said that Developer-1 would “come under some very serious accusations from the City,” and that by using the City, the Enterprise could make Developer-1 “cry uncle.” (Pa57).

Other allegations confirm the Indictment validly charges conspiracies to extort and coerce through threats of government and reputational harm. After all, the grand jury charged the Enterprise not simply with agreeing to threaten Developer-1’s reputation, but also with plotting to delay approval of the Victor PILOT transfer and using the fact that Developer-1 had money “stranded” in the unrelated Radio Lofts site and needed the City’s help to advance that project as “another point of attack.” (Pa59). Such attempts to use “power over officeholders to the disadvantage of a person who refuses to pay,” MPC Commentaries at 217, go well beyond rough-and-tumble business disputes, and fit subsections (c) and (d)—and subdivisions (a)(3) and (a)(4)—perfectly.

The conspiracy to flaunt eminent-domain power to gain leverage over Developer-1 is illustrative. (Pa50-53). The power to take private property for public good is a core government power, Boom Co. v. Patterson, 98 U.S. 403, 406 (1878), meant to be exercised solely for public purposes, State v. Mayor, 58 N.J.L. 255, 257 (1895)—not a part of ordinary economic jockeying. Yet the

grand jury alleged defendants plotted to use their control over that governmental power not for government interests, but to gain leverage over Developer-1 for entirely private gain: to put Developer-1 “in a drastically different position in terms of negotiating” and reinforce their threats, (Pa57-58). That is not ordinary hard bargaining, but rather conspiring to deprive a rival of “a level playing field, an opportunity to which they were legally entitled.” Collins, 78 F.3d at 1030.¹⁸

So too with the L3 Complex scheme. Through a long series of calculated actions, defendants unlawfully exploited CFP’s CEO’s fear that if CFP pursued the best deal for itself with a partner of its choosing, they would inflict both reputational and governmental harm. Again, the conclusion follows easily from the grand jury’s Indictment, which alleged:

- George Norcross effectively controlled Camden’s government, (Pa61);
- He had a reputation for punishing adversaries, including by causing them to lose government contracts (which CFP relied on) and by seeking to have them fired, (Pa23);
- He had already punished CFP by having Camden officials cut the nonprofit’s funding after an earlier dispute, (ibid.);
- Redd’s own mayoral chief of staff had ordered the CFP CEO to meet often

¹⁸ Nor does it make a difference that defendants ended up abandoning the scheme, after a separate entity “declined to cooperate,” (Pa60), or that Developer-1 did not then learn of it. Contra (Pa184). Defendants are charged with extortion and coercion conspiracies—that is, with agreeing to obtain Developer-1’s property via these unlawful means. That crime can be committed even if its object never occurs—“[i]t is the agreement that is pivotal.” E.g., In re State ex rel. A.D., 212 N.J. 200, 222 (2012).

with Philip Norcross (who had no official role in city government) to make sure that the CEO had George and Philip Norcross's approval for CFP's projects, (Pa22);

- George Norcross was angry that CFP intended to buy the L3 Complex and wanted the CFP CEO or President fired, so the CEO of Cooper Health (and co-chair of CFP) told the CFP CEO and President that they had to go meet with Philip Norcross about the deal, (Pa24-25);
- At the meeting, Philip Norcross told CFP's CEO and President they should turn the deal over to an Enterprise-selected investor (with whom George Norcross had a financial relationship), itself an implicit threat, (Pa25-26);
- When the CFP CEO nevertheless sought to work with KPG/MC, he learned that Philip Norcross was angry about it and was told by Philip Norcross that he was "not allowed" to do so, "in a manner that CFP CEO-1 took as a threat," (Pa27-28).
- When George Norcross later "wanted to move people around in Camden" to obtain a spot for Redd on the Rutgers-Rowan Board and thus sought to have CFP's CEO resign to open up his job, CC-1 told CFP's CEO that if he did not resign, "they" would make something up about him to have him terminated for cause, (Pa6-7, 69-70).

In short, the grand jury validly charged defendants not only with agreeing to violate provisions of subsection (g) and subdivision (a)(7), but also with agreeing to achieve the relevant objects through threats to inflict reputational and governmental harms under subsections (c)-(d) and subdivisions (a)(3)-(4).

C. In Holding To The Contrary, The Trial Court Both Misconstrued And Misapplied Extortion And Coercion Law.

1. The court collapsed its analysis of what constitutes a threat into a single inquiry tethered to business disputes and this Court's interpretation of N.J.S.A. 2C:20-5(g), despite acknowledging that the Indictment charged threats under

other subsections of N.J.S.A. 2C:20-5 (and N.J.S.A. 2C:13-5) as well. See (Pa157-60). That use of economic “hard bargaining” case law was mistaken.

Roth, on which the trial court relied, involved a defendant who threatened to move to set aside a sheriff’s sale for a property to which he had no other connection, unless the bidder paid him off. 289 N.J. Super. at 155. A grand jury charged that conduct as extortionate under N.J.S.A. 2C:20-5(g)—the law’s “catch-all provision”—and a petit jury convicted. 289 N.J. Super. at 155, 159. On appeal, this Court rejected Roth’s argument that his threat was not extortionate, even though the 1971 Commentary specifically identified a threat “to sue” as a type of “menace which ought not to be included” in the statute’s sweep. 1971 Commentary at 227; see Roth, 289 N.J. Super. at 161. In doing so, it reasoned that the 1971 Commentary could not have meant to “merely require[] a threat to assume the guise of a lawsuit to bypass the statute’s mandate,” and concluded that the drafters instead “intended an economic or commercial nexus to exist between the actor who utters these ‘protected’ threats and the underlying transaction.” Ibid. But that does not help defendants for three primary reasons: they are not charged solely under subsection (g); they are not charged with threatening to do something the 1971 Commentary expressly “protect[s]”; and no fair economic or commercial nexus exists here. Just as the charges against the defendant in Roth were valid, so too are these.

First, subsection (g) is a “catch-all” provision that comes at the end of the statute’s enumerated list. See Roth, 289 N.J. Super. at 159. It sweeps in any other threat to “[i]nfllict any other harm” that would not substantially benefit the threatener but would so harm a victim, N.J.S.A. 2C:20-5(g); accord N.J.S.A. 2C:13-5(a)(7). Such a provision reflects that “[a]ny particularization of criminal threats is bound to be incomplete,” 1971 Commentary at 229, yet at the same time triggers the concern that the law might “be read too expansively to cover” conduct that is “tolerated in commercial and personal life,” Roth 289 N.J. Super. at 158 n.4 (citation omitted)—explaining the need for a court to devise a test to separate the wheat from the chaff. But no such need arises when the Legislature itself has already enumerated the types of threats not to be “tolerated in commercial and personal life,” ibid.—as it did in subsections (c) and (d). Put simply, Roth was solving a problem unique to subsection (g) cases and the risks they pose to “accepted economic bargaining,” id. at 161, whereas defendants are also charged under subsections (c) and (d)—provisions not at issue in Roth, and in which the Legislature has already spelled out what is off-limits.

Second, Roth was also solving that problem in the face of charged conduct that the 1971 Commentary had expressly approved. As noted, the 1971 Commentary itself listed certain “menaces which ought not to be” deemed extortionate threats. Id. at 227. These non-criminal “menaces” centered on

various commercial or property-based disputes, such as threatening “to breach a contract,” “to infringe a patent or trademark,” “to change a will”—or, importantly, to do what Roth did: threatening “to sue.” Ibid. Roth thus confronted a need to harmonize the 1971 Commentary’s recognition that such behaviors must typically be tolerated “as an incident to free bargaining,” id. at 227-28, with the fact that Roth’s conduct seemed far-afield from the purpose behind these exceptions. Its solution was its “economic or commercial nexus” test. Roth, 289 N.J. Super. at 162. But just as that test cannot support facial dismissal where, as here, subsections (c) and (d) are also at stake, the reason for creating that test is also not implicated, because no conflict exists between the conduct charged—threatening to inflict reputational, governmental, and economic harm through actions that are not (unlike threatening to sue) described by the Commentary as “[f]or the most part” permissibly “incident to free bargaining.” See id. at 161 (quoting 1971 Commentary at 227-28).

Third, and regardless, the trial court erred in applying Roth’s test. There is no valid economic nexus between the kinds of harms the grand jury alleged—which expressly extended beyond one property to using governmental leverage to pursue multiple “point[s] of attack on [Developer-1],” e.g., (Pa59, 72-76), as well as CFP CEO’s job and reputation. The trial court was similarly wrong to find an economic nexus simply because defendants had the “wherewithal” to

develop the property they sought and were generally involved in Camden development, (Pa163); extortion is about abuse of impermissible leverage, see supra at 47-52, not a lack of resources or a general connection to a city or its commerce. And the court’s having inferred alternative narratives—for example, that this was “a steel cage brawl between two heavyweights,” and that “Developer-1 handle[d] himself ably and gives as good as he gets,” (Pa160-61)—again reinforces the flaws of this dismissal. In sum, the charges under N.J.S.A. 2C:20-5(g) and N.J.S.A. 2C:13-5(a)(7) were proper, in addition to the more specific charges under subsections (c)-(d) and subdivisions (a)(3)-(4).

2. Nor is related “hard bargaining” case law, (Pa171-72, 190-91), to the contrary. There is indeed an exception for “hard bargaining” set out in Viacom International v. Icahn, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), aff’d on other grounds, 946 F.2d 998 (2d Cir. 1991), but none of these cases applying these principles has ever done so to allegations like those in the Indictment—least of all where control over the government is being leveraged as a threat. Here, the trial court instead made two core errors. First, “hard bargaining” applies only to purely economic pressure, but defendants are not alleged to have used purely economic leverage. Second, as to the L3 Complex conspiracies, they involved no negotiations between defendants and the victims at all.

Start with the cornerstone of “hard bargaining” case law, Viacom.

Viacom centered on a practice known as “greenmail,” in which a prominent shareholder amasses stock and then threatens a corporate takeover unless the company buys him out at a premium. 747 F. Supp. at 211. In assessing whether such conduct, which was not “inherently unlawful,” ibid., could be extortion, the federal court contrasted a “hard-bargaining scenario”—in which “the alleged victim has no pre-existing right to pursue his business interests free of the fear he is quelling” by giving up his property—from “an extortion scenario,” in which he is entitled to go about his business free of such fear. Id. at 213. And because public corporations are not entitled to list and sell their stock to investors on the open market free of the fear that a shareholder will amass a large quantity of stock and threaten a takeover—indeed, they “are subject to such threats on a regular basis”—the greenmail scheme was not extortionate. Id. at 214. Had this powerful shareholder instead threatened that, without a hefty buyout, he would have used his control over City Hall to freeze Viacom out of the New York City media market, the case doubtless would have come out the other way. See ibid.; see also United States v. Tobin, 155 F.3d 636, 640 (3d Cir. 1998) (“The caselaw focuses on whether the victim of the extortionate activity had a preexisting right to be free from the threats invoked[.]”).

Viacom, in other words, offers “a rule only for a very narrow subset of the potential universe of extortion cases: one involving the accusation of the

wrongful use of economic fear where two private parties have engaged in a mutually beneficial exchange of property.” Brokerage Concepts v. United Healthcare, 140 F.3d 494, 503 (3d Cir. 1998). In other words, “hard bargaining” presumes that the party exerting pressure is using lawful leverage—pushing for favorable terms using market power, competition, or business strategy. The facts alleged here, by contrast, extend far beyond that narrow remit. The Indictment alleges that defendants did more than simply threaten to exert a type of economic pressure to which all businesspeople are subject—it alleges that they threatened to impose reputational harm (a non-economic harm that has never been included in the “hard bargaining” framework), see (Pa4, 6-7, 39, 57, 61-62, 70), and to use their control over government to deprive their victims of “a level playing field” and cause them to “forfeit any potential business opportunity” in the entire city of Camden in the first place, see Collins, 78 F.3d at 1030; supra at 53-58. And while that threatened harm may have been useful because of its economic effect, that does not imply that it was “inherently legitimate.” United States v. Sturm, 870 F.2d 769, 773 (1st Cir. 1989). Instead, “the coercive element [was] provided by the office itself”—an impermissible type of leverage. See Evans v. United States, 504 U.S. 255, 266 (1992).

Accordingly, courts have never applied the hard-bargaining exception in “level playing field” cases like in Collins, where a threat to cause harm through

government action or inaction was at issue. 78 F.3d at 1030 (rejecting challenge where governor’s husband conditioned consideration for state contracts on private payments); see also Edwards, 303 F.3d at 635-37 (rejecting challenge where governor’s associate conditioned “right to compete” for casino license on payments); Rashad, 687 F.3d at 642-43 (rejecting challenge where developer’s refusal to pay would cause loss of any “right to compete at all” for projects). Rather, greenmail cases like Viacom and public-corruption cases like Collins are (in the federal Hobbs Act context, charged here as a racketeering predicate) simply opposite sides of the same coin, “striking at the same principle”: where the two sides are engaged in economic grappling on a “level playing field,” there is no extortion; where one is threatening to deprive the other of a level playing field through its control of the government in the first place, there is. See Albertson, 971 F. Supp. at 845, summarily aff’d, 156 F.3d 1225. And here, the grand jury, after hearing voluminous evidence from sources familiar with the underlying context, charged defendants with agreeing to threaten to deny victims like Developer-1 a level playing field in order to obtain his property.¹⁹

The trial court thus erred in treating the Indictment as if its extortion and coercion conspiracy charges could be resolved simply by reference to case law

¹⁹ Whether that is what defendants actually agreed and intended, of course, is a question of fact. See supra at 29-30 & n.4. At this stage, the question is at most whether doing so is a prima facie crime. The answer is simple: it is.

concerning N.J.S.A. 2C:20-5(g) and “hard bargaining” cases. While the charges under N.J.S.A. 2C:20-5(g) would alone be sufficient, see supra at 54-56, 62-65, the charges under subsections (c) and (d)—and for the same reasons N.J.S.A. 2C:13-5(a)(3)-(4)—are entirely mismatched with that analysis. Yet despite acknowledging these alternate statutory bases in passing, (Pa157), the opinion does not analyze them. (Pa85, 88, 93, 97-98, 171-72, 190). And the oversight was consequential, given how closely those particular provisions fit the grand jury’s allegations. In short, while defendants may incorrectly believe that wielding the threat of reputational and governmental harm to extract property or submission from others permissibly “occurs every day in politics and business,” see (Pa191), New Jersey law, like the Hobbs Act, makes clear it is unlawful.²⁰

3. Even leaving aside the Developer-1-related charges, the court erred in dismissing the L3 Complex charges for a more foundational reason: there was no “negotiation” between the Enterprise and CFP on the L3 deal in the first place, let alone any “hard bargaining.” See (Pa56-57). The Indictment alleges

²⁰ At one point, the trial court seemed to dismiss the relevance of N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4), opining that it is “not wrongful to allow your adversaries to fear your reputation for using political power.” (Pa171-72). That may be true of the state-law crimes—though not the Hobbs Act, see supra at 51 n.15—if what the court pictured was purely passive acquiescence. But the grand jury charged defendants with agreeing to engage in the active instillation of fear, which numerous authorities—including the text of N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4)—make clear is wrongful. So to the extent the trial court meant that even that is lawful, it simply misunderstood New Jersey law.

that George and Philip Norcross wanted CFP to partner with an entity the nonprofit did not want to partner with, and that the relevant defendants frightened CFP's leadership into giving up its right to do so, at much greater benefit to the nonprofit, through reasonable fear of governmental and reputational harm. (Pa26-30); supra at 9-13. Whatever the trial court may have (improperly) concluded about the facts involving Developer-1 (without the benefit of the grand-jury materials), it certainly never inferred that CFP and its CEO were "heavyweights" in a "steel cage brawl," able to "give[] as good as [they] get." (Pa161-62). Nor was there any "natural economic or commercial nexus" between the means employed and whatever interest Enterprise members may have had in this specific deal. See Roth, 289 N.J. Super. at 161.²¹ And that CFP's CEO "ultimately made his choice," (Pa170), is something that can be said of any extortion victim, including the small business owner who pays protection money to be left alone, e.g., Clemente, 640 F.2d at 1072-75. In short, even accepting the trial court's misimpressions about the law of hard bargaining, those impressions would have nothing to say about the L3 Complex charges.

4. Finally, the trial court erred in concluding that the Indictment failed to

²¹ Rather, those means included threats that CFP's CEO would have reasonably understood, in context, to include threats to use City government to target the organization's funding and the CEO's own job and reputation. And that reasonable understanding was corroborated by the steps the Enterprise indeed took when it wanted to "move people around in Camden." See supra at 58.

validly charge financial facilitation of criminal activity (Counts 5-10) and misconduct by a corporate official (Counts 11-12), based solely on its rejection of Counts 2-4. (Pa155-56, 173-74). If this Court reaches the issue and does not simply reverse and remand for a some-evidence motion, see supra Point I.A, it should reverse the court’s holding as to Counts 5-12 for the reasons just given.

POINT III

THE TRIAL COURT’S COUNT- AND
DEFENDANT-SPECIFIC HOLDINGS WERE
ALSO IN ERROR. (Pa174-211).

While Point I suffices to dispose of this appeal, and while the erroneous threats holding discussed in Point II is relevant to the validity of all charges, see (Pa155-56, 173-74), the trial court made other holdings that would justify dismissing only some counts or defendants. Because those holdings were also in error, the Indictment should be reinstated in full.

A. The Indictment Validly Alleges A Conspiracy To Engage In A Racketeering Enterprise. (Pa174-200).

Count 1 properly charges that Defendants violated N.J.S.A. 2C:41-2(d) by conspiring to violate N.J.S.A. 2C:41-2(c)—that is, essentially, by agreeing that at least one of them “would engage in conduct which would constitute the crime of racketeering” and at least one of them “would aid in the planning, solicitation and commission of the crime,” (Pa81). The trial court’s holding that the grand jury failed to allege an “enterprise”—an element of the substantive offense—

misapplied governing precedent and should also be reversed.

“[M]odeled upon its federal counterpart,” subsection (d) of New Jersey’s RICO statute, N.J.S.A. 2C:41-2, makes it a crime to conspire (as defined in New Jersey’s general conspiracy statute, N.J.S.A. 2C:5-2), to violate any provision of the NJ RICO statute. State v. Cagno, 211 N.J. 488, 508 (2012); see N.J.S.A. 2C:41-2(d). One of those provisions, subsection (c), prohibits conducting or participating in, directly or indirectly, the affairs of any commercial “enterprise ... through a pattern of racketeering activity.” One element of this substantive RICO offense is “the existence of an enterprise.” State v. Ball, 141 N.J. 142, 176 (1995). And for the crime of RICO conspiracy to be committed, of course, the State need not “prove that the alleged enterprise actually existed,” but rather that the conspirators agreed that one would be created. United States v. Harris, 695 F.3d 1125, 1133 (10th Cir. 2012); see Salinas v. United States, 522 U.S. 52, 65 (1997) (“It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil[.]”).

The term “enterprise” is capacious, including “any individual, ... association, or other legal entity, any union or group of individuals associated in fact although not a legal entity,” whether “licit” or “illicit.” N.J.S.A. 2C:41-1(c). That reflects the Legislature’s intent to “encompass more than traditional organized-crime families” such as the Mafia and to “cover any situation in which

a few persons exerted significant control over the social and political fabric of a community through illicit profits.” Ball, 141 N.J. at 161 & n.2 (citing legislative history). The term is thus “to be construed broadly.” Id. at 160-61. Federal law has similarly recognized myriad RICO enterprises distinct from traditional, Mafia-type organized crime—including enterprises involving local officials. See, e.g., Boyle v. United States, 556 U.S. 938, 944 (2009); United States v. Cianci, 378 F.3d 71, 78, 79 (1st Cir. 2004) (finding enterprise composed of a mayor, city officials, and a member of a private towing organization); United States v. Ganim, 225 F. Supp. 2d 145, 160-61 (D. Conn. 2002) (finding association-in-fact composed of Office of the Mayor and several individuals).

Further, the “enterprise” element “may be satisfied if there exists a group of people, no matter how loosely associated, whose existence or association provides or implements the common purpose of committing two or more predicate acts.” Ball, 141 N.J. at 160. An enterprise thus “need not feature an ascertainable structure,” but must have some “organization.” Id. at 162. And “a defendant only needs to possess ‘some minimal knowledge’ of ‘the general nature of the racketeering enterprise[.]’” Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., L.L.C., 450 N.J. Super. 1, 39 (App. Div. 2017) (quoting Ball, 141 N.J. at 176)). A defendant “need not know the identities of all the conspirators, nor need a defendant know all the details of the enterprise.” Ball,

141 N.J. at 176. Thus, in Ball, this Court found—in the context of a sufficiency-of-the-evidence appeal—that an enterprise existed because defendants shared a common purpose, even though they were “a somewhat disorganized group of individuals,” with “no real ‘leader,’” who “did not even seem to like each other, and were often engaged in double-dealing and back-stabbing.” 268 N.J. Super. at 107-08. Our Supreme Court affirmed that finding. Ball, 141 N.J. at 183-84; see also Cianci, 378 F.3d at 79, 85 (similarly rejecting sufficiency-of-the-evidence appeal and holding city officials and a businessman formed an association-in-fact RICO enterprise given delineation of roles and the ways in which they used municipal “entities that they controlled” to further their goals).

Here, Defendants were alleged to have agreed to operate together within a structure much more organized than in Ball, and to share common purposes as Ball requires. The Indictment alleges a conspiracy to form—and, indeed, the formation of—an association-in-fact rife with interpersonal relationships and common interests. George Norcross was indisputably the Enterprise’s leader, dictating its priorities and agenda. (Pa83). Philip Norcross acted as George’s proxy, delivering George’s orders both inside and outside the Enterprise. See, e.g., (Pa4-5, 15-16, 20, 22, 25, 28). Redd was Mayor of Camden—the most powerful official in the City—allowing the Enterprise to exercise direct “control of the Camden government,” (Pa61), and use it to their advantage. See (Pa49-

50, 52-53). Tambussi was, inter alia, a legal expert, able to wield his expertise to the Enterprise's advantage, beyond the scope of lawful practice. See (Pa55-59, 62-63). O'Donnell and Brown were businessmen who, among other things, participated in plotting to use a municipal entity to file a condemnation action to gain leverage against or punish Developer-1, see (Pa58-60), supplied financial capital, and used their corporate entities to collect (and sell) the millions in tax credits at the heart of the conspiracy, (Pa50-64). In short, as in Ball, defendants agreed to work together in an "ongoing organization" that functioned "as a continuing unit for the common purpose of achieving the objectives of the enterprise[,]” including those in the Indictment. (Pa82-85).

The Indictment likewise demonstrates that defendants were associated in fact and worked toward unlawful (as well as lawful) common purposes. See, e.g., United States v. Starrett, 5 F.3d 1525, 1552 (11th Cir. 1995) (noting a "legitimate entity, with a purpose unrelated to criminal endeavors," can still be a RICO enterprise). As alleged, they identified waterfront property they wanted. (Pa16-17, 42-43). They coordinated with each other to formulate and convey threats to obtain the property in order to receive tax credits. (Pa30, 46-60). They concealed those activities in many ways. (Pa36-37, 62-63). These allegations reflect the division of tasks needed to achieve their shared purposes.

Finally, binding precedent makes clear that whether an enterprise exists

hinges on these considerations, and not whether a given defendant's acts were themselves criminal. Contra (Pa184, 188-91, 192-93, 198-200). As with general conspiracy, the RICO conspiracy statute "criminalizes an agreement that others will commit the substantive crime that is the objective of the conspiracy." Ball, 141 N.J. at 180; see also ibid. ("a defendant need not agree to commit personally at least two predicate acts"). A defendant may thus be convicted of RICO conspiracy if he "know[s] of, and agree[s] to, the general criminal objective of a jointly undertaken scheme," even if he did not agree to commit the acts himself. Cagno, 211 N.J. at 510; see also, e.g., Salinas, 522 U.S. at 65; Mayo, Lynch & Associates, Inc. v. Pollack, 351 N.J. Super. 486, 503-05 (App. Div. 2002). Thus, even if a given defendant's contributions were themselves non-criminal, those acts could still support the existence of an enterprise.

B. The Indictment Validly Alleges Official Misconduct. (Pa192-200).

Much that is true with respect to Count 13 has already been said with respect to other counts. To start, the trial court's dismissal of this count was partly based on its conclusion that the relevant conspiracy counts were invalid, so that conclusion should be reversed for any of the independent reasons given in Points I and II. Further, and relatedly, much of the trial court's analysis of Count 13 rested on an erroneous search for missing "evidence" that both applied an improper sufficiency-of-the-evidence test to the Indictment, see supra Point

I.A. and then, even in applying that analysis, flipped its duty to draw inferences in the State’s favor on its head, see supra Point I.B.²²

In any event, the trial court’s analysis contained several other errors that would also require reversal of its holding on Count 13. Under N.J.S.A. 2C:30-2(a), a public servant is properly charged with official misconduct when the charges allege (1) she committed “an act relating to [her] office;” (2) the act was unauthorized and she knew it was unauthorized; and (3) she did so with “purpose to obtain a benefit for [herself] or another.” The grand jury properly charged each of those elements. It charged Redd with affirmative, unauthorized acts relating to her office, including committing the conspiracy offenses charged in Counts 1-3, (Pa81-86), and, as part of these conspiracies:

- Through her chief of staff, instructing the CFP CEO to meet regularly with members of the Enterprise to ensure that CFP’s projects were pre-approved by George and Philip Norcross, and redirected CFP’s CEO to Philip Norcross when he came to her for help, (Pa22, 30), thus demonstrating the Enterprise’s governmental power to a victim;
- Cutting off communication with Developer-1 and ignoring his requests for help with the Radio Lofts, at the Enterprise’s direction (Pa49-50), thus demonstrating the Enterprise’s “control of the Camden government” to another victim, (Pa61);

²² Compare, e.g., (Pa199) (“There is no evidence of even a vague promise that Redd would be taken care of when her term ended.”), with (Pa6-7) (“The Norcross Enterprise did this, in part, to financially benefit [Redd]”); (Pa69) (alleging that “CC-1 told CFP CEO-1 in a phone conversation that [Redd] needed a place to go as her term as mayor was ending” and “was going to take the job” on the Rowan-Rutgers Board). See also (Pa195-200).

- Agreeing to use the Enterprise’s reputation for controlling local government to help intimidate and threaten those who held property interests that the Enterprise wanted to acquire, and to use the Enterprise’s control over government agencies to reward members and punish opponents (Pa83, 85); and
- Telling CFP’s CEO that his “job was in jeopardy” for resisting the Enterprise’s demands, (Pa30).

The grand jury alleged that Redd committed these acts “with the purpose to obtain a benefit for herself and another” (Pa109)—which she did indeed obtain for herself, when, as alleged, George Norcross arranged for her to take a lucrative position on the Rowan-Rutgers Board after her mayoral term ended, and for others when they obtained (and sold) the tax credits, (Pa77-80).

The trial court’s contrary rationales do not hold up. Initially, the court’s conclusion that Redd committed no unauthorized act cannot be squared with the point that using one’s public office to commit crimes is not authorized. See, e.g., State v. Hinds, 143 N.J. 540, 549 (1996) (officer committed official misconduct by “conspiring with a thief”); State v. Burnett, 245 N.J. Super. 99, 106 (App. Div. 1990) (officer committed official misconduct by stealing and possessing controlled substances). That alone should dispose of that element.

The court also erred in linking whether the acts were “discretionary” to whether they were “unauthorized.” (Pa198). After all, almost every decision by a defendant in an unauthorized-act official misconduct case under subsection (a) of N.J.S.A. 2C:30-2 is “discretionary”: a mayor who chooses to submit a

letter supporting the zoning application of a business that paid a bribe makes a “discretionary decision” to do so, but that does not make the act “authorized.” While the trial court may have conflated failure-to-act official misconduct cases under subsection (b) (not charged)—for which an official must have refrained from a nondiscretionary “duty,” Brady, 452 N.J. Super. at 163-64—the trial court cited no authority for incorporating a “non-discretionary duty” requirement into N.J.S.A. 2C:30-2(a), and the State is aware of none. Rather, when an official “commit[s] an act of malfeasance ... because of the opportunity afforded by [her] office,” that conduct “support[s] a conviction under N.J.S.A. 2C:30-2(a).” State v. Bullock, 136 N.J. 149, 157 (1994). Thus, whether Redd’s conduct involved “no non-discretionary duty,” (Pa198), is beside the point.²³

The court also erred in concluding that there were insufficient allegations that Redd acted with a purpose to benefit herself or another. First, though parts of its opinion stated the law correctly (Pa197-98, 200), the court at times improperly searched for facts establishing that Redd actually “received a benefit,” (Pa194-95, 200). This was a non sequitur for two reasons. First,

²³ If a duty is required, the court overlooked that Redd owed a duty to serve the public with good faith and integrity. See, e.g., Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 474-76 (1952); State v. Lore, 197 N.J. Super. 277, 282 (App. Div. 1984). But it is enough, if this Court reaches the issue, simply to confirm that the discretionary nature of Redd’s alleged conduct does not bear on the charge’s validity. See N.J.S.A. 2C:30-2(a).

receipt of a benefit is not an element; acting with purpose to obtain one suffices, and the Indictment alleges that. (Pa109-110). Second, the court appeared to assume that the grand jury needed to charge that Redd was seeking a benefit for herself, e.g., (Pa194-95, 199), but the statute is equally violated when an official seeks a benefit “for another,” N.J.S.A. 2C:30-2(a), and the Indictment alleges that as well, (Pa109-10), given the millions in tax credits at stake, (Pa77-80).

Finally, and again leaving aside the inherent flaws in weighing sufficiency and intent at this stage, the Indictment alleges sufficient facts about Redd’s intent. As to herself, as charged, the Enterprise “remove[d] the CEO of the nonprofit from his job through threats” and did so “in part, to financially benefit [Redd].” (Pa6-7). The grand jury likewise alleged that CC-1 told CFP’s CEO that he was being removed because Redd “needed a place to go.” (Pa69, 71-72). A more than fair inference from the allegations that Redd benefited from her participation is that she acted with purpose to do so.²⁴ And as to the other members, the allegations are straightforward: they secured millions in tax credits. (Pa77-80). Defendants may disagree that these were Redd’s subjective

²⁴ To the extent the court posited that Count 13 was suspect because others of the “handful” of people who benefited from the arcane legislative change that boosted Redd’s pension were perhaps not indicted, see (Pa199), that is of course irrelevant to the validity of the charge. In any event, the reason others were not charged is plainly that the State is not aware of any such person who participated in the kind of unlawful conduct alleged here.

purposes, but again, that is a question of fact that cannot be resolved at this stage. See supra at 29-30 & n.4. In short, Count 13 was validly charged.

C. The Charges Against Tambussi And Philip Norcross Do Not Trench On The Practice Of Law Or Protected Petitioning. (Pa185-92).

The trial court also erred in ruling that Tambussi and Philip Norcross could not have engaged in a RICO conspiracy because their contributions, in the court's view, came in the form of lawyering and lobbying. Because the court's analysis of these two issues as to these defendants was largely overlapping, e.g., (Pa191), this section addresses them together.

Begin with the law. Both lawyering and petitioning are valuable activities in a democratic society, and they rightly receive meaningful protection. But neither operates as an immunity. Rather, "an individual's status as an attorney engaged in litigation-related conduct does not provide protection from prosecution for criminal conduct." United States v. Cueto, 151 F.3d 620, 631 (7th Cir. 1998) (upholding lawyer's conviction for obstruction stemming from "litigated-related conduct" that "exceeded the scope of lawful lawyering"); see also, e.g., United States v. Aguilar, 515 U.S. 593, 599 (1995); Matter of Goldberg, 105 N.J. 278, 282 (1987) (finding criminal misconduct "even more egregious" when the attorney's "criminal deeds directly involve his law practice."); In re Selser, 15 N.J. 393, 407 (1954) (discussing crime-fraud exception to attorney-client privilege). That is equally true when it comes to

entering a criminal enterprise. In United States v. Bergrin, 650 F.3d 257 (3d Cir. 2011), for example, the Third Circuit reinstated an indictment charging a lawyer with racketeering, in part because most of the predicate acts alleged were linked to his law practice. Id. at 270; see id. at 272 (criticizing trial court’s failure to account for “allegation that all the members of the enterprise benefited from Bergrin’s status as a licensed attorney because ‘the special privileges granted to licensed attorneys’ allowed them ‘to engage in and assist Client Criminals to engage in criminal activities’”). And even assuming litigation statements may be immune from civil liability, see (Pa207), that has no bearing on this criminal indictment. See also Lobiondo v. Schwartz, 199 N.J. 62 (2009) (establishing protections in “unique context” of malicious-use-of-process tort cases but creating no protection from criminal grand jury indictment)

So too with petitioning the government. The trial court cited Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), (Pa190, 192), but that case stands for the proposition that people and entities can work to influence policy to serve their own anticompetitive economic interests without violating antitrust laws. See id. at 136; see also Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972). This Court has meanwhile applied the doctrine to immunize individuals who legitimately “petition the government for redress” in other contexts from

“certain civil actions.” Structure Bldg. Corp. v. Abella, 377 N.J. Super. 467, 471 (App. Div. 2005). But the doctrine does not “immunize activities said to violate the criminal laws.” United States v. Goldberg, 906 F. Supp. 58, 63-64 (D. Mass. 1995); see also, e.g., Columbia v. Omni Outdoor Advert., Inc., 499 U.S. 365, 378-79 (1991) (explaining that antitrust liability is not necessary in these contexts because criminal statutes exist and citing the Hobbs Act); Allied Tube & Conduit Co. v. Indian Head, Inc., 486 U.S. 492, 504 (1988) (“[O]ne could imagine situations where the most effective means of influencing government officials is bribery, and we have never suggested that that kind of attempt to influence the government merits protection.”); Monarch Entm’t Bureau, Inc. v. N.J. Highway Auth., 715 F. Supp. 1290, 1303 (D.N.J. 1989) (similar). Advocates have no more right to commit crimes than anyone else.

Here, the grand jury alleged that Tambussi and Philip Norcross committed crimes—including by conspiring to use the tools of government to achieve illicit ends. Take the eminent-domain scheme. The Indictment did not charge Tambussi with crimes for simply for doing legal research and discussing a strategy to condemn Developer-1’s view easement. Contra (Pa186). Rather, it charged him (and Philip Norcross) with having “agreed to cause the CRA” to take steps to condemn Developer-1’s view easement as part of the Enterprise’s broader extortion and coercion efforts. (Pa50). That agreement to help wield a

public entity to advance the Enterprise’s private, illicit purposes is what crossed the line. Our Legislature made that clear when it enacted N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4) (barring threats to cause a public official to take or withhold action), see supra at 49-51, which naturally would include a lawyer causing an official to begin the process of exercising the sovereign power of eminent domain in order to “deliver a body blow to an adversary,” (Pa76).

Likewise, while the CRA was a client of Tambussi’s firm, (Pa50-51), that hardly immunizes the alleged conduct. (Pa191-92). To start, it in no way establishes that Tambussi himself was on the relevant conference call among defendants as the CRA’s lawyer, let alone for a benign purpose—if he himself, rather than a law partner, even represented the CRA at that time in the first place. Cf. (Pa138) (calling the CRA “Tambussi’s client,” despite absence of support in the Indictment). And in any event, that Tambussi may have had access to the CRA through his firm does not mean he could not use that power illegally—just as a police officer permitted to make arrests is not immune from extortion liability if he threatens to arrest “unless the arrestee pays him money.” 1971 Commentary at 228; see N.J.S.A. 2C:20-5(d).²⁵

²⁵ As for the pretrial motion Tambussi filed seeking to bar any reference to George or Philip Norcross in litigation over the Radio Lofts site, see (Pa62-63), the trial court misinterpreted the role of these allegations in the Indictment, see (Pa187-89). The Indictment does not allege these acts were themselves

The trial court likewise misperceived the relevance of Phillip Norcross’s lobbying activities and representation of Cooper Hospital. (Pa191-92). As an initial matter, the Indictment has little to say about Philip Norcross engaging in actual lawyering at all—so concerns about safeguarding the practice of law would at most justify affirming dismissal as to Tambussi. Moreover, as to petitioning activity, no one disputes that Philip Norcross had a “right to craft proposed EOA legislation and to communicate with the Senate President,” (Pa190)—these acts simply illustrate the breadth of the Enterprise’s power and reinforce the allegation that the tax credits were a longstanding objective, (Pa82-85). Rather, the grand jury charged Philip Norcross with, inter alia, demanding that CFP partner with the Enterprise’s preferred developer through an extortionate threat, (Pa25-26); directing Redd to ignore Developer-1’s phone calls as a way to pressure Developer-1, (Pa49-50); and causing Camden officials to slow down approval of Developer-1’s PILOT-transfer agreement, (Pa73-74). And importantly, Philip Norcross is not charged with having asked the government to take actions—he is charged, like the other defendants, with having controlled the government, and having agreed to wield that power to “cause an official to take or withhold action” to extortionate and coercive ends.

criminal, but rather that they showed continued coordination among the Enterprise, which in turn goes to timeliness. See infra at 92-94.

See N.J.S.A. 2C:20-5(d); N.J.S.A. 2C:13-5(a)(4). There is nothing constitutionally protected about doing so, see supra at 53-55 (discussing Collins and other “level playing field” cases), and precedent protecting the right to make genuine requests is simply inapposite.

D. Each Charge Is Facially Timely. (Pa200-211).

Finally, the Indictment properly alleges that each crime charged occurred within or pursued objectives extending into the applicable limitations period. To the extent the trial court doubted that these were in fact the Enterprise’s objectives or that they in fact extended into the limitations period, these were likewise issues that could only await a some-evidence motion.

Under New Jersey’s criminal statute of limitations, “[a] prosecution for a crime” generally “must be commenced within five years after [the crime] is committed.” N.J.S.A. 2C:1-6(b)(1). For official misconduct, the limit is seven years. N.J.S.A. 2C:1-6(b)(3). The grand jury returned this Indictment on June 13, 2024, so the relevant cutoffs are June 13, 2019, and June 13, 2017, respectively. N.J.S.A. 2C:1-6(d). The trial court erred in finding that the Indictment, on its face, did not timely charge that they were met.

1. The RICO Conspiracy Charge Is Timely.

Begin with RICO conspiracy (Count 1). (Pa81-86). The Indictment states that this conspiracy, far from ending before June 2019, continued “[f]rom at

least approximately 2012 to the present.” (Pa1, 37, 81). Again, the simple (and correct) legal answer is that this defect alone disposes of this facial motion—if the grand jury’s factual allegation that defendants entered into a racketeering conspiracy that has continued into the present day is accepted as true, that renders it timely. Whether the evidence presented supports that prima facie case is a question for a some-evidence motion. See supra Point I.A.

Binding precedent confirms that conclusion. A “factual dispute concerning the proper computation of the statute of limitations ‘is for the jury to decide[.]’” W.S.B., 453 N.J. Super. at 236 (citation omitted); see also, e.g., Pressler & Verniero, Current N.J. Court Rules, cmt. 3.7 on R. 3:10-2 (2024) (“If there is a dispute as to whether the statute has run the issue must be decided by the jury following proofs adduced during trial.” (citing N.J.S.A. 2C:1-14(h)(d)); United States v. Kozeny, 493 F. Supp. 2d 693, 715 (S.D.N.Y. 2007) (observing that whether a “conspiratorial agreement was in fact as broad as the Indictment alleges, whether each defendant in fact subscribed to that agreement, and if and when the conspiracy ended are issues for the jury”), aff’d, 541 F.3d 166 (2d Cir. 2008); United States v. Carnesi, 461 F. Supp. 2d 97, 98-99 (E.D.N.Y. 2006) (denying facial limitations challenge to money-laundering-conspiracy charge because indictment alleged conspiracy continued during limitations period). The trial court cited no authority to the contrary, and the State is aware of none.

Instead, the trial court incorrectly concluded that “the alleged time frame of the enterprise is not a fact” but an “allegation, assertion, and ultimately, a conclusion” and that this allowed a facial dismissal. See (Pa202) (cleaned up). But as the precedent just cited confirms, the “alleged time frame” of a racketeering conspiracy (or any crime) is indeed a factual “allegation”—which therefore can be challenged via a pretrial some-evidence motion, or at trial before the fact-finder, or post-judgment through a sufficiency challenge. At this facial stage, by contrast, the court was indeed required to accept this allegation as true. This core error infected the court’s timeliness rulings as to each of Counts 5-12, (Pa209), confirming the need for reversal on each. And the same flaw also requires reversal of the court’s ruling as to Count 13, though the court’s reasoning differed somewhat. See infra Point III.D.4 (addressing this Count).

Even under the trial court’s flawed approach, its analysis was misguided. The court listed various alleged wrongful acts and reasoned that because each occurred outside the limitations period, the Indictment was facially invalid. (Pa202-03). But RICO conspiracy is a continuing offense, and even at trial the State is “not obligated to present direct evidence of an overt act” within the limitations period. Cagno, 211 N.J. at 511; see N.J.S.A. 2C:41-2(d). Instead, “[b]ased upon the continuing nature of a RICO enterprise, ‘the statute of limitations for RICO conspiracy should not begin to run until the

accomplishment or abandonment of the objectives of the conspiracy.” Cagno, 211 N.J. at 509-10 (citation omitted); see also, e.g., United States v. Jimenez, 96 F.4th 317, 322 (2d Cir. 2024). So even continuing to pursue the conspiracy’s objectives through lawful means suffices to extend it into the limitations period.

Further, the grand jury alleged in considerable detail how defendants continued to pursue their shared objectives into the limitations period. The RICO conspiracy (like the general extortion and coercion conspiracies discussed below, see infra Point III.D.2) embraced at least three objectives that continued into the limitations period: (1) enriching defendants and obtaining effectively free property through a limited series of tax credits; (2) concealing the illegal activities of the Enterprise; and (3) promoting compliance with the Enterprise’s demands by intimidating and retaliating against those who defied them. (Pa84-85). And the Indictment supports each with specific allegations of continued conduct past June 2019, as discussed below. So even accepting the faulty premise that the grand jury’s factual finding that the conspiracy continued into the limitations period was not enough, Count 1 is facially timely.

a. Tax Credits Objective.

A central objective of the charged RICO conspiracy was “[o]btaining Grow NJ and ERG tax credits,” and then “[u]sing the tax credits ... so that costs expended in planning, constructing, or occupying [criminally obtained] property

would be offset by the ... tax credits.” (Pa15, 84). After all, a person cannot exploit tax credits for redeveloping a city waterfront if one does not have waterfront property to develop. Firms controlled by defendants received and sold these tax credits throughout 2022 and 2023. See (Pa4, 5-6, 33, 64-69). These sales themselves were crimes alleged by the grand jury—confirming the validity of the charge of a continuing conspiracy, and independently justifying the timeliness of those charges (Counts 5-12), see infra at 95-97. Because defendants are alleged to have continued to execute this scheme after June 2019, the conspiracy charge is timely. See Cagno, 211 N.J. at 509-10.²⁶

The court rejected this conclusion by relying on an exception outlined in two federal cases, United States v. Grimm, 738 F.3d 498, 503 (2d Cir. 2013), and United States v. Doherty, 867 F.2d 47, 61 (1st Cir. 1989), but its reliance on this exception was misplaced. To start, the Grimm/Doherty exception is just that—an exception—and courts instead overwhelmingly apply the “ordinary rule” that a conspiracy for economic gain continues until the accomplishment or abandonment of that objective. E.g., United States v. Rutigliano, 790 F.3d 389,

²⁶ There is no “legal significance,” as the trial court essentially acknowledged, to the fact that credits were received and sold by uncharged businesses controlled by defendants, rather than directly by defendants themselves. (Pa206). The Indictment alleges that defendants controlled these entities for criminal ends, (Pa105-108), and details how these efforts yielded substantial benefits, including millions of dollars, to defendants personally, (Pa77-80).

400 (2d Cir. 2015); United States v. McNair, 605 F.3d 1152, 1214 (11th Cir. 2010); United States v. Fitzpatrick, 892 F.2d 162, 167-68 (1st Cir. 1989). For instance, a conspiracy to rig a bidding process continues until receipt of the final payment for the contract, United States v. Girard, 744 F.2d 1170, 1172-73 (5th Cir. 1984); a conspiracy to commit insurance fraud continues until a conspirator receives his promised payout, United States v. Mennuti, 679 F.2d 1032, 1034-35 (2d Cir. 1982); and a conspiracy to commit securities fraud continues until the conspirators achieve their objective of selling the securities at an artificially inflated market price, United States v. Salmonese, 352 F.3d 608, 615-17 (2d Cir. 2003). The rule “makes a good deal of sense,” because “the receipt of such [economic] benefits is the sole reason the conspirators become involved in the scheme.” Id. at 615 (citation omitted). And here, the grand jury validly alleged that securing such benefits was the conspiracy’s central objective, enabling them to obtain (and sell) the tax credits over the 10-year period they themselves chose when shaping that very legislation. (Pa15-16, 82-84). In short, both Cagno, which does not recognize any exception to the rule for continuing conspiracies, and the weight of persuasive precedent on conspiracies aimed at economic objectives—not to mention the limited nature of proper facial review at this stage—all independently confirm that the Indictment is facially timely.

The trial court went further astray, meanwhile, by reasoning that the

State’s argument would mean that “no conspiracy would end until every conspirator no longer retained economic benefit no matter how residual.” (Pa205) (quoting United States v. Kang, 715 F. Supp. 2d 657, 679-80 (D.S.C. 2010)). Not so, and many decisions applying the ordinary rule—including Girard, Mennuti, and Salmonese—have distinguished a conspiracy in which conspirators unlawfully obtain property to enable a later payoff that is their true objective from that kind of boundless liability. Though Cagno, a RICO conspiracy case, acknowledges no exceptions at all to the rule for continuing offenses—and the State maintains that a RICO conspiracy charge is timely so long as the conspiracy still exists—this Court need only conclude that collecting a delimited series of tax credits over a period of years the conspirators themselves shaped falls under the ordinary rule in order to reverse.

The trial court also overread and misapplied the Grimm/Doherty exception on its own terms. The exception holds that a conspiracy for economic gain does not continue until the accomplishment of those objectives if those objectives are achieved through the receipt of “serial payments” that are “lengthy, indefinite, ordinary, ... noncriminal and unilateral.” Grimm, 738 F.3d at 503; see Doherty, 867 F.2d at 61. Thus, in Doherty, the First Circuit rejected the idea that a conspiracy to unlawfully obtain a promotion continued for as long as the conspirator received the higher salary from the promotion. 867 F.2d at

62. And in Grimm, a divided panel of the Second Circuit held that a conspiracy to rig bids for interest rates on loans did not continue for as long as unindicted co-conspirators paid interest on those loans. 738 F.3d at 502-04. But Doherty and Grimm came to those conclusions in interpreting the statute of limitations for the general federal conspiracy statute, see 18 U.S.C. §§ 371, 3282—not RICO conspiracy, as applied in Cagno and charged in Count 1. See Doherty, 867 F.2d at 60-61; Grimm, 738 F.3d at 501. That makes a difference, because a federal general conspiracy requires an “overt act” within the limitations period, Doherty, 867 F.2d at 62; Grimm, 738 F.3d at 504, whereas RICO conspiracy does not, see N.J.S.A. 2C:41-2; N.J.S.A. 2C:5-2(d); Cagno, 211 N.J. at 509-11. So the Doherty/Grimm exception is statutorily inapt as applied to Count 1.²⁷

In any event, the exception is also inapt as applied to these allegations. First, the wrongful receipt and sale of the tax credits alleged is not “indefinite,” Grimm, 738 F.3d at 503; defendants’ eligibility for the tax credits ends in six years. (Pa66). Second, achieving this economic objective requires more than a passive “unilateral” act. Grimm, 738 F.3d at 503. Unlike the salary payments in Doherty, 867 F.2d at 62, or the interest payments in Grimm, 738 F.3d at 502-

²⁷ To be clear, it is also inapt as to the first- and second-degree crimes defendants are charged with conspiring to commit in the other Counts, since New Jersey’s general conspiracy law expressly does not require an “overt act” for first- and second-degree crimes. See N.J.S.A. 2C:5-2(d); infra at 94-95 & n.28.

04, defendants, through the entities they are alleged to control and use for these purposes, must apply annually for the tax credits, (Pa14), and make specific showings, (Pa14-15). Third, the length of this program is not random—it is a structure that defendants themselves allegedly shaped. (Pa17-19); see United States v. Derman, 23 F. Supp. 2d 95, 102 (D. Mass. 1998) (district court, bound by Doherty, distinguishing it where economic benefits were “part and parcel of the conspiracy”). And fourth, to avoid the risk that the State will try to claw back the credits, they are also alleged to have worked together to conceal that the credits stemmed from criminal activity. (Pa84-85); see infra Point III.D.1.b. Thus, unlike the period in which salary payments were passively received in Doherty, or in which interest payments were passively made after the bid-rigging was over in Grimm, here there are “further [conspiratorial] objectives or cooperative activity.” Contrast Doherty, 867 F.2d at 62; contrast also Grimm, 738 F.3d at 502-04. In short, even if the Doherty/Grimm exception applied to this NJ RICO conspiracy charge despite Cagno, and even if it were proper to make factual findings at this stage, Count 1 is still timely given that the receipt and sale of the tax credits were neither “indefinite” nor “unilateral,” see Grimm, 738 F.3d at 503; other objectives and conspiratorial activity also continued; and this limited series of tax credits was shaped by defendants themselves.

Finally, to the extent the judge concluded that the RICO conspiracy does

not extend into the limitations period because defendants' corporations did not act unlawfully in obtaining or selling the tax credits, (Pa204-05), that was also error. "The legal as well as the illegal aspects of an agreement are all part of a conspiracy to commit an illegal act for statute of limitations purposes." United States v. Helmich, 704 F.2d 547, 549 (11th Cir. 1983). And in any event, the receipt and sale of those tax credits is unlawful, because the credits, as charged, "derived from" defendants' conspiratorial and extortionate activity, N.J.S.A. 2C:21-25—they were "directly or indirectly from, maintained by or realized through" that activity. N.J.S.A. 2C:21-24; see (Pa99-104) (Counts 5-10); see also N.J.S.A. 2C:41-1(o) (financial facilitation is a RICO predicate offense); see supra Point II. The Enterprise, in short, was charged with continuing to commit RICO predicate crimes into the limitations period, much as if a ring of art thieves stole ten Rembrandts and sold off one per year through an LLC they created.

b. Concealment Objective.

The charged objectives of the RICO conspiracy also included "[c]oncealing, misrepresenting, and hiding the illegal operation of the Enterprise." (Pa84-85). Defendants engaged in alleged acts of concealment during and after October 2019. See (Pa36-37) (misleading statements to media regarding L3 Complex in October 2019 and May 2022); (Pa62-63) (2023 motion to bar reference to George and Philip Norcross in the Radio Lofts litigation and

misleading court statements). The trial court was mistaken in deeming these acts no more than “mere overt acts of concealment” that do not extend the conspiracy. (Pa207-08) (citing State v. Twiggs, 233 N.J. 513, 543 (2018)). To be sure, prosecutors cannot “‘extend the life of a conspiracy indefinitely’ by inferring a conspiracy to conceal ‘from mere overt acts of concealment,’” as Twiggs points out. Id. at 543 (quoting Grunewald v. United States, 353 U.S. 391, 402 (1957)). But Twiggs and Grunewald stressed the “vital distinction” between simply covering one’s tracks after a conspiracy’s central objectives are attained and “acts of concealment done in furtherance of the main criminal objectives of the conspiracy,” which extend the conspiracy for limitations purposes. See Twiggs, 233 N.J. at 544 (finding express original agreement to conceal that brought conspiracy into limitations period because conspirators met after crime and agreed to keep crime secret and lie about what happened); see also Grunewald, 353 U.S. at 405; United States v. Upton, 559 F.3d 3 (1st Cir. 2009) (failing to file tax return and filing false return extended limitations period); United States v. Rogers, 9 F.3d 1025 (2d Cir. 1993) (sending false communications to bank likewise extended limitations period). The acts of concealment here, as facially alleged, fall within this latter category—just like the facts in Twiggs—because concealment was a core objective that facilitated the conspiracy’s central aim: capturing the value of the tax credits. (Pa82-85).

c. Intimidation And Retaliation Objective.

In addition, the charged RICO conspiracy had as an objective “[p]romoting compliance with the Enterprise’s demands by retaliating against those in the way of and opposed to the Enterprise” and “[u]sing the Enterprise’s reputation for controlling governmental entities to intimidate and threaten those who held property interests that the Enterprise wanted to acquire.” (Pa85). As alleged, this objective was neither completed nor abandoned by June 2019. For example, the Enterprise engaged in a protracted retaliation campaign against Developer-1 that involved directing Camden officials to delay in providing an approval Developer-1 needed to complete an unrelated deal. (Pa72, 74). Their retaliation continued into 2023, when Developer-1 yielded and forfeited an unrelated property interest (his right to redevelop Radio Lofts) as a result of the Enterprise’s efforts. (Pa76); see also (Pa59) (George Norcross, in a recorded call, referring to Radio Lofts as “another point of attack on this putz”).

2. The Other Conspiracy Charges Are Likewise Timely.

For many or all the same reasons the RICO conspiracy charge is timely, the other conspiracy charges (Counts 2-4)—alleged to have continued at least into mid-2022 if not later, see (Pa4-5, 33-34, 37-38, 76)—are also timely.²⁸

²⁸ As noted, Grimm and Doherty arose in the federal general-conspiracy context, where an “overt act” is required by the relevant statute. E.g., Salmonese, 352

Each of the objectives of the RICO conspiracy charge that extended into the limitations period—tax credits, concealment, and retaliation—were also core objectives of the extortion and coercion conspiracies alleged in Counts 2-3, and related to the conspiracy charged in Count 4 (which focused primarily on retaliation). Each of these Counts alleges the relevant defendants agreed to use criminal means to cause rivals to surrender property rights on the Camden waterfront. (Pa87, 92, 97). Among their objectives were obtaining tax credits. (Pa15, 37, 87-94). And an express part of the conspiracy as to Counts 2-3 was that defendants, up through “the date of this Indictment,” (Pa87, 92), agreed to receive and sell tax credits—including in 2022 and 2023. See (Pa33, 64-69, 87-89, 92-94). Defendants also retaliated against Developer-1 for his resistance to their demands (Count 4), resulting in Developer-1’s capitulation within the limitations period. See (Pa3-4, 59, 72, 74, 76). And they committed acts of concealment, having originally agreed to do so as a core objective, (Pa84-85), of at least Counts 2 and 3, (Pa36-37, 62-63). Defendants may of course dispute whether the grand jury was presented with sufficient evidence that these were

F.3d at 614; United States v. Bermudez, 526 F.2d 89, 94 n.1 (2d Cir. 1975). But New Jersey’s conspiracy statute does not require an “overt act” for first- and second-degree crimes, which Counts 2-13 allege, see N.J.S.A. 2C:5-2(d); State v. LeFurge, 101 N.J. 404, 412-13 (1986); State v. Clark, 151 N.J. Super. 529, 532 (App. Div. 1977); (Pa87-110); see also supra at 91 & n.27. So while Grimm and Doherty are inapposite here too, the Indictment in any event alleges overt acts, for the reasons just detailed.

their objectives, or whether these objectives were accomplished or abandoned outside the limitations period. But here too, the charges are facially timely.

3. The Financial Facilitation And Corporate Misconduct Charges Are Timely.

The Indictment properly alleges that defendants engaged in Financial Facilitation of Criminal Activity, N.J.S.A. 2C:21-25, which continued beyond June 2019. Counts 5-10 allege that Defendants possessed and directed transactions in funds from the sale of tax credits related to the L3 Complex, the Triad1828 Centre, and 11 Cooper, and that defendants knew or reasonably should have known that those tax credits stemmed from the crimes alleged in Counts 2-3. The Indictment alleges defendants possessed and directed transactions in these funds up through June 2024, and specifically alleges the receipt and sale of credits in 2022 and 2023. Thus, these charges are timely.

For the same reason, Counts 11-12 (Misconduct by a Corporate Official), see N.J.S.A. 2C:21-9(c); (Pa105, 107), are also timely. Put simply, these charges allege that the relevant defendants directly or vicariously used corporations under their control to promote criminal objectives—among them the receipt and sale of the criminally derived tax credits (the conduct underlying the financial facilitation charges). See (Pa99, 100-108).

Finally, Counts 5-12 are facially timely regardless of whether Counts 1-4 (or Count 13) are facially timely. While the trial court deemed these counts

facially time-barred “[f]or the same reasons” that it deemed Count 1 (RICO conspiracy) time-barred, (Pa209), that was mistaken. While the substantive validity of Counts 5-12 hinges on the existence of underlying extortion or coercion conspiracies, see supra at 67-68, the timeliness of Counts 5-12 does not, because those counts charge different criminal acts. Specifically, they charge the knowing transaction in criminal proceeds, and the knowing use of corporations to do so, which—subject only to the dispute about whether the credits are in fact the proceeds of substantive crimes, see supra Point II—undeniably have occurred within the limitations period. To put the point simply, an art thief who conspires to steal a painting and hides it for 20 years may or may not evade the limitations period for theft, but he still commits a new crime when he sells it to a fence, and a second new crime if he uses a corporation to do so. See, e.g., United States v. Silver, 948 F.3d 538, 575-77 (2d Cir. 2020). In the same way, the limitations period for Counts 5-12 necessarily runs from when the actual conduct charged occurred, not from when the predicate crime that originally tainted the property occurred.

4. The Official Misconduct Charge Is Timely.

Finally, the indictment validly alleges that all defendants—Redd directly, the others vicariously—committed Official Misconduct (Count 13) within the limitations period, i.e., beyond June 2017. See N.J.S.A. 2C:1-6(b)(3); N.J.S.A.

2C:2-6(a), (b)(3)-(4)); N.J.S.A. 2C:30-2; (Pa90-91, 95-96, 109-110). As already emphasized, the simplest reason is that this is a facial challenge, and the Indictment alleges that all defendants committed this crime between “January 1, 2014 and December 31, 2017” (Redd’s second term as mayor), which overlaps with the seven-year limitations period for this offense. (Pa109-110); see supra at 73-78; W.S.B., 453 N.J. Super. at 236.

Regardless, even accepting the trial court’s improper facial approach, this count is valid. Most relevantly, the grand jury charged Redd with committing “an act relating to her office” that she knew to be “an unauthorized exercise of her official functions” by committing the crimes alleged in Counts 1-3 (RICO conspiracy; L3 Complex conspiracy; and Triad1828 Centre and 11 Cooper conspiracy) and Counts 5-12 (financial facilitation and corporate misconduct charges related to the same). (Pa109-110). Because those Counts charge Redd with crimes through December 2017, when her term ended, Count 13 is timely.

Moreover, the grand jury alleged affirmative acts by Redd within the limitations period. Take Redd’s involvement in the RICO conspiracy (Count 1), the objectives of which included promoting the power and wealth of George Norcross through control of local government, (Pa83, 85). Redd’s contributions qualify as official misconduct for at least two reasons. First, agreeing to lend one’s mayoral office to a conspiracy that involves the leveraging of government

power, see (Pa81-82, 109-110), is itself official misconduct. And the grand jury alleged Redd lent her power through the end of her term. (Pa1, 8).

Second, the Indictment charges that the Enterprise operated continuously between June and December 2017 (when Redd left office), as the conspirators reaped the benefits of the charged crimes, and indeed into 2024, (Pa2). And Redd, as noted, allegedly acted with purpose to obtain benefits both for herself—exemplified by the Rowan-Rutgers Board position, which the Enterprise achieved by threatening CFP CEO-1, whom Redd herself allegedly helped intimidate—and for others (the properties and resulting tax credits). See (Pa30-31, 69-72, 77-80); supra at 11-12. So Redd’s official misconduct (and participation) was ongoing during the last six months of her term, since it was during this time that she was still “obtain[ing] a benefit for [herself] or another,” N.J.S.A. 2C:30-2. See State v. Weleck, 10 N.J. 355, 368, 374-75 (1952) (finding official-misconduct charge timely because official demanded to be paid for having corruptly influenced ordinance within limitations period); Mennuti, 679 F.2d at 1035-36 (explaining that conspiracies generally continue “until conspirators receive their payoffs,” and finding conspiracy charge timely on this basis); see also supra Point III.D.1.a.²⁹ That renders Count 13 facially timely.

²⁹ Indeed, were the rule otherwise, a corrupt official could evade the limitations period by instructing a bribe-payer to deliver funds seven years and a day after she leaves office—at which point it would be too late. That cannot be right.

The trial court also erred in finding that Redd’s receipt of a benefit for her participation cannot qualify for limitations purposes. (Pa209-210). First, the court (again) inappropriately drew inferences against the State, (Pa6-7, 69-72), questioning why the grand jury’s Indictment did not consider whether she received the job solely because she was “was competent and capable,” (Pa210). And relatedly, it waved away the Indictment’s allegations as a “conclusory supposition” rather than a “fact.” (Pa210). But as noted, assessing what someone did, and when and why they did it, are classic questions of fact and thus improper at this stage. E.g., supra at 29-30 & n.4. The grand jury charged Redd with committing unauthorized acts for the purpose of obtaining a benefit for herself or another during the final six months of her mayoral term. (Pa109-110). That the trial court found that conclusion insufficiently supported by the evidence included in the Indictment did not render it facially untimely.

CONCLUSION

This Court should reverse the facial dismissal order in full.

Respectfully submitted,

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Dated: June 10, 2025

State of New Jersey,

Plaintiff/Appellant,

-v.-

George E. Norcross, III, Philip A.
Norcross, William M. Tambussi,
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 dated February
26, 2025

Submitted: July 23, 2025

Trial court Docket No.:
MER-24-001988

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

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PRELIMINARY STATEMENT

Upon thorough consideration of extensive briefing and lengthy oral argument, the trial judge in this case carefully applied the law to the facts and concluded that the State's theory of prosecution, as set forth in the lengthy Indictment that it obtained, did not actually amount to a crime. Refusing to find extortion where there was only hard bargaining—in direct contravention of the established limits of the theft by extortion statute—and otherwise searching the Indictment but not finding any illegality, the trial court correctly dismissed the Indictment for failure to state an offense. As well, for certain of the more extreme charges, such as the racketeering count of the Indictment, the trial court correctly dismissed charges where essential elements of the offenses alleged were not even charged, and facts necessary to provide notice to the defendants of what they could possibly have done wrong, were not provided. The thorough, thoughtful and considered decision of the trial court is a paradigm of how courts should take seriously the principled arguments of defendants who—whatever they did—did not commit crimes and therefore do not deserve the terrible toll that a criminal prosecution takes on the lives, reputations and psychological well-being of law-abiding and constructive New Jerseyans, like Sidney Brown, trying to help rebuild troubled municipalities like Camden.

The State, untroubled by these consequences, continues to pursue Mr. Brown and his co-defendants mercilessly and relentlessly for events that occurred long ago—beyond the applicable statute of limitations, another basis for dismissal. In doing so, the prosecution does not merely attack the decision of the trial judge on the merits, with which it disagrees. It also seeks to diminish the rights of not only these but all defendants, arguing that motions like the one before the court should not be able to be made at all—that, although no court has ever so held, motions to dismiss indictments on their face for failure to state an offense should not be allowed, though the rules and longstanding caselaw expressly permit them. They ask the court to reverse, arguing that the trial judge erred by not considering the evidence that was placed before the grand jury, though a motion addressed to that evidence was not before the Court, and though the State does not proffer how that evidence would change the legal theory upon which they were proceeding was, or the validity of that theory. And they ignore pleading standards which require them to allege essential elements of the offenses charged, elements which bear upon, for example, whether the isolated acts at issue here amount to a racketeering enterprise, or—as is obviously the case—engender an overreach that is not justified by the facts alleged or the statutes at issue.

For Sidney Brown, the question here is a simple one: does this Indictment, fairly read, and assuming the truth of all that is in it, allege a crime? The answer to those questions is no, for the reasons set forth below and in the briefs of Mr. Brown's co-defendants. Accordingly, the Indictment, which was legally unsupportable, was correctly dismissed, bringing to an end both this unsustainable prosecution and the devastation it has wrought and continues to wreak on the lives of these people, even as it wastes the resources of our State and legal system on an unjust and unfounded effort. Judge Warshaw's excellent decision, dismissing this Indictment, should be affirmed.

PROCEDURAL HISTORY

On June 13, 2024, a Grand Jury returned Indictment No. 24-06-00111-S charging Sidney Brown as follows: racketeering conspiracy, in violation of N.J.S.A. 2C:41-2(c) and (d) and N.J.S.A. 2C:5-2 (Count 1); conspiracy to commit theft by extortion, criminal coercion, financial facilitation of criminal activity, misconduct by a corporate official, and official misconduct, in violation of N.J.S.A. 2C:5-2 (Count 3); financial facilitation of criminal activity, in violation of N.J.S.A. 2C:21-25(a) and N.J.S.A. 2C:2-6 (Counts 5, 6, 9, 10); misconduct by a corporate official, in violation of N.J.S.A. 2C:21-

9(c) and N.J.S.A. 2C:2-6, (Count 12); and official misconduct, in violation of N.J.S.A. 2C:30-2 and N.J.S.A. 2C:2-6 (Count 13). Pa1-111.¹

Mr. Brown pleaded not guilty, and following a number of status and scheduling conferences with the trial court (Honorable Peter E. Warshaw, J.S.C.), on October 1, 2024 properly moved to dismiss the charges against him, arguing that the Indictment was facially deficient because the facts, as alleged in the Indictment and taken as true, failed to allege that a crime had occurred. Specifically, Mr. Brown adopted and joined in the argument in the brief filed on behalf of all defendants by defendant George Norcross, arguing that the Indictment failed to allege theft by extortion under N.J.S.A. 2C:20-5 and criminal coercion under N.J.S.A. 2C:13-5, as well as the other offenses that were alleged based upon those purported offenses, including RICO conspiracy, money laundering, misconduct by a corporate official, and official misconduct. He also adopted and incorporated by reference the arguments of defendants

¹ The following abbreviations will be used:

Pa – State’s appendix

Pb – State’s brief

GNDb – Co-defendant George Norcross’s brief

DRDb – Co-defendant Dana Redd’s brief

JODb – Co-defendant John O’Donnell’s brief

1T – Transcript dated July 9, 2024

2T – Transcript dated August 7, 2024

3T – Transcript dated September 10, 2024

4T – Transcript dated October 16, 2024

5T – Transcript dated January 22, 2025

George Norcross and John O'Donnell, which showed that the offenses alleged were, as a matter of law, barred by the statute of limitations.

Mr. Brown separately showed, in his trial court filing, and at oral argument, that the Indictment failed to allege the essential elements of the racketeering and official misconduct counts against him. Specifically, he argued that, with respect to the RICO charge, the Indictment failed to allege that Mr. Brown had known the extent of the purported RICO enterprise or that he agreed to commit (or to aid other members of the conspiracy to commit) at least two predicate acts as part of a “pattern of racketeering activity.” And with respect to the official misconduct charges, he demonstrated that the Indictment lacked even the most basic allegation that Mr. Brown, who was not a public official, shared in Dana Redd’s intent to abuse her office, also an essential element of the offense.

The State, both before and in the course of this motion practice, contended that the court could not and should not measure the allegations of the Indictment against the applicable law, but was instead required to review the State’s entire presentation to the grand jury. But the trial court, after considering hundreds of pages of briefing, and a full day of oral argument, agreed with Mr. Brown and his co-defendants, finding that it was proper to consider the defendants’ motions directed to the face of the Indictment and

postponing, until a later date, if necessary, any motion directed to the sufficiency, or propriety, of the grand jury proceedings.²

Approximately one month after oral argument, on February 26, 2025, Judge Warshaw, in a comprehensive and well-reasoned opinion, granted the defense motions, including Mr. Brown's, and dismissed the Indictment in its entirety. The court concluded that, as a matter of law, the factual allegations in the Indictment failed to describe any unlawful conduct whatsoever. Pa173-74. That is, the court held that each of the charges was predicated on the existence of wrongful or unlawful threats—yet the Indictment identified no such threats, or other unlawful conduct. Pa174. The trial court reiterated its finding that “the facial challenge defendants bring is appropriately heard

² See 4T12:17-20 (“But, you know, what I - - what I’m not going to do is get drawn into doing a substantive review of the transcript when that’s not the motion that’s filed right now.”); *id.* at 23:13-16 (“See, that’s the thing is, if this motion fails, then we still go back to sufficiency and *Hogan* and all the other arguments that might come.”); *id.* at 23:19-22 (“It was just, this is what you do on the four corners, and we’re holding off on adequacy of evidence and whether there was a failure to present exculpatory evidence under *Hogan*.”); *id.* at 33:15-22 (“But, I’m just not going to get unto Grand Jury. Everybody understands, and it seems like what everybody wants here is for me to not read the Grand Jury transcript. That could be the next wave of motions if this motion isn’t successful. But, for right now, that’s not where we are. This is where we are. This is the motion that’s been filed. And this is what I’m going to hear and decide.”); 5T8:21 to 9:3 (“Just for purposes of clarity of the record, the defendants view these arguments as purely legal arguments and they are asking the Court to decide the motion based upon the four corners of the 112-page indictment. The Court is not asked to review and will not be reviewing or discussing any grand jury materials, specifically testimony, exhibits or any instructions to decide this matter.”).

because the argument makes no reference to the grand jury record, and because it assumes that every factual allegation in the Indictment is true and was adequately supported before the jury.” Pa152. The court further concluded that the Indictment failed to allege any racketeering enterprise or official misconduct. Pa178-185, 195-200. Finally, the court held that the charges were based upon conduct that occurred long ago—for Mr. Brown, in 2015 and 2016—and that the Indictment was therefore facially time-barred. Pa200-10.

While the Indictment as a whole was, the court concluded, completely unfounded, the trial court concluded that the allegations against Mr. Brown, in particular, were especially lacking in merit. On its face, the Indictment contained minimal allegations addressed to Mr. Brown’s conduct, and completely failed to allege that Mr. Brown engaged in any actions that amounted to any kind of crime. To the contrary, as the trial court discussed in appropriate detail, the Indictment alleged no more than that Mr. Brown, who had committed to invest in the redevelopment of the Camden waterfront, participated in a single conference call over eight years ago, and later received entirely lawful, legislatively-approved tax credits for relocating his business to Camden, New Jersey. Pa179-185. Indeed, as the trial court correctly concluded in its thorough opinion: “There is no evidence that [Mr. Brown]

w[as] part of any ‘enterprise.’ There is no evidence [Mr. Brown] intended to plan, join, or assist Mayor Redd in committing official misconduct.” Pa185.

SUPPLEMENTAL STATEMENT OF FACTS

Defendant Sidney Brown adopts the statement of facts as it is correctly and appropriately set forth in co-defendant George Norcross’s brief; he does not here restate those facts, other than to describe the truly minimal factual allegations against him. This brief assumes, as did the motion practice below, the truth of the facts alleged in the Indictment.

Mr. Brown is the CEO of NFI, a trucking logistics company. Pa8 ¶ 13. He was a member of the board at Cooper University Health Care. *Id.* And, he was a partner in the groups that came to own property in Camden: the Ferry Terminal Building; an office tower that was later called Triad1828 Centre; and a residential building that became 11 Cooper. *Id.* As well, Mr. Brown, along with defendants George Norcross and John J. O’Donnell, was a member of Camden Partners Tower group (“Camden Partners”). Pa44 ¶ 107. The Indictment states that Camden Partners was represented by Philip A. Norcross to engage in negotiations with Liberty Property Trust (“LPT”) regarding the construction of Triad1828 Centre and 11 Cooper. *Id.*

As described in more detail in George Norcross’s brief, Mr. Brown and others are alleged to have sought to construct Triad1828 Centre and 11 Cooper

as part of the initiative to revitalize the Camden Waterfront. Pa38-39 ¶ 94. The Indictment identifies Dranoff Properties Incorporated and its principal, Developer-1, (“Dranoff”), as having held certain property rights that impacted those plans. Pa10 ¶ 19; Pa38-39 ¶ 94. More specifically, Dranoff owned the Victor Lofts building, a housing development at the Camden Waterfront, which held a view easement, set to expire in 2022, restricting the height of structures that could be built to the west of it, including the proposed Triad1828 Centre. Pa10 ¶ 19; Pa16-17 ¶ 34; Pa39 ¶ 94(c). Dranoff also held a right of first refusal for residential development in the Camden Waterfront area, which would include development of 11 Cooper. Pa39 ¶ 94(d).

From September 2015 to October 2016, Dranoff negotiated with LPT concerning Triad1828 Centre and 11 Cooper. Pa44 ¶ 107; Pa45 ¶¶ 109-11; Pa47 ¶ 116. On October 20, 2016, during a phone call between George Norcross, Phil Norcross, Dranoff, and Dranoff’s counsel, the group struck a deal concerning the release of Dranoff’s property rights. Pa53 ¶ 136. LPT memorialized this deal in a written agreement the next day. Pa54-55 ¶ 138. However, later that same day, the “deal fell through.” Pa55-56 ¶ 139. As a result, during a conference call on October 22, 2016, some of the defendants, including Mr. Brown, discussed whether the City of Camden might use its

eminent domain power to condemn Dranoff's easement.³ Pa50-52 ¶¶ 128-30; Pa57-60 ¶¶ 142-49. That condemnation action, however, was not alleged to have ever been threatened, and was never brought. Pa60 ¶ 151; Pa62 ¶ 154. Instead, LPT offered Dranoff an additional \$200,000, bringing the total cash value to Dranoff to \$1.95 million, an agreement which he accepted on October 24, 2016. Pa60-62 ¶¶ 151-52, 154. That same day, Conner Strong & Buckelew, NFI, and The Michael's Organization applied for Grow NJ tax credits for the proposed Triad1828 Centre, which the Economic Development Authority awarded on March 24, 2017. Pa63-64 ¶¶ 158-59.

Triad1828 Centre and 11 Cooper were eventually constructed in Camden. Pa64 ¶ 160; Pa67 ¶ 169. Triad1828 Centre was owned by Camden

³ Mr. Brown is not alleged to have been part of the negotiations or discussions leading up to this conference call, and, as alleged, his contribution to the conference call was limited to one question regarding the goal of the potential litigation and another summarizing his view of the strategy. Pa58-60 ¶ 146 ("Right, is the goal here. Let me just make sure, is the goal here really to try and put some pressure on [Dranoff] to sign what we just tried to get signed?"), *id.* ¶ 149 ("A couple . . . of good things would come out of this . . . it puts pressure on [Dranoff] to come to the table that he hasn't had any pressure to up to this point So, seems to me we should proceed and go ahead and let Bill [TAMBUSSI] get this thing done."). Based on Mr. Tambussi's recommendation, including his representation that "we have a very strong argument," Mr. Brown—who is not (and is not alleged to be) an attorney—opined that the group should move forward with Mr. Tambussi's plan. Pa59-60 ¶ 149. Mr. Brown is also not alleged to have ever communicated with Dranoff or the City of Camden. Indeed, George Norcross is alleged to have told the LPT CEO that "if NFI [Mr. Brown's company] walked away, it wouldn't be a big deal." Pa48 ¶ 121.

Partners Tower Equities, an entity comprised of LLCs associated with George Norcross, Mr. Brown, and Mr. O'Donnell. Pa64. NFI also leased office space in Triad1828 Centre. *Id.* NFI applied for and received Grow NJ tax credits for its occupancy of Triad1828 Centre for the 2020 calendar year, credits which it subsequently sold. Pa65 ¶ 162. 11 Cooper was owned by CP Residential GSGZ, LLC, which was owned by LLCs associated with George Norcross, Mr. O'Donnell, and Mr. Brown. Pa67 ¶ 169. Between 2022 and 2023, the ownership group of 11 Cooper applied for and received ERG tax credits, which it also subsequently sold. Pa80 ¶ 211.

As a result of this alleged conduct, the State asserted that Mr. Brown conspired with his co-defendants as part of the “Norcross Enterprise” to use unlawful threats against Dranoff to obtain certain property rights along the Camden Waterfront. *See* Pa1-4 ¶¶ 1-5. The parties agreed that each allegedly unlawful act alleged in the Indictment depended on a theory of criminal extortion or coercion. *See* Pb46-47; Pb95-97; Pa154. The trial court, however, concluded that the Indictment “must be dismissed because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” Pa153. The court recognized that “certain commercial or economic menaces are excluded from the purview of the statute,” including, among other things, “to refuse to do business or to cease doing business” or “to sue.” Pa159-60

(quoting II Final Report of the New Jersey Criminal Law Revision Comm’n, Commentary 227-28 (1971) (“1971 Commentary”). Thus, the trial court held, the alleged “threats” were “precisely the sort of economic coercion that the 1971 Commentary recognized as incident to free bargaining.” Pa163-64. Moreover, the court correctly concluded that the Indictment failed to allege that Mr. Brown was a member of any purported “enterprise,” which is an essential element of the RICO conspiracy charged, because the Indictment failed to allege that Mr. Brown did anything criminal. Pa174; Pa179-80; Pa185; *see State v. Ball*, 141 N.J. 142, 176 (1995) (recognizing that an enterprise is an essential element of a RICO conspiracy). Finally, the trial court held that the Indictment “must be dismissed because the charges are facially time-barred,” because (1) the five-year statute of limitations applicable to the extortion and coercion offenses expired in June 2019, yet all of the alleged “threats” occurred between 2014 and 2017, Pa200-08, and (2) the seven-year statute of limitations applicable to the official misconduct charge in Count 13 expired in June 2017, yet all of the alleged unlawful occurred between 2013 to 2016, and “[a]ll [Mayor Redd] did after June 2017 was finish her term and get a job.” Pa208-10.

For these reasons and the reasons that follow, the trial court properly dismissed the Indictment. Its decision should be affirmed.

LEGAL ARGUMENT

I. The Trial Court Appropriately Dismissed The Indictment Against Defendant Brown Because It Was Facially Invalid.

The State argues that the trial court’s decision to dismiss the Indictment should be reversed because, in its view, the court granted a type of motion that “does not exist.” Pb1-2. According to the State, there are only two permissible types of motions—a facial motion to dismiss and what it labels a “some evidence” motion—and the trial court, by purportedly analyzing the sufficiency of the evidence in the Indictment, granted a “third kind of motion” that “does not exist in our law or any other.” Pb2. But the State’s characterization misstates both the nature of the trial court’s ruling and, even more fundamentally, the legal framework, derived from the New Jersey Rules of Court and judicial precedents, that govern motions to dismiss indictments in this State. Mr. Brown’s motion was, without question, a proper facial challenge, authorized by *Rule* 3:10-2—one that was, as the joint brief submitted on behalf of defendant George Norcross makes clear, limited to whether the allegations contained within the four corners of the Indictment amount to a crime, as a matter of law. *See* GNDb18-22 (demonstrating that the issue presented was whether the Indictment’s allegations, accepted as true, amounted to violations of the charged offenses). And the trial court’s

decision, no matter how hard the State tries to characterize it as something else, followed suit. *See id.* at 21-22.

The State's assertion that a facial motion is only viable if it proves "facial impossibility," *id.* at 44-45; Pb23-26, amounts to a request that this Court employ a new and unprecedented standard to a well-established motion process. Indeed, the novelty of the State's position is highlighted by the bizarre requirements that the State would impose on such motion practice: the State's position is that this "facial impossibility" standard requires a "stipulated and closed universe of facts," which show that the "charged crime *necessarily* did not occur." Pb24-25. One can understand why the State desires such a standard, essentially eliminating a safeguard for which New Jersey law provides. But the State's concocted standard not only finds no support in, but attempts to rewrite New Jersey law, which is directly at odds with it.

Specifically, New Jersey law is clear: a motion to dismiss an indictment at the outset of the case is entirely permissible and appropriate. Such a motion can be of several types, depending on the deficiency at issue. Specifically, there are five separate types of pretrial motions to dismiss, three of which are, as set forth below, applicable here; the other two are, as briefly discussed at the conclusion of this point, not applicable here.

First, a Court should dismiss an indictment, or any count thereof, which fails to allege each and every element of the offense purportedly charged. *See, e.g., State v. Jeannotte-Rodriguez*, 469 N.J. Super. 69, 103 (App. Div. 2021) (“It is fundamental that an indictment . . . must . . . contain all the elements of the offense charged.”); *see also State v. Algor*, 26 N.J. Super 527, 531 (App. Div. 1953) (dismissing indictment because, “[h]owever progressively liberal has become the legislative and judicial attitude toward the literal composition of indictments . . . and the discretionary disinclination to quash them unless palpably defective . . . it is basically imperative that an indictment allege every essential element of the crime sought to be charged”). Thus, “the State must present proof of every element of an offense to the grand jury *and specify those elements in the indictment.*” *State v. Fortin*, 178 N.J. 540, 633 (2004) (emphasis added); *see also State v. Salter*, 425 N.J. Super. 504, 514 (App. Div. 2012) (“It is axiomatic that an indictment ‘must charge the defendant with the commission of a crime in reasonably understandable language setting forth all . . . essential elements’ of the alleged offenses so as to enable defendant to prepare a defense.” (quoting *State v. Wein*, 80 N.J. 491, 497 (1979))). While the State acknowledges that this is a proper type of motion, it quickly dismisses its application to this case, asserting that such a motion is not at issue. Pb22, Pb23-25 (“No such challenge was presented below.”). In fact,

however, Mr. Brown raised below, and again shows here, that the Indictment simply does not allege certain essential elements of the offenses with which he is charged. In particular, Mr. Brown has shown, and the State has not rebutted, that with respect to the RICO conspiracy charged in Count 1, the Indictment fails to allege the essential element of Brown's knowledge of the extent of the enterprise. Likewise, with respect to the official misconduct crimes alleged in Counts 3 and 13, as purportedly applied to Mr. Brown by way of an aiding and abetting theory, the Indictment completely fails to allege that Mr. Brown shared in Mayor Redd's alleged intent to abuse her office. With regard to these essential elements of the offense, the Court does not even need to examine whether the theory alleged in the Indictment is one that articulates a crime; in these respects, the Indictment is insufficient on its face for the clear failure to allege an essential element, a deficiency that has previously been pointed out to the State but remains uncorrected.

Second, a Court should grant a motion to dismiss where, even if it does allege the essential elements of the offense, the indictment fails to set forth a sufficient factual basis to provide adequate notice of what the defendant is alleged to have done with regard to each such element charged. This is clear on the face of the Rules of Court, *see* R. 3:7-3 ("The indictment or accusation shall be a written statement of the essential facts constituting the crime

charged.”), as well as the well-established caselaw underscoring this important requirement. *See, e.g., State v. Dorn*, 233 N.J. 81, 93-94 (2018) (the indictment must allege “all the essential facts of the crime”); *Wein*, 80 N.J. at 497 (“The indictment must charge the defendant with the commission of a crime in reasonably understandable language setting forth all of the critical facts and each of the essential elements which constitute the offense alleged.”); *State v. L.D.*, 444 N.J. Super. 45, 55 (App. Div. 2016) (“[T]he reviewing court’s responsibility remains to examine whether ‘an indictment alleges all the essential facts of the crime[.]’” (quoting *State v. New Jersey Trade Waste Ass’n*, 96 N.J. 8, 19 (1984))); *State v. Campione*, 462 N.J. Super. 466, 491 (App. Div. 2020) (An “indictment must allege all the essential facts of the crime.”); *State v. Saad*, 461 N.J. Super. 517, 522-23 (App. Div. 2019) (same). The purpose of this Rule is manifest: “an indictment must be sufficiently clear to apprise a defendant of ‘that against which he must defend.’” *State v. Lisa*, 391 N.J. Super. 556, 578 (App. Div. 2007); *see also State v. D’Amato*, 218 N.J. Super. 595, 605 (App. Div. 1987) (“An indictment must serve as notice to the accused of the charge against him and must apprise him sufficiently so that he may prepare an adequate defense.”). Thus, an indictment must include “a satisfactory response to the questions of who . . . , what, where, and how.” *Jeannotte-Rodriguez*, 469 N.J. Super. at 103 (internal quotations omitted).

And, as co-defendant George Norcross repeatedly, and powerfully, points out in his brief, the “essential facts constituting the crime must be directly stated in the indictment,” rather than “supplied by inference or implication.” *State v. De Vita*, 6 N.J. Super. 344, 347 (App. Div. 1950), *cited in* GNDb18, 32, 41, 51 (also *citing Dorn*, 233 N.J. at 93-94; *Saad*, 461 N.J. Super. at 522-23; and *State v. Newell*, 152 N.J. Super. 460, 466-68 (App. Div. 1977)).

The State incorrectly claims that “all agree this Indictment provides notice.” Pb22. As even a cursory review of Mr. Brown’s trial court pleadings demonstrate, that is simply not true. Rather, he argued below, and raises again here, that the Indictment is facially deficient as to him because it does not allege sufficient facts with regard to certain essential elements of the RICO conspiracy charged to put Mr. Brown on notice of what he did wrong. Thus, for example, it does not tell him what two predicate acts he allegedly committed, or aided other members of the conspiracy to commit, as part of a pattern of racketeering activity—a fundamental element of the offense charged in Count 1 of the Indictment. *See Ball*, 141 N.J. at 179-80 (discussing requirement that a RICO conspiracy charge include allegations that the defendant “agreed to participate directly or indirectly in the conduct of the affairs of the enterprise by agreeing to commit, or to aid other members of the conspiracy to commit, at least two racketeering acts”).

Third—and this is the motion here at issue—even accepting all of the facts alleged in an indictment as true, a Court should dismiss charges where the indictment’s allegations simply do not state an offense as a matter of New Jersey law. *See, e.g., State v. Thompson*, 402 N.J. Super. 177, 204 (App. Div. 2008) (affirming dismissal of 28 counts of an indictment for “legal insufficiency,” without consideration of the factual sufficiency of the “evidence presented to the grand jury”); *State v. Perry*, 439 N.J. Super. 514, 532 (App. Div. 2015) (affirming dismissals of indictments charging driving-while-suspended offenses where the facts alleged in the indictments established that “[n]one of these offenses occurred during the relevant court-imposed period of suspension”); *State v. Riley*, 412 N.J. Super 162, 169, 191 (Law Div. 2009) (dismissing indictment where facts alleged, even after viewing the facts most favorably to the State, did not “fall within the statute invoked”); *State v. Bleichner*, 11 N.J. Super. 542, 547 (App. Div. 1951) (an indictment is “insufficient” when its alleged facts do not “constitute [] an offense” within the “terms and meaning” of the charged statutes). Thus, as the brief filed by defendant George Norcross, in which Mr. Brown joins, shows, none of the “threats” alleged in the Indictment are unlawful because the facts alleged, even when accepted as true, describe conduct that is not criminal under the extortion or coercion statutes. GNDb25-40.

The State, however, repeatedly points to the volume of evidence that it presented to the grand jury, arguing that by allowing a defendant to bring a facial challenge to an indictment in this manner would create an unfair “windfall” by “blocking the State from relying on any evidence that did not make it into the indictment,” while allowing the defendant to bring what the State mischaracterizes as a “new” motion that would somehow not exist but for the detailed nature of the Indictment. Pb21, 34-35. But the State’s argument amounts to a contention that a legally unsustainable indictment may be saved by alleged “evidence” hidden in the grand jury record. In so contending, it is the State that here tries to create new law, in an effort to insulate the Indictment in this case—and if the State prevails, in all other cases—from appropriate, well-established review by the judicial branch of government.⁴

Of course, there is no such windfall—whether the amount of evidence presented to the grand jury or allegations included in the indictment is a lot or a little, it is a question of whether the facts that are ultimately alleged in the indictment, taken as true, support a viable *theory* that amounts to a crime. Where, as here, the State’s legal theory with respect to the crimes alleged is evident from the face of the indictment, but that theory does not amount to the

⁴ As discussed below, *see infra* at 29-30, consideration of grand jury testimony and exhibits is appropriate with regard to the *fourth* and *fifth* bases upon which a defendant may seek to dismiss an indictment, but not with regard to the three bases to dismiss, raised here.

offense charged, the Court can and really must dismiss the indictment, or relevant parts thereof.

The State's concern that this kind of motion is inappropriate notwithstanding, the New Jersey cases cited above make clear the propriety of the defense motions at issue. And applicable federal law is in accord. For example, as the United States Court of Appeals for the Third Circuit concluded in *United States v. Panarella*, a defendant may challenge a charging instrument—including a speaking indictment like the one at issue here—because the prosecution theory “fall[s] beyond the scope of the relevant criminal statute.” 277 F.3d 678, 684-85 (3d Cir. 2002). *See also United States v. Schiff*, 602 F.3d 152, 161-67, 177 (3d Cir. 2010) (affirming district court decision rejecting Government's legal theory because a court “may grant a pretrial motion to dismiss an indictment, or a portion thereof, if the indictment's allegations do not suffice to charge an offense” because “dismissal of legal theories” is an aspect of the “dismissal of part of the indictment”); *United States v. Sittenfeld*, 522 F. Supp. 3d 353, 366 (S.D. Ohio 2021) (recognizing that the court can assess the government's legal theory based on the facts alleged in the indictment and dismissal is appropriate where the legal theory is insufficient as a matter of law).

This basis for dismissal—that the indictment fails to state an offense as a matter of New Jersey law—is fundamentally different from the basis for dismissal in *State v. Shipley*, 10 N.J. Super. 245 (App. Div. 1950), on which the State relies. Pb23, 37. In *Shipley*, the defendants sought dismissal by disputing the accuracy of the indictment’s factual allegations—specifically, the defendants disputed that many of the purported illegally registered voters alleged in the indictment had been removed from the registration rolls, while others were not. *Shipley*, 10 N.J. Super. at 250. The court properly rejected that argument, reiterating that the facts alleged in the indictment must be accepted as true, and that because the defendants’ challenge “sought only to question the facts stated in the indictments, it was improper on a motion to dismiss.” *Id.* In contrast, defendants here have never disputed the factual allegations in the Indictment, but instead have at all times raised a purely legal question—accepting all facts in the Indictment as true, do those facts establish a criminal offense under the law? In other words, entirely consistent with *Shipley*, the question here is whether “the indictment on its face” could “support[] a judgment of conviction.” *Id.* The trial court correctly concluded that it could not.⁵

⁵ The State cherry-picks quotes from the court’s opinion in an attempt to show that the court was assessing the sufficiency of the evidence rather than deciding the case as a matter of law. *See, e.g.*, Pb27-28 (criticizing the trial

As noted, this basis for dismissal underlies the central argument in co-defendant George Norcross’s brief, in which all defendants have joined. That brief establishes that none of the “threats” alleged in the Indictment constitute extortion or coercion as a matter of law. And, as the Norcross brief shows, and the State fundamentally concedes, every count in the Indictment depends upon a theory of criminal extortion or coercion. *See* Pb95-97 (discussing the “core objectives of the extortion and coercion conspiracies alleged in Counts 2-3, and related to the conspiracy charged in Count 4” and recognizing that “the substantive validity of Counts 5-12 hinges on the existence of underlying extortion or coercion conspiracies”). But yet the facts alleged, even when accepted as true, concern conduct such as, for example, hard-bargaining and the business consequences thereof, for which “theft penalties would be quite

court’s statement that “for Brown and O’Donnell, this was about getting the buildings built and making money and that is all they did.” (quoting Pa184-85)); Pb43 (same). But even if this is true, the State has not contended, and certainly does not show, that these “facts” in any way alter the legal theory underlying the Indictment, which—as defendant George Norcross’s brief on behalf of all the defendants shows—does not set forth an offense. That is, the Indictment’s theory is that defendants agreed to “extort and coerce” others to facilitate a series of real-estate transactions. Pa2 ¶ 2. But the trial court was correct that the Indictment’s theory is invalid, and thus the Indictment must be dismissed, because, for example, it is premised on economic hard-bargaining and the business consequences thereof, for which “theft penalties would be quite inappropriate.” 1971 Commentary at 227-28. *See* Pa159-74; GNDb22-29. *See also infra* at 24-28 (discussing limitation on reach of extortion and coercion statutes).

inappropriate,” 1971 Commentary (identifying threats “to refuse to do business or to cease doing business,” “to breach a contract,” “to persuade others to breach their contracts,” and “to sue” as among those “which ought not to be included” in the reach of the theft by extortion statute); *see* GNDb25-29. And determining the difference “between legitimate use of economic fear—hard bargaining—and wrongful use of such fear—extortion”—is a legal matter, *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep’t, AFLCIO*, 770 F.3d 834, 838 (9th Cir. 2014); *see also United States v. Albertson*, 971 F. Supp. 837, 842-50 (D. Del. 1997) (granting judgment of acquittal as a matter of law because and holding that, although the defendant’s conduct was “disgraceful, offensive, and ethically repugnant,” the Hobbs Act “does not police all disgraceful, offensive, and ethically repugnant behavior; it only prohibits the ‘wrongful’ use of economic fear,” and recognizing the difference between lawful hard-bargaining and extortion); *Viacom Int’l, Inc. v. Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990) (distinguishing between “hard-bargaining” and extortion, and concluding as a matter of law that “any intentional exploitation of fear by defendants was only part of ‘hard-bargaining’”).

Here, the trial court correctly dismissed the Indictment due to the absence of any alleged *unlawful* threat, Pa154-55, 174, a requirement of the

extortion statute, N.J.S.A. 2C:20-5. Indeed, the Legislature amended the extortion statute to add the word “unlawfully” as a warning that the statute is prone to an overly broad interpretation, and to make clear that the statute does not “cover situations in which people are acting in ways tolerated in commercial and personal life”—just like this case. *See State v. Roth*, 289 N.J. Super. 152, 158 n.4, 160 (App. Div. 1996) (quoting Cannel, *New Jersey Criminal Code Annotated*, comment 3 on N.J.S.A. 2C:20-5 (2025)); 1971 Commentary, *supra* (“[A] private property economy must tolerate considerable ‘economic coercion’ as an incident to free bargaining. Civil remedies are usually adequate to deal with abuse of the privilege . . . but theft penalties would be quite inappropriate.”); GNDb25-29. This amendment was intended to “add an extra element which must be proved in a prosecution (the element of unlawfulness), and thereby allow convictions only where the demand and threat were illegitimate.” Cannel, *supra*. Thus, where—as here—there is a valid economic nexus between the defendant at issue and the underlying transaction, the threat is not extortionate. *See Roth*, 289 N.J. Super. at 161 (“In our view, before exempting threats otherwise considered illegal under this provision, the Code drafters intended an economic or commercial nexus to exist between the actor who utters these ‘protected’ threats and the underlying transaction.”); Cannel, *supra* (“What makes the threat extortion is the lack of a

natural economic or commercial nexus with the matters that are the subject of the threat.”). Here, that nexus was clear: the Indictment alleges that George Norcross and Dranoff were engaged in negotiations regarding development of property on the Camden Waterfront, including Victor Lofts and the Triad Parcel. Pa45-47 ¶¶ 109-110, 115-116. George Norcross, Philip Norcross, LPT and Dranoff specifically participated in negotiations regarding purchase of a view easement for Victor Lofts held by Dranoff for the purpose of developing the Triad Parcel. Pa46-47 ¶¶ 115-116. According to the Indictment, in the course of those negotiations between two rival developers regarding their respective properties, George Norcross threatened Dranoff that he would “never do business in this town again”—thus threatening the very thing under negotiation (property for development in Camden by Dranoff). Pa47 ¶ 116-17. This is precisely the type of economic nexus between the “threat” and the underlying transaction that was insulated from criminal liability by the Legislature when it carved out “economic coercion” from the conduct prohibited by the extortion statute. *See* 1971 Commentary, *supra* (“private property economy must tolerate considerable ‘economic coercion’”); *Roth*, 289 N.J. Super. at 161 (“Code drafters intended an economic or commercial nexus to exist between the actor who utters these ‘protected’ threats and the underlying transaction.”).

The State also asserts in its briefing that the defendants engaged in threats of reputational harm and government retribution. *See* Pb41, Pb47-48, Pb55-58. However, as detailed in George Norcross’s brief, the Indictment lacks any such allegations; as to each instance of supposed reputational harm, the relevant allegations describe conduct that was not a threat at all and was certainly not a threat to reputation. *See* GNDb54-60. And with regard to the alleged threats of government retribution, the Indictment fails to allege that defendants made any threat that the government would take adverse action against anyone.

Moreover, even if such a threat had been made, merely threatening to use political influence to *ask* the government to take some action does not constitute unlawful conduct because it is constitutionally protected, entirely lawful petitioning activity. GNDb60-66 (citing, *e.g.*, *United States v. Hylton*, 710 F.2d 1106, 1107-08 (5th Cir. 1983) (absolving defendant of “criminal sanction” where its “actions represented an exercise of the right to petition for a redress of grievances”)). Additionally, some of the acts at issue (including those alleged as against Mr. Brown, whose sole involvement in the offense here at issue had to do with discussing a potential effort to persuade the City of Camden to seek the condemnation of Dranoff’s view easement, *see* Pa57-60 ¶¶ 142-49) certainly seek to punish the defendants, including Mr. Brown, for

petitioning (or considering petitioning) the government of the City of Camden to take certain actions, impinging upon a constitutionally protected right, *see* GNDb61-66. For this reason, too, the alleged threats are not covered by the theft by extortion and coercion statutes, and the trial court's dismissal of the Indictment should be affirmed.

Specifically, the State's RICO conspiracy as against Mr. Brown cannot, as a matter of law, stand because, at best, the Indictment against him is based solely on his involvement in a single conference call. This single act fails to support that Mr. Brown had any knowledge of the extent of the enterprise required to allege his membership in the enterprise, an essential element of the offense which has simply not been alleged but, in any event, does not, as a matter of law, amount to the crime purportedly charged. *See Ball*, 141 N.J. at 176 (defendant "must have some minimal knowledge of the extent of [the] enterprise," and must know "that the enterprise extends beyond his individual role."); Pa184-85 (concluding that Mr. Brown was not part of any "enterprise"). Moreover, this single act cannot satisfy the requisite "pattern of racketeering activity" under the RICO statute—again, a fundamental element that is both missing from the Indictment and does not, to the extent it is set forth at all, amount to the offense charged. *See Ball*, 141 N.J. at 168.

Although the State concedes, as it must, that the kind of facial motion to dismiss brought by the defendants is distinct from one that challenges the evidence before the grand jury, *see* Pb1, Pb21-27, it insists that the trial court erred because it did not review the grand jury evidence, Pb33-34. In doing so, it confuses the bases to dismiss an indictment discussed above—for failure to allege an essential element of an offense, failure to allege sufficient facts to put the defendant on notice of what he or she is alleged to have done wrong, and failure to set forth a legal theory that amounts to the crime charged—with other grounds for dismissal not at issue here. Those are, to continue the discussion of potential motions to dismiss contained herein, that *fourth*, a defendant may seek dismissal where the State’s presentation to the grand jury did not make out a *prima facie* case, *see, e.g., State v. Morrison*, 188 N.J. 2, 5, 12 (2006) (affirming trial court’s dismissal of the indictment where the State failed to present evidence to the grand jury to support the crime charged); *State v. Hogan*, 144 N.J. 216, 227 (1996) (“[T]he grand jury must determine whether the State has established a *prima facie* case that a crime has been committed and that the accused has committed it.”). And *fifth*, a defendant may seek dismissal where the prosecution committed misconduct before the grand jury by, for example, failing to present it with known exculpatory evidence. *See, e.g., Hogan*, 144 N.J. at 228 (holding that the State has an obligation to present

evidence that “directly negates the guilt of the accused and is clearly exculpatory”); *see also State v. Saavedra*, 222 N.J. 39, 63 (2015) (same); *State v. Womack*, 145 N.J. 576, 589 (1996) (dismissing portion of indictment related to the exculpatory evidence the State failed to provide to the grand jury).

But defendants do not now, and Mr. Brown has never, relied upon these grounds for dismissal, which obviously require review of the grand jury transcript. The State’s argument, then, amounts to the proposition that the defendants should have filed a different motion than the one they filed. But the court, recognizing that the motion that was filed is one that—unquestionably—exists under State law, decided that which was before it. It did not err in doing so and its conclusions were consistent with the applicable standards and were entirely correct as a matter of law. The trial court’s careful and well-considered decision to grant the defense motion to dismiss should be affirmed.

II. The Trial Court Appropriately Dismissed the RICO Conspiracy Charges Against Mr. Brown.

The trial court correctly dismissed the RICO conspiracy alleged against Mr. Brown in Count 1 of the Indictment, concluding that the State had failed to adequately allege a RICO enterprise. Pa176-77. But beyond the fact that this conclusion necessarily follows from the legal flaws in the extortion and coercion counts which are the underlying predicates for the RICO charge, the

RICO conspiracy was also deficient as to Mr. Brown in particular, because the Indictment did not allege the essential elements and critical facts necessary to charge Mr. Brown with being a member of any purported enterprise. Pa174; Pa179-80.⁶ Thus, after “giving the State the benefit of every positive inference and accepting every fact alleged in the indictment as true,” the trial court concluded that Mr. Brown’s actions amounted to “nothing criminal.” Pa184-85. As the court held, nothing in the Indictment supported that Mr. Brown was anything other than a businessman and investment partner, and that the Indictment did not allege that he was part of any “enterprise.” Pa185. In addition, as Mr. Brown also explained to the trial court, even accepting all of the facts set forth in the Indictment as true, the allegations of Mr. Brown’s participation in a single conference call and subsequent receipt of entirely lawful tax credits fail to allege any crime because the single call could not amount to the pattern of racketeering activity necessary to allege a RICO offense. *See id.* (RICO conspiracy requires “an agreement to the commission

⁶ In this regard, Mr. Brown, like any defendant, is to be considered individually, a right that applies to pleadings, as well as trial; that is, each count of an indictment must be sufficiently plead as to each defendant named in that count. *See, e.g., Saavedra*, 433 N.J. Super. 501, 530 (App. Div. 2013) (recognizing “that a dismissing court must ‘accord careful consideration to the status of the individual defendant’” (quoting *State v. Abbati*, 99 N.J. 418, 435 (1985)); *see also State v. Maloney*, Nos. A-2313-18, A-2870-18, A-5706-18, 2022 N.J. Super. Unpub. LEXIS 2032, at *33 (App. Div. Nov. 3, 2022) (SBa51) (stressing the importance that “[e]ach defendant, and each count in the indictment, should be considered separately”).

of at least two predicate acts.”). Although the trial court did not expressly reach this specific argument in its written decision, it nonetheless appropriately dismissed the RICO conspiracy charged in Count 1 against Mr. Brown.⁷ For the reasons set forth below the trial court’s dismissal of the RICO conspiracy charge against Mr. Brown should be affirmed on appeal.

A. The Indictment Is Deficient Because It Fails to Allege That Mr. Brown Was a Part of the Alleged Enterprise.

Foremost, as is discussed at length above, an indictment must allege all of the essential elements of the offense, as well as the essential facts of the crime. *See supra* at 15-18 (*citing, e.g., Jeannotte-Rodriguez*, 469 N.J. Super. at 103 (“It is fundamental that an indictment . . . must . . . contain all the elements of the offense charged.”); *R. 3:7-3* (“The indictment or accusation shall be a written statement of the essential facts constituting the crime charged.”)). Under New Jersey law, a racketeering conspiracy has two essential elements: “an agreement to violate RICO and the existence of an enterprise.” *Ball*, 141 N.J. at 176. Although an enterprise need not have a particular structure, it must be organized and consist of different people each

⁷ Although the trial court did not address this basis for dismissal, this Court is not precluded from considering it, because appeals are “taken from judgments, not opinions” and “a respondent can argue any point on the appeal to sustain the trial court’s judgment.” *Campbell v. Lion Ins. Co.*, 311 N.J. Super. 498, 506 (App. Div. 1998); Mandel, *N.J. Appellate Practice* § 34:5 “Result not Rationale Controls Appeal” (2025) (collecting cases).

fulfilling specific roles within the enterprise. *See id.* In addition, there must be an agreement “to conduct or participate in the conduct of the affairs of the enterprise.” *Id.* at 176. In this regard, a defendant “need not know the identities of all the conspirators, nor . . . all the details of the enterprise.” *Id.* An absolutely essential element of a RICO conspiracy, however, is that the defendant “must have some minimal knowledge of the extent of [the] enterprise,” and must know “that the enterprise extends beyond his individual role.” *Id.* at 176 (citation omitted).

Here, the Indictment not only failed to allege that Mr. Brown had the required “minimal knowledge of the extent of the enterprise,” but more profoundly, it failed to allege that he had any knowledge of the scope of the enterprise whatsoever, let alone that the enterprise extended beyond his role, whatever that was. Indeed, the Indictment is devoid of any allegation of this essential element of the offense, and it certainly lacks allegations regarding these “essential facts” in this regard necessary as they are to provide Mr. Brown with the constitutionally required notice of how he violated the RICO statute. *See supra* at 17-19 (citing *L.D.*, 444 N.J. Super. at 55 (“[T]he reviewing court’s responsibility remains to examine whether ‘an indictment alleges all the essential facts of the crime[.]’”); *D’Amato*, 218 N.J. Super. at

607 (recognizing that the indictment must provide notice to the defendant so that he may prepare a defense).

In fact, the Indictment alleges that the extent of the supposed enterprise includes a broad range of objectives, Pa82-85 ¶ 215, but the 211 paragraphs preceding and incorporated by reference into Count 1 do not contain any allegation whatsoever that Mr. Brown had any involvement in or any knowledge at all of numerous of the purported aspects of the enterprise, including:

- The passage of the Economic Opportunity Act;
- Any political matters, such as political endorsements, access to local political parties, appointments to government or public positions, intimidation of political opponents, or control over government entities or agencies;
- Any “placement in lucrative private sector jobs”;
- Any concealment or misrepresentation of purportedly illegal activities from the public and law enforcement or avoiding attempts by the State to recapture the tax credits;
- Any retaliating against opponents of the “enterprise”; or
- Any using of the “enterprise’s” reputation in order to control governmental entities to intimidate and threaten others.

See Pa82-85 ¶ 215(a)-(d), (g)-(i).

Even more concretely, the Indictment nowhere alleges that Mr. Brown had any involvement in the events that form several critical aspects of the alleged enterprise’s activities—the L3 Complex transaction or the Radio Lofts

matter. *See, e.g.*, Pa13-37 ¶¶ 26-92 (discussing the Economic Opportunity Act and the L3 Complex transaction without any mention of Mr. Brown or NFI); Pa59 ¶ 147 (alleging that during the conference call on October 22, 2016, George Norcross “raised the issue of having the CRA take away Developer-1’s Radio Lofts redevelopment option, an issue unrelated to his group’s negotiations with Developer-1”); Pa72-76 ¶¶ 181-97 (discussing the Radio Lofts matter). And significantly, Mr. Brown is not charged in the counts arising from the those matters. Pa87-91 ¶¶ 217-18; Pa97-98 ¶¶ 221-22; Pa101-02 ¶¶ 227-30; Pa105-06 ¶¶ 235-36.

The absence of any reference to Mr. Brown on these issues is a powerful fact in this case. The State may not allege, on the one hand, that these objectives and disparate schemes define the scope of the enterprise, as it does here, Pa81-86 ¶¶ 213-16 (defining the objects of the alleged enterprise); Pb4-5 (describing the alleged enterprise), while also implicitly, though candidly, admitting—through its absence of any other allegations that would put Mr. Brown on notice of what he was being charged with—that Mr. Brown had no involvement in them.

Even giving the State every reasonable inference, the State’s legal theory, as it has consistently asserted throughout this case, is that Mr. Brown

was a businessman who participated in a single conference call,⁸ “supplied financial capital,” and collected entirely lawful tax credits. Pa178-79; Pb72. Per the Indictment itself, Mr. Brown’s actions during the conference call were limited to questions about a potential court action against Dranoff, Pa58-60 ¶¶ 146, 149, including expressing his view (following statements by counsel) that it would be beneficial to pursue that course, Pa59-60 ¶ 149. There is no allegation that Mr. Brown agreed to take on any specific role in furtherance of either the hypothetical court matter or any other conduct alleged in the Indictment, such as undertaking a specific task or responsibility to fulfill the

⁸ The State references a second call during which George Norcross is alleged to have threatened Dranoff by saying “if you f**k this up, I’ll f**k you up like you’ve never been f**ked up before. I’ll make sure you never do business in this town again,” and asserts that the trial court’s finding that there was “no indication Brown or O’Donnell participated in this conversation or even knew of it” was “not true of the evidence the grand jury heard.” Pb43 n.10 (quoting Pa181). But the State’s argument, by its terms referring to what the “grand jury heard,” *id.*, even were it correct (which it is not), requires consideration of information beyond the four corners of the indictment—the grand jury presentation—which is not appropriate in order to resolve the issues raised in this motion. *See, e.g., Dorn*, 233 N.J. at 93-94 (an indictment “must allege all the essential facts of the crime”; “the court looks to whether the indictment is sufficiently specific to preclude the substitution by a trial jury of an offense which the grand jury did not in fact consider or charge”); *Thompson*, 402 N.J. Super. at 182 (distinguishing motion to dismiss based upon legal insufficiency from motion to dismiss based on the evidence presented to the grand jury or selective prosecution); *see also* Pb23 (recognizing this distinction). Significantly, the State does not—even in its briefing—contend that Mr. Brown was on this call, let alone that it would have demonstrated that Mr. Brown had “some minimal knowledge of the extent of [the] enterprise,” an essential element of the offense that is not, accordingly, here alleged. *See Ball*, 141 N.J. at 176.

criminal purpose. *See Ball*, 141 N.J. at 162 (recognizing that each member must fulfill a specific role within the enterprise). Nor could this conference call—again, granting the State every reasonable inference—be tied to the other alleged aspects of the enterprise: it concerned only the Triad1828 Centre and 11 Cooper building, *see* Pa57-60 ¶¶ 142-49, and took place years after the passage of the Economic Opportunity Act and the alleged completion of the L3 Complex transaction, Pa14 ¶ 28; Pa32 ¶ 82. Nothing conveyed during this conference call, as alleged, suggested anything illicit. And the Indictment’s description of this conference call includes no allegations, let alone facts to support, that Mr. Brown was aware that an “enterprise” even existed, much less one that dated back to 2012—four years before this alleged conference call—or one that extended beyond the single issue discussed during that call. These allegations, innocent of themselves, do not even begin to suggest that that Mr. Brown knew the extent of the alleged conspiracy, an essential element of the offense.

Likewise, the State’s conclusory claim, Pb72, that Mr. Brown “supplied financial capital,” which is completely without citation or support in the Indictment, does not allege how, if at all, it was an aspect of any alleged enterprise, as opposed to relating to Mr. Brown’s own independent and indisputable legitimate business interests. Allowing such a claim to be

sufficient to allege a criminal charge would potentially turn any investor into a criminal defendant. Nor, as set forth below, *see infra* at 45-47, can Mr. Brown's undisputedly lawful realization of tax credits be criminalized, let alone show his understanding of the scope of the alleged enterprise. *See also* Pa205 ("The Indictment never alleges that any business sought or received tax credits for which it was not eligible. There is no allegation of fraud in the application process.").

Finally, it bears noting that even at the pleading stage, Mr. Brown's mere association with the other defendants around the time of some of the allegations in the Indictment cannot serve as a substitute for an allegation that he actually agreed to participate in the alleged conspiracy. *See, e.g., United States v. Vastola*, 670 F. Supp. 1244, 1255 (D.N.J. 1987) ("irrelevant and vague language which may imply guilt by association" in the indictment was improper); *see also State v. Martin*, Nos. A-1592-17T4, A-2226-17T4, 2020 N.J. Super. Unpub. LEXIS 876, at *26 (App. Div. May 5, 2020) (SBa87) (explaining that "mere association is insufficient to establish a conspiracy"); *State v. Augello*, No. A-2203-18, 2021 N.J. Super. Unpub. LEXIS 664, at *21 (App. Div. Apr. 20, 2021) (SBa18) ("[D]efendant's mere association with or membership in the Pagans in itself in no way proves the defendant was involved in racketeering activity or that the Pagans constituted a criminal

enterprise.”); Model Jury Charges (Criminal), “Conspiracy to Commit Racketeering (N.J.S.A. 2C:41-2(d))” (approved March 22, 2021) (“Mere association, acquaintance, or family relationship with an alleged conspirator is not enough to establish a defendant’s guilt of conspiracy.”).

At the end of the day, the State’s bare assertions with respect to Mr. Brown fall far short of the pleading demanded in *Ball*, and do not come close to adequately alleging the requirements of his membership in the enterprise alleged, and particularly the element that Mr. Brown was aware of the extent of the enterprise. *See, e.g., United States v. Gonzalez*, 921 F.2d 1530, 1542-43 (11th Cir. 1991) (holding that the defendant did not agree to the “wide agreement” alleged by the government; instead, “[t]he government’s evidence show[ed] only a more limited agreement on [the defendant’s] part,” and thus failed to show the defendant’s “*agreement to the overall conspiracy*” (emphasis in original)); *see generally State v. Kuklinski*, 234 N.J. Super. 418, 421 (Super. Ct. 1988) (dismissing RICO count of indictment for failure to allege an “enterprise” that was distinct from the defendant); *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 738 (5th Cir. 2019) (affirming dismissal in a civil RICO case where, among other things, even accepting all of the facts alleged as true, the “enterprise” was “wholly conclusory and unsupported by facts”). Because an essential element of this offense is, at

least as against Mr. Brown, missing from Count 1 of the Indictment, that Count was correctly dismissed with respect to him.

B. The Indictment Fails to Allege That Mr. Brown Agreed to Commit At Least Two Predicate Acts as Part of a “Pattern of Racketeering Activity.”

The State was also required to—but did not—allege that defendants “conspir[ed] to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity, *i.e.*, two acts of racketeering activity within at least ten years of each other.” *See Ball*, 141 N.J. at 179-80; N.J.S.A. 2C:41-1(a). The State’s brief confirms what Mr. Brown has asserted all along, that the only act to which Mr. Brown allegedly agreed is that an attorney seek to persuade local government to bring a court action against Dranoff in order to pressure him to sell certain property rights. Pb42-43, 72. Even if this single agreement somehow amounted to a racketeering act, it is insufficient, as a matter of law, to allege that Mr. Brown participated in a *pattern* of racketeering activity. *See Ball*, 141 N.J. at 179-80 (RICO conspiracy requires at least two acts of racketeering activity); *see also United States v. Private Sanitation Indus. Ass’n*, 793 F. Supp. 1114, 1147 (E.D.N.Y. 1992) (“Clearly, the RICO conspiracy claims cannot be maintained against [defendants] on the basis of only one allegation that they agreed to commit one predicate act; the forty-fifth and the forty-sixth claims for relief

must therefore be dismissed as against these two defendants.”). The State has yet to meaningfully respond to this argument.

The provisions of RICO under which Mr. Brown is charged—N.J.S.A. 2C:41-2(c) and (d)—require that he “conspire[d] to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity, *i.e.*, two acts of racketeering activity within at least ten years of each other.” *See Ball*, 141 N.J. at 179-80 (emphasis added). Of course, as the State argues, a defendant need not personally commit the predicate acts. *Id.* at 181. However, the statute requires, that each defendant “agreed to participate directly or indirectly in the conduct of the affairs of the enterprise by agreeing to commit, or to aid other members of the conspiracy to commit, at least two racketeering acts.” *Id.* at 179-80 (“[I]n establishing a RICO conspiracy the State must show that a defendant). But the Indictment did not—apparently because it could not—identify (and thus put Mr. Brown on notice of) the two (or more) predicate acts that Mr. Brown agreed would be committed, by anyone. Indeed, as discussed above, it did not even allege that Mr. Brown had any knowledge of the other acts that made up the scope of the conspiracy.

That said, even if the Indictment alleged two predicate acts, that would be insufficient as a matter of pleading: those acts must, as the statute makes

clear, be alleged to comprise a “pattern,” which is also a fundamental element of the offense. *See id.* at 164 (discussing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985)). In that regard, “two isolated acts of racketeering activity do not constitute a pattern,” nor do “one ‘racketeering activity’ and the threat of continuing activity.” *Sedima*, 473 U.S. at 496 n.14; *Ball*, 141 N.J. at 168 (“[The] statute expressly enjoins use of the RICO statute to cover isolated criminal incidents.”). Instead, a pattern of racketeering, as defined by the statute, requires (1) at least two incidents of racketeering conduct; and (2) that the conduct must have “the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.” N.J.S.A. 2C:41-1(d). Thus, the Supreme Court in *Ball* interpreted the statute as “expressly enjoin[ing] use of the RICO statute to cover isolated criminal incidents.” 141 N.J. at 167-68. Rather, there must be “some degree of continuity, or threat of continuity,” which is “inherent in the ‘relatedness’ element of the ‘pattern of racketeering activity.’” *Id.* at 168. Of course, this continuity element could never, by definition, be satisfied by a single “act” or “incident.”⁹ *See, e.g.,*

⁹ In this regard, it bears noting that simply alleging a violation of multiple *statutes*, as the Indictment does, Pa85-86 ¶ 216, is not sufficient. The caselaw makes this clear. For example, a single bank robbery, although it may result in multiple statutory violations, does not amount to a “pattern of racketeering”:

Yucaipa Am. All. Fund I, L.P. v. Ehrlich, 204 F. Supp. 3d 765, 782 (D. Del. 2016), *aff'd*, 716 F. App'x. 73 (3d Cir. 2017) (“The Third Circuit has often held that a single scheme involving a single injury to a single victim within a short period of time falls outside of RICO due to lack of continuity, even where all aspects are entirely related.” (collecting cases)).

[A] single (interstate) bank robbery consists of several different parts (say, using a gun, threatening a teller, stealing a getaway car, perhaps abducting the teller as well, and eventually lying about participation). Some of those separate parts may themselves constitute separate criminal acts or “crimes” (in the technical sense that each, separately, violates a specific statute). Yet, those several separate criminal parts, taken together, do not generally make out a “pattern.” To hold otherwise would mean that many individual bank robberies, frauds, drug sales, embezzlements, and other crimes as well would automatically fall within the scope of the RICO statute, a result contrary to RICO’s basic purpose. One might express the fact that a single criminal episode, or event, is not a “pattern” by stating that its parts, taken together, do not “amount to or pose a threat of continued criminal activity.” Or, one might risk circularity and simply state that those parts do not bear to each other the relevant (“pattern of racketeering”) relationship. But, however courts express the point, they have consistently held that a single episode does not constitute a “pattern,” even if that single episode involves behavior that amounts to several crimes (for example, several unlawful mailings).

[*Apparel Art Int’l v. Jacobson*, 967 F.2d 720, 722-23 (1st Cir. 1992) (internal citations omitted)].

Nor did the Court trial court evaluate—or need to evaluate—the sufficiency of the evidence recited in the Indictment or submitted to the grand jury in order to dismiss the RICO Count of the Indictment on this basis. *See* Pb2, Pb43. That Count—accepting all of its allegations as true—makes absolutely clear that the State’s theory of Mr. Brown’s involvement in the enterprise is that he agreed to the condemnation action against Dranoff—a single agreement to a single act, and not the two acts required for a RICO conspiracy charge.¹⁰ If there are other predicate acts alleged against Mr. Brown, they are not alleged raising a different issue: by not specifying the two incidents of racketeering conduct with which he is charged, the Indictment is also deficient because it does not provide Mr. Brown with notice of the racketeering activity against which he must defend. *See, e.g., D’Amato*, 218 N.J. Super. at 607 (“The main purpose of the indictment is to provide adequate

¹⁰ The State claims that the trial court “made determinations throughout its opinion on what it viewed as defendants’ likely intent based on its review of only the Indictment, effectively rejecting the grand jury’s more-informed view.” The State provides as an example the court’s conclusion with regard to the alleged agreement to bring the condemnation action that “[f]or Brown and O’Donnell, this was about getting the buildings built and making money and that is all they did.” Pb27-28 (quoting Pa184-85). The State’s argument is revealing: even accepting as true—no matter how wrong—that Mr. Brown’s agreement to bring the condemnation action against Dranoff is somehow a predicate act, it is still only a single such act, which is plainly insufficient. The State does not respond to that argument.

notice so that the defendant can prepare a defense, and ‘the indictment must clearly identify and charge the criminal offense.’”).

In truth, Defendant Sidney Brown appears in but a single interaction in the Indictment: the conference call that occurred on October 22, 2016. Pa57-60 ¶¶ 142-49. On the basis of this call, the Indictment theorizes a single agreement to bring a court action against Dranoff. Pa50 ¶ 127 (stating that George Norcross, Philip Norcross, Mr. Tambussi, Mr. Brown, and Mr. O’Donnell “then all agreed to cause the CRA to bring court action against [Dranoff] with the purpose of creating additional pressure on [Dranoff] to sell his rights”). And shortly after Mr. Brown agreed to the initiation of the court action against Dranoff, but before any action was initiated (none ever was), Dranoff entered into an agreement to release his sought after property rights in exchange for nearly \$2 million. Pa60-62 ¶¶ 151-54. That ended the matter; nothing happened thereafter, as would be required to establish the “pattern” or “continuity” that RICO demands.

And Mr. Brown is not alleged to have agreed to do anything else pertinent to this case, other than having his company, NFI, legitimately apply for and receive Grow NJ tax credits for Triad1828 Centre, and agreeing that the 11 Cooper ownership group would apply for ERG tax credits for 11 Cooper, which it received. Pa65 ¶ 162; Pa66 ¶ 165; Pa68-69 ¶¶ 171-72. But

those allegations fail to state an agreement to commit any crime, let alone an agreement to commit a predicate act in furtherance of the “enterprise.” *See State v. Ball*, 268 N.J. Super. 72, 100 (App. Div. 1993), *aff’d*, 141 N.J. 142 (1995) (“[P]redicate acts are those acts defined by statute to be illegal or ‘Racketeering Activity’ as set forth in N.J.S.A. 2C:41-1a(1) and (2)”); *Amboy Bank v. Harbor View Estates LLC*, No. A-1665-20, 2022 N.J. Super. Unpub. LEXIS 344, at *14 (App. Div. Mar. 3, 2022) (SBa7) (“Racketeering activity is defined as a predicate act of enumerated crimes recognized under New Jersey law or equivalent crimes under the laws of any other jurisdiction, or conduct constituting racketeering activity under the federal RICO Act.” (quoting N.J.S.A. 2C:41-1(a))). And any suggestion by the State in its brief that the Indictment alleges that Mr. Brown (or any other defendant) sought or received tax credits for which he was not eligible, or that he committed fraud in connection with the awards, *see* Pb45 & n.12 (asserting that the trial court “discount[ed the] grand jury’s charge that defendants unlawfully conspired for purpose of obtaining tax credits”), is not only not alleged but is certainly not alleged with the required factual basis that would put the defense on notice of what it would need to respond to such a charge. *See, e.g., D’Amato*, 218 N.J. Super. at 605 (“An indictment must serve as notice to the accused of the

charge against him and must apprise him sufficiently so that he may prepare an adequate defense.”).

Nor, even if there is some argument that NFI’s receipt of tax credits is a predicate act, there is no allegation, and there could be none, that Mr. Brown would not have received the tax credits, or the benefits of their sale, without the alleged condemnation action against Dranoff. Indeed, the Indictment alleges no connection whatsoever between the discussion of a condemnation action in which Mr. Brown, according to the Indictment, participated and the tax credits at issue. And in the absence of such a connection, any allegation of a pattern is missing. *See Ball*, 141 N.J. at 166 (“The [RICO] statute also requires that at least two of the ‘incidents’ of racketeering be related to each other.” (emphasis in original)); *see also Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., L.L.C.*, 450 N.J. Super. 1, 38 (App. Div. 2017) (“... the term ‘pattern’ also requires ‘relatedness,’ which means ‘some temporal connection or continuity over time[.]’” (quoting *Ball*, 141 N.J. at 167-69)); *United States v. Pinson*, 860 F.3d 152, 163 (4th Cir. 2017) (concluding that no pattern of racketeering activity existed because the state failed to prove the necessary relationship or continuity (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989))).

In sum, the Indictment’s failure to allege Mr. Brown’s awareness of the extent of the purported enterprise or agreement to commit at least two predicate acts in furtherance of any such enterprise compelled the dismissal of Count 1 against him. The trial court’s decision dismissing that Count should therefore be affirmed.

III. The Trial Court Appropriately Dismissed The Official Misconduct Charges Against Mr. Brown.

As Mr. Brown demonstrated to the trial court, to charge him, an admittedly non-public official, with official misconduct under an aiding and abetting theory of liability—the theory that the State admittedly sought to use here, 5T230:22 to 231:16—the Indictment must allege that Mr. Brown (i) “acted with the purpose of promoting or facilitating the substantive offense for which he is charged,” *State v. Tolotti*, No. A-5380-17T4, 2019 N.J. Super. Unpub. LEXIS 394, at *24 (App. Div. Feb. 20, 2019) (SBa108) (citation omitted), and that he (ii) shared with the public official the intent to abuse the public official’s office, *State v. Hinds*, 143 N.J. 540, 551 (1996). Although the trial court did not expressly address this particular argument in its written decision, it nonetheless appropriately dismissed the official misconduct charges set forth in Counts 3 and 13 against Mr. Brown after hearing his argument. *See supra* at 32 n.7. And in any event, for the reasons set forth below—reasons that the State has yet to meaningfully confront or rebut—the

trial court’s dismissal of the official misconduct charges against Mr. Brown should be affirmed on appeal.

Initially, Mr. Brown’s alleged culpability under an aiding and abetting theory is wholly dependent upon at least one properly alleged count of official misconduct by a public official. That is, absent sufficient allegations of official misconduct by Dana Redd—here, the only public official charged—the Indictment simply cannot adequately allege that Mr. Brown shared Ms. Redd’s intent to abuse her office. *E.g.*, *State v. Whitaker*, 200 N.J. 444, 459 (2009) (“To be found guilty as an accomplice, a defendant must not only share the same intent as the principal who commits the crime, but also must ‘at least indirectly participate[] in the commission of the criminal act.’” (quoting *State v. Bielkiewicz*, 267 N.J. Super. 520, 528 (App. Div. 1993))); *see also State v. Marshall*, 97 N.J.L. 10, 12 (1921) (defendant was improperly convicted of embezzlement because she could not be found to have aided and abetted another, who was found not guilty of embezzlement).

In this case, the trial court properly found that the Indictment, failed to allege that any of the acts that Dana Redd purportedly undertook were unauthorized or committed in an unauthorized manner under N.J.S.A. 2C:30-2(a). *See* Pa198 (“What [Dana Redd] did or did not do in this case was not an unauthorized exercise of her official functions.”); *id.* at 200 (“The facts alleged

by the grand jury and accepted as true by the court do not support the notion that Mayor Redd compromised the duties of her office with an intention to benefit herself or anyone else.”). To the contrary, as Ms. Redd shows in her brief, the factual allegations against her, even if entirely true, do not amount to a crime. Some of those actions, as alleged, did not relate to her office and were not done in an official capacity. DRDb28-40. And with respect to the others, the Indictment set forth acts that fit squarely within the scope of her elected role as mayor of Camden. *See* DRDb28-30. Nor, as Ms. Redd has pointed out, does that Indictment contain any allegation that Ms. Redd exceeded her authority, or even if she did, that she did so with the specific intent to obtain a benefit or to harm another, as New Jersey’s official misconduct statute requires. *See* N.J.S.A. 2C:30-2 (explaining that “[a] public servant is guilty of official misconduct when” he acts “with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit”). At most, the Indictment claims that Ms. Redd made certain policy decisions that were consistent with the desires of political and economic allies. Pa22 ¶ 49; Pa30-31 ¶¶ 77, 78; Pa46 ¶ 113; Pa49-50 ¶¶ 124, 125. However, as Ms. Redd explained, this does not render those actions criminal, but rather, merely reflect the ordinary functioning of a representative democracy. DRDb35-36. Indeed, to criminalize such conduct would risk transforming commonplace

political activity into indictable offenses, which is not and cannot be the law. Accordingly, the trial court properly concluded that the official misconduct charges against the former-Mayor of Camden simply could not stand. And because the official misconduct charges against Mr. Brown are entirely derivative of Ms. Redd's criminal liability, Counts 3 and 13 as to Mr. Brown must also be dismissed.

Nevertheless, even if Court were somehow to find that the Indictment sufficiently alleged that Ms. Redd purposely committed an unauthorized act in violation of her official duties, the Indictment still fatally fails to include any allegation that Mr. Brown shared in, or was even aware of Ms. Redd's intent to abuse her office. But that is what is required, as an essential element of this offense under aiding and abetting law. Specifically, that law requires that a defendant "share the *same* intent as the principal who commits the crime." *Whitaker*, 200 N.J. at 459 (emphasis in original)); *see also State v. Zeigler*, No. A-2029-22, 2025 N.J. Super. Unpub. LEXIS 433, at *20 (App. Div. Mar. 20, 2025) (SBa117) ("An accomplice can only be liable for the actions of another if they 'shared in the intent[,] which is the crime's basic element, and at least indirectly participated in the commission of the criminal act.'" (quoting *Bielkiewicz*, 267 N.J. Super. at 528)).

In sum, for purposes of official misconduct, an aiding and abetting charge requires, as an essential element of the offense, and accordingly something that must be included in the indictment, *see supra* at 15-16 (citing cases), that the defendant share the same intent as the public official alleged to have committed the underlying crime. *See Hinds*, 143 N.J. at 551 (“[Defendant] should not be liable for official misconduct in the absence of proof that he shared with [the public official] the intent to abuse [the public official’s] office”). Thus, the State was required to allege that the defendant (here, Mr. Brown) shared the intent of the public official (here, Ms. Redd) to abuse that public official’s office. *Id.* And when that allegation is missing, an indictment is, as this one was, properly dismissed. *See Tolotti*, 2019 N.J. Super. Unpub. LEXIS 394, at *24-25 (SBa108) (affirming dismissal of second-degree conspiracy to commit official misconduct and second-degree official misconduct charges against a private citizen where there was no allegation or evidence that the private citizen was aware of the regulations governing the public officials’ employment); *State v. Ruiz-Vidal*, No. A-4708-18T1, 2021 N.J. Super. Unpub. LEXIS 115, at *13-14 (App. Div. Jan. 22, 2021) (SBa96) (finding that “there was a reasonable probability that defendant [a non-public official] would have been successful in dismissing [a] second-degree charge[] of . . . official misconduct” where there was no indication that defendant

worked to further the alleged scheme or was aware of an intermediary's agreement with the public servant to violate his office).

Here, the Indictment was completely devoid of any allegation that Mr. Brown shared in Ms. Redd's alleged intent to abuse her office. *See Hinds*, 143 N.J. at 551; *Ruiz-Vidal*, 2021 N.J. Super. Unpub. LEXIS 115, at *13-14 (SBa96). As the trial court properly found, there was no allegation that Mr. Brown "intended to plan, join, or assist Mayor Redd in committing official misconduct." Pa185. Indeed, the Indictment does not allege any connection between Mr. Brown and Ms. Redd at all, and the State does not point to one in its appellate brief. Instead, the Indictment—and now the State's brief—relies entirely on purported acts involving Ms. Redd and Mr. Brown's co-defendants, acts that, as alleged, did not involve Mr. Brown whatsoever, including that Ms. Redd: (1) "instruct[ed] the CFP CEO to meet regularly with member of the Enterprise to ensure that CFP's projects were pre-approved by George and Philip Norcross, and redirected CFP's CEP to Philip Norcross when he came to [Ms. Redd] for help"; (2) "[c]ut[] off communication with Developer-1 and ignor[ed] his requests for help with the Radio Lofts"; (3) "[a]gree[d] to use the Enterprise's reputation for controlling local government to help intimidate and threaten those who held property interests that the Enterprise wanted to acquire"; and (4) "[told] CFP's CEO that his 'job was in jeopardy' for resisting

the Enterprise’s demands.” Pb74-75; Pa22 ¶ 49; Pa30 ¶ 77; Pa49-50 ¶ 124, 125; Pa61-62 ¶ 153; Pa82-85 ¶¶ 215(b), 215(c), 215(i). But the Indictment fails to allege that Mr. Brown ever knew of any of these purported acts.

As discussed above, at length, the most that the Indictment alleges as against Mr. Brown was that he participated in one October 22, 2016 conference call with George Norcross, Philip Norcross, William Tambussi, and John O’Donnell, wherein the parties discussed potential litigation regarding Dranoff’s property interests. Pa57-60 ¶¶ 142-49. However, Ms. Redd was not a participant on that call, and the Indictment at no point alleges that she ever intended to take any action with respect to the defendants’ alleged condemnation idea (and, as the Indictment explains, she did not: “[t]his planned court action orchestrated by the Norcross Enterprise did not ultimately occur.” Pa60 ¶ 151; Pb8 (“the lawsuit was ultimately not filed”). Likewise, the allegation that “the Enterprise ‘remove[d] the CEO of the nonprofit from his job through threats’ and did so ‘in part, to financially benefit [Redd],” Pb77, or that Mr. Brown subsequently received entirely lawful tax credits, *see id.*, does not charge, or support any inference, that Mr. Brown somehow shared in Ms. Redd’s intent. Mr. Brown is not alleged to have been part of the removal of CFP CEO’s job; he is not alleged to have contacted, communicated, or met with Ms. Redd regarding those events; and he is not

alleged to have been aware of any alleged agreement between Ms. Redd and anyone else that involved this purported improper use of her office. And even beyond the fact that the receipt by Mr. Brown's company of tax credits was entirely lawful, as discussed above, there is nothing alleged in the Indictment that would tie those tax credits to any official misconduct by Ms. Redd. Accordingly, the official misconduct charges against Mr. Brown, premised solely on an accomplice theory of liability, are inadequately alleged as a matter of law, and accordingly must be dismissed for failing to charge an offense against Mr. Brown.

IV. The Trial Court Appropriately Dismissed the Indictment as Time-Barred.

The trial court also correctly dismissed the Indictment because all counts against Mr. Brown are time-barred. Pa200-10. The statute of limitations serves as an "absolute bar to the prosecution of the offense." *State v. Short*, 131 N.J. 47, 55 (1993). As discussed in the briefs of co-defendants John O'Donnell and George Norcross, in which Mr. Brown joins, even taking the allegations of the Indictment as true, and giving the State every possible reasonable inference, the offenses here at issue should be dismissed at this, the pleading stage. *See* JODb44-46 (citing, *e.g.*, *State v. Cozen*, 405 N.J. Super. 266, 277 (App. Div. 2009) (affirming dismissal of indictment charges as facially time-barred)); GNDb75-76 (citing, *e.g.*, *United States v. Grimm*, 738

F.3d 498, 502 (2d Cir. 2013) (properly assessing whether conspiracies continued as a matter of law)).

There is no dispute but that the extortion and coercion offenses underlying each count in the Indictment are subject to a five-year statute of limitations. *See* GNDb66-76; Pa201; N.J.S.A. 2C:1-6(b)(1). Thus, to be timely, the Indictment must—but does not—allege that the charges against Mr. Brown continued and extended beyond June 2019. All the alleged “threats,” however, occurred between 2014 and 2017. *See* Pa28 ¶¶ 70-71; Pa47-48 ¶¶ 117-19; Pa53-54 ¶¶ 136-38; Pa70 ¶¶ 176-77; Pa200-08. To circumvent this obvious bar, the State attempts to recast the alleged threats as part of a “continuing offense” via the RICO conspiracy charge. Pb86-92 (asserting that receipt of Grow NJ tax credits was an objective that extended the charged conspiracy). However, the State’s assertion fails as a matter of law because when an “anticipated economic benefit continues, in a regular and ordinary course, well beyond the period when the unique threats to society posed by a conspiracy are present,” those continued payments are nothing more than “the *result* of a completed conspiracy.” *Grimm*, 738 F.3d at 503 (cleaned up); *see* GNDb66-76. And, as discussed above, Mr. Brown is not alleged to have done

anything further following the conference call in 2016.¹¹ *See, e.g., State v. Reid*, 456 N.J. Super. 44, 64 (App. Div. 2018) (“[W]hen the crime or crimes” which are the object of the conspiracy “are committed,” the “duration of a conspiracy generally terminates”). Finally, for the reasons set forth in John O’Donnell’s, Dana Redd’s, and George Norcross’s briefs, the seven-year statute of limitations for official misconduct, N.J.S.A. 2C:1-6(b)(3), still requires dismissal of the charges against Mr. Brown because all of the alleged acts by Mayor Redd occurred more than seven years ago, *i.e.*, before June 2017. JODb42-46, 78; DRDb40-43; GNDb74-76.

For these reasons, as well as those set forth by Mr. Brown’s co-defendants, the trial court’s decision to dismiss this matter on statute of limitations grounds, additionally or in the alternative, should be affirmed.

¹¹ As further discussed in George Norcross’s brief, the State also attempts to extend the statute of limitations based on a supposed “concealment objective,” for statements concerning the L3 Complex and the Radio Lofts matter, and a supposed “intimidation and retaliation objective,” based on Dranoff’s Radio Lofts property rights. Pb92-94. But, as already discussed, Mr. Brown is not alleged to have had any involvement in the L3 Complex transaction or the Radio Lofts matter, and he is not charged in any of the associated counts. *See supra* at 34-36. While these supposed objectives are irrelevant to Mr. Brown, he nevertheless concurs with and adopts the arguments raised by George Norcross in opposition. GNDb72-76.

CONCLUSION

For these reasons, Sidney R. Brown requests that the Court affirm the trial court's dismissal of the Indictment.

Dated: July 23, 2025

Respectfully submitted,

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Superior Court of New Jersey
Appellate Division

Docket No. A-1833-24T5

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
<i>Plaintiff-Appellant,</i>	:	
vs.	:	ON APPEAL FROM AN ORDER
	:	DISMISSING THE INDICTMENT
GEORGE E. NORCROSS,	:	IN: CRIMINAL DIVISION, MERCER
III, PHILIP A. NORCROSS,	:	COUNTY
WILLIAM M. TAMBUSI,	:	
DANA L. REDD, SIDNEY	:	INDICTMENT NO. 21-05-73-S
R. BROWN, AND JOHN J.	:	
O'DONNELL,	:	Sat Below:
<i>Defendants-</i>	:	
<i>Respondents.</i>	:	HON. PETER E. WARSHAW, P.J. Cr.
	:	

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PRELIMINARY STATEMENT

In a remarkable concession in its brief, the State acknowledges that if this Court has “concerns about safeguarding the practice of law,” that would “justify dismissal as to Tambussi.” We agree.

Respondent William M. Tambussi, Esq., adopts the arguments raised in his co-defendants’ briefs that the Indictment is fatally flawed because (1) it failed to allege conduct that is criminal under any Criminal Code statute, and (2) the alleged criminal conduct occurred well outside the statute of limitations.

But there are larger issues regarding constitutional and procedural limitations on the State’s ability to indict a lawyer for practicing law that this Court should address. Not only are these limitations central to the invalidity of the Indictment against Tambussi, but judicial guidance is needed for the New Jersey Bar on when and how the practice of law can become criminal. This brief focuses solely on the defects in the Indictment arising from the State’s attempts to criminalize Tambussi’s routine practice of law.

First, the Indictment is missing a key element of the crimes charged. Namely, the Indictment does not allege the proper mens rea standard to hold an attorney liable for actions taken during legal representation. Second, the Indictment violates the federal and state constitutions in multiple ways.

Notwithstanding the State’s lengthy discussion of when dismissal is proper,

there is no dispute that failing to charge an element of a crime renders that indictment invalid. An essential element for every crime is the defendant's mental state—the mens rea. This is the first area where the Indictment fails as to Tambussi.

To prosecute an attorney for his legal representation of a client, the State must allege a heightened, specific mens rea. Our Supreme Court has explained that an attorney can be held liable for providing legal services only where he did so for an improper purpose—that is, the attorney had no bona fide reason for taking the action on behalf of the client. The Indictment fails to allege that Tambussi filed a motion in limine or researched the viability of a declaratory judgment action for an improper purpose and not in the course of valid representation of his clients. Without including this required mens rea element, the Indictment cannot stand against Tambussi.

A second indisputable ground for dismissing an indictment is when the indictment violates constitutional principles. Here, the Indictment against Tambussi does so in two ways—both stemming from the manner in which the Indictment criminalizes the routine practice of law.

Due process requires advanced notice that the conduct is criminal in nature. The Indictment deprives Tambussi of due process because the State has redefined what the permissible practice of law is by adopting its own standards that differ from (and contradict) the Court Rules and Rules of Professional Conduct. In this regard, the novelty of the State's prosecution against Tambussi dooms it. No reasonable

attorney could have been aware that filing a motion in limine or researching a potential declaratory judgment action could be criminal conduct because those acts have long been authorized by the rules promulgated by our Supreme Court. Under the State's theory, there are no clear lines demarcating the lawful from the criminal.

The Indictment also violates the separation of powers doctrine. New Jersey's constitution delegates the exclusive authority to regulate the practice of law to the Supreme Court. That authority includes adopting the Court Rules and Rules of Professional Conduct, as well as disciplining attorneys. State prosecutors, as representatives of the Executive Branch, cannot redefine the acceptable practice of law that has already been approved by our Supreme Court. Yet that is what the State does in the Indictment. The Indictment places additional burdens on Tambussi for legal work (i.e., filing motions in limine, advising on potential declaratory judgment actions) and the attorney-client relationship (i.e., communications with a client, billing arrangements) beyond the requirements promulgated by the Supreme Court. By doing so, the State redefines the contours of the acceptable practice of law and infringes upon the Supreme Court's exclusive authority to set the standards.

Stated simply, the trial court got it right—this Indictment fails to state any crime against anyone. Tambussi joins in the briefs of the other Respondents, which effectively rebut the State's attempt to salvage this prosecution, and he focuses here on the deficiencies in the Indictment specific to him.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

In 2024, the State convened a grand jury to investigate the so-called “Norcross Enterprise.” The grand jury returned an indictment, charging William M. Tambussi, Esq., along with George E. Norcross, III, Philip A. Norcross, Esq., Dana L. Redd, Sidney R. Brown, and John J. O’Donnell, with 13 counts: first-degree racketeering conspiracy, N.J.S.A. 2C:41-2(d) (Count One); first-degree conspiracy to commit extortion, N.J.S.A. 2C:20-5, N.J.S.A. 2C:5-2 (Counts Two through Four); first-degree financial facilitation of criminal activity, N.J.S.A. 2C:21-25(a), (c) (Counts Five through Ten); second-degree misconduct by a corporate official, N.J.S.A. 2C:21-9(c) (Counts Eleven and Twelve); and second-degree official misconduct, N.J.S.A. 2C:30-2 (Count Thirteen).

All defendants joined in an omnibus motion to dismiss the Indictment. Tambussi and the other co-defendants filed individual motions to dismiss as well.

On February 26, 2025, the Honorable Peter E. Warshaw, P.J. Cr., dismissed the entire Indictment with prejudice, concluding in a 96-page opinion that all charges alleged against all defendants were legally invalid on multiple grounds. (Sa112–211.)¹ That same day, the State filed its Notice of Appeal.

¹ Sa refers to the Appendix of Appellant State of New Jersey.
Sb refers to the Brief of Appellant State of New Jersey.
DGNb refers to the Brief of Respondent-Defendant George E. Norcross, III.
DPNb refers to the Brief of Respondent-Defendant Philip A. Norcross, Esq.

COUNTERSTATEMENT OF FACTS

The Indictment contains limited allegations directed at Tambussi or even mentioning him in passing. In total, only 23 paragraphs of the 242-paragraph, 111-page Indictment mentioned Tambussi. Those references are summarized here. Where the Indictment does mention Tambussi, as Judge Warshaw explained, “[t]he Indictment focuses on things Tambussi did as a lawyer.” (Sa185.) Specifically, the charged conduct against Tambussi was that “[h]e represented clients.” (Id.)

Tambussi is a licensed attorney in the State of New Jersey and a partner at the law firm of Brown & Connery. (Sa8, ¶ 11.) His legal representation of clients identified in the Indictment fell into two categories.

First, in August 2023, in litigation relating to the Radio Lofts building in Camden, Tambussi filed a pre-trial motion in limine on behalf of his clients, Camden and the Camden Redevelopment Agency (“CRA”), to preclude reference to either Norcross brother at the trial. (Sa62, ¶¶ 155–57.) The motion was never adjudicated because the litigation settled.

Second, in October 2016, Brown & Connery evaluated the viability of bringing a declaratory judgment action to determine whether its client, the CRA, had legal authority to pursue a condemnation action against a view easement possessed by a building in Camden. (Sa50–53, ¶¶ 128–35.) As another Brown & Connery partner explained to the client, “[t]he proposal is for CRA to file an application in

Court to ask the Court to confirm that the power of eminent domain is available to extinguish the view easement.” (Sa52, ¶ 134.) After the firm’s attorneys “worked at least 86 hours, over a 7-day period” on the issue, (Sa53, ¶135), Tambussi advised that “the likelihood that the court will declare that the CRA has the right to condemn the view easement under the circumstances presented is good,” (Sa52, ¶ 133). The declaratory judgment action was never filed.

Because both actions by Tambussi involved a lawyer “actively engaged in lawyering,” Judge Warshaw concluded that “[s]uch action is immune from criminal liability” and could not form the basis for the criminal allegations against Tambussi. (Sa191–92.)

LEGAL ARGUMENT

POINT ONE

THE ALLEGATIONS AGAINST TAMBUSSE ARISE ENTIRELY FROM HIS SUPPOSED CRIMINAL INTENT IN PERFORMING LEGAL WORK, BUT THE INDICTMENT FAILED TO ALLEGE THE SPECIFIC, HEIGHTENED MENS REA NECESSARY TO ATTACH LIABILITY TO AN ATTORNEY ENGAGED IN THE PRACTICE OF LAW.

Our courts have consistently ruled that an attorney cannot be held liable for providing legal services unless a specific, heightened mens rea is alleged. Because Tambussi's purported criminal conduct falls within his capacity as lawyer, the Indictment must have alleged that Tambussi lacked a good faith basis in performing his legal duties and that his "primary purpose" was an improper one. The Indictment failed to do so, and, as a result, the dismissal of the Indictment must be affirmed.²

A. An indictment's failure to allege an element requires dismissal.

Far from the "extraordinary facial dismissal" that the State calls the Opinion, (Sb19), Tambussi raises a routine argument that the Indictment fails to allege each element of the crimes charged. Buried in a lengthy discussion of the legal standard for dismissing indictments, the State concedes that an indictment should be

² Tambussi adopts and relies upon all arguments raised by his co-defendants in their respective briefs.

dismissed where it “fails to recite the proper elements” of the crimes alleged. (Sb22) (quoting State v. Algor, 26 N.J. Super. 527, 531 (App. Div. 1953)).

This is Tambussi’s precise argument. When a “specific criminal intent” is required, “the indictment charging the commission of the offense must allege the existence of such intent.” Algor, 26 N.J. Super. at 535. Here, the Indictment “fail[ed] to recite” the heightened mens rea element necessary to hold an attorney liable. See id. at 531. This failure renders the Indictment against Tambussi facially defective.

Importantly, it is not Tambussi’s position, as the State has caricatured, that an attorney can never be criminally prosecuted based on his status as a lawyer. (See Sb78–83) (arguing against absolute immunity). This has never been a case about absolute criminal immunity for actions taken by a lawyer. Rather, it is Tambussi’s position—a position shared by our Supreme Court—that an attorney can be held liable for his routine practice of law only where the primary purpose of his practice was improper.³ This is a mens rea case, not an immunity case. And the State’s failure to allege the proper mens rea standard to hold an attorney liable is fatal to the Indictment. See State v. Majewski, 450 N.J. Super. 353, 366 (App. Div. 2017).

³ This Court, if it chooses, could affirm on Noerr-Pennington grounds of absolute immunity, similar to the Opinion’s conclusion that actions taken as a lawyer were “immune from criminal liability and intrinsic to the constitutional right to petition.” (Sa191–92); (see DGNb at 38–40, 64–66; DPNb at 41–46).

B. The allegations against Tambussi all involve his practice of law.

The Indictment homed in on two specific acts of client representation. The first dealt with a motion in limine filed by Tambussi “to preclude any reference to the Norcross brothers in trial.” (Sa187 (citing Sa62–63 ¶ 156).) This motion was never resolved by the trial court. The filing of the motion in limine was an act done “as a lawyer related to litigation.” (Sa187.) Yet the State characterized this practice of law in the Indictment as “William M. Tambussi Later Sought to Conceal the Norcross Enterprise’s Plot.” (Sa62.) However, this conduct was far from criminal, and Judge Warshaw rightly concluded that “[a] review of every word of the Indictment suggests the effort to keep a jury from hearing the Norcross name was simply a reasoned legal decision.” (Sa188–89.)

The second act of lawyering alleged in the Indictment was Tambussi and his firm assessing the viability of a declaratory judgment action to determine whether a view easement was condemnable under the eminent domain statute. (Sa186–87 (citing Sa50–52, ¶¶ 126–33).) Though the potential declaratory judgment action was contemplated, it was never filed. (Sa186.) Tambussi’s role in this potential action was “being a lawyer.” (*Id.*) He was engaged in “predictive lawyering” anticipating how a court would assess whether his client had a cognizable legal action to condemn a view easement under the eminent domain statute. (*Id.*)

No matter how the State attempts to spin its Indictment, Tambussi is charged

for providing legal services. The Indictment alleges no other actions by him. The trial court stated plainly that Tambussi was “actively engaged in lawyering.” (Sa191–92 (citing LoBiondo v. Schwartz, 199 N.J. 62 (2009))).

In its brief, the State acknowledges that Tambussi acted as “a legal expert” who “wield[ed] his expertise,” but the State contends his actions as a lawyer were “beyond the scope of lawful practice.” (Sb72.) Even under the State’s rubric, Tambussi was indicted for legal services rendered as a professional.

Whether Tambussi used his professional skill and expertise for an improper purpose, as the State now argues, is the precise mens rea standard the Supreme Court has imposed on determining whether an attorney’s legal actions can subject that attorney to liability. But this mandatory element of the crime is missing from the Indictment, thereby rendering the Indictment facially defective against Tambussi. See, e.g., State v. Ramadan, 481 N.J. Super. 435, 447–50 (App. Div. 2025) (reversing trial court’s failure to dismiss an indictment where incorrect mens rea standard was charged); Majewski, 450 N.J. Super. at 366 (reversing trial court’s failure to dismiss an indictment because the State failed to define applicable mens rea requirement to grand jury).

The State claims that Tambussi’s filing and arguing the motion in limine were not “themselves criminal, but rather that they showed continued coordination among the Enterprise.” (Sb81 n.25.) Again, this allegation goes right to the heart of mens

rea. Was Tambussi’s “primary purpose” in filing the motion in limine to aid his client in litigation brought by an adversary or to “continue[] coordination among the Enterprise”? The Indictment does not say. Omitting the key mens rea element from an indictment renders it facially invalid.

C. Specific intent is required to hold attorneys liable for their practice of law.

Our Supreme Court has adopted threshold requirements before liability can attach to an attorney who was engaged in the practice of law. The Supreme Court has imposed a specific mens rea requiring that an attorney cannot be held liable unless his primary purpose for engaging in the legal acts was improper. This rule mirrors those imposed by federal courts and adopted by Congress. The State failed to allege this specific mens rea in the Indictment against Tambussi.

On several occasions, the Supreme Court has faced questions regarding the standard necessary to impose liability on an attorney for acts undertaken during legal representation. Each time, the Court has exercised caution and mandated strict requirements before allegations can proceed against an attorney. Federal courts and Congress have done the same. At the core of these decisions is the universal recognition of the dangers inherent in restricting an attorney’s zealous advocacy on behalf of his client.

The unifying principle across courts and Congress is that if attorneys can be easily sued for advice given to their clients or, worse, prosecuted criminally for that

advice, our adversarial system suffers. Loyalties become divided. Advocacy is diluted and becomes less zealous. In some cases, advocacy may be silenced altogether. To avoid that, our Supreme Court has made it hard to hold attorneys (and even their agents) liable for the advice they dispense; federal courts have held that attorneys cannot conspire with their clients; and Congress has excepted attorneys from criminal prosecution where there is a bona fide reason for actions taken on behalf of clients.

In LoBiondo, the Supreme Court adopted a heightened mens rea standard for Strategic Lawsuits Against Public Participation (“SLAPP”) suits filed against attorneys by nonclients. But the reach of the decision—according to the opinion itself—extends beyond just SLAPP suits. Specifically, the Court held that when the “target is the attorney,” “the proof must focus on the motivation of the attorney and must demonstrate that his or her primary motive was an improper one.” 199 N.J. at 73. The Supreme Court justified this heightened requirement because “the attorney’s primary duty is to be a zealous advocate for his or her own client and recogniz[ed] the potential for harm that may arise from permitting a suit by a nonclient arising from the attorney’s role in representing a client.” Ibid.

In reaching its decision, the Court closely examined the role of attorneys in our legal system and relied upon the Restatement of Law Governing Lawyers. Id. at 98–103. The Supreme Court explicitly acknowledged the breadth of its decision,

noting, “the inescapable reality that [its] decision [would] have broader impact than merely its application to these parties or to SLAPP suits.” Id. at 72 (emphasis added). The Court understood that allowing suit against an attorney for legal work could “become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends.” Id. at 101. Although the case arose in the context of a SLAPP suit, the LoBiondo Court emphasized the dangers that would result if attorneys could be easily targeted legally in other contexts for actions taken on behalf of clients.

Because of the real threat of infringing upon a lawyer’s responsibility to zealously advocate for a client, the Court allowed a nonclient to bring suit against an attorney only in the narrowest of circumstances, namely when: (1) the attorney’s client has called the attorney’s advice into question; and, more importantly, (2) when the nonclient can “demonstrate that the attorney’s primary purpose was an improper one.” Id. at 113.

The Court defined “primary purpose” to mean “a purpose that is the principal, essential, immediate and overriding one rather than one that is merely incidental or corollary in nature.” Id. at 113. The Court was clear: to bring a claim against an attorney for his or her routine practice of law, a plaintiff must show as an element the attorney had an improper primary purpose. That is true even if the lawyer’s client has an improper motive of which the lawyer is aware. It is the lawyer’s motive that

counts.

It was not just in LoBiondo that the Supreme Court explored the dangers of liability chilling attorney advocacy. The Court has broadly applied the litigation privilege to shield attorneys from liability for actions taken within the context of judicial proceedings. The Supreme Court has clarified that the litigation privilege “provid[es] an absolute privilege for statements made in and pertaining to a judicial proceeding by a judge, attorney, witness, juror, or other participant.” Hawkins v. Harris, 141 N.J. 207, 215, 221 (1995) (quotation omitted) (emphasis added).

The Court compared the absolute litigation privilege to other absolute privileges. The Court explained that these absolute privileges are not intended to protect the recipient of the privilege but exist for the public’s benefit. Id. at 213–14. The Court went on to explain that the litigation privilege for attorneys is “grounded in similar public-policy concerns.” Id. at 214.

The breadth of the privilege is deliberate. The Supreme Court explained that these protections are “granted to good and bad alike” and recognized that such broad application could also include “a cloak of immunity from prosecution.” Id. at 213 (quotation omitted). This was an acceptable, even if undesirable, outcome necessary to “protect[] lawyers,” because bad attorney actors would still be subject to disciplinary action with potentially severe sanctions available. Id. at 221–22. The Supreme Court later explained that this “trade-off” was “the necessary price that

must be paid for the proper functioning of our judicial system, a system that requires attorneys to vigorously and fearlessly represent their clients' interests." Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 587 (2006).

This Court has applied the lessons of LoBiondo and Hawkins, at least implicitly, when it adopted a specific mens rea requirement for attorneys alleged to have violated the RICO statute based on legal advice they dispensed. Mayo, Lynch & Associates, Inc. v. Pollack, 351 N.J. Super. 486 (App. Div. 2002). In Mayo, the Court was tasked with determining whether there was sufficient evidence to establish that an attorney knowingly participated in a RICO enterprise. Id. at 494. This Court explained that the attorney's legal advice "was so egregiously wrong that a jury could find that it surpassed negligence or recklessness, and could infer knowledge of the bid-rigging scheme and intent to participate in it." Id. at 497. Thus, this Court imposed a requirement that an attorney must have intentionally provided bad or improper advice before his work product can establish his state of mind for violating the RICO statute. Id. at 497–98. If an attorney cannot be a civil RICO co-conspirator unless his advice is "so egregiously wrong," then he certainly cannot be a criminal RICO co-conspirator under the same statute absent (at least) such a showing. But there is no such allegation in the Indictment against Tambussi.

Federal courts also take a protective approach to our adversarial system, ensuring that before conspiracy liability can attach to an attorney, specific intent

requirements must be met. The Third Circuit has adopted a principle that where attorneys “acted within the attorney-client relationship, they cannot be considered conspirators.” Heffernan v. Hunter, 189 F.3d 405, 407 (3d Cir. 1999). In Heffernan, an attorney allegedly “file[d] a frivolous lawsuit and disseminate[d] defamatory information to the media to intimidate and punish” a witness before a trial. Id. at 408. The plaintiff sought damages based, in part, on a theory that the defendant attorney conspired to take these actions. Ibid. The district court granted a motion to dismiss the lawsuit with prejudice, finding that the attorney, as a matter of law, could not have engaged in a conspiracy for actions taken on behalf of his client. Ibid.

The Third Circuit affirmed, concluding that whether the complaint “has set out actionable conspiracies” was a “dispositive,” “threshold issue.” Id. at 411. Based on “compelling policy concerns,” the court adopted a “ban on conspiracies in the attorney-client context.” Id. at 413. Of course, the court explained that actions taken outside the scope of client representation would subject an attorney to conspiracy liability. Ibid. But, even if the alleged conduct “violate[d] the canon of ethics,” an attorney could not have committed a conspiracy “so long as it is within the scope of representation.” Ibid.

Similarly, in General Refractories Co. v. Fireman’s Fund Insurance Co., 337 F.3d 297, 314 (3d Cir. 2003), the Third Circuit rejected arguments like the ones the State raised, which the motion court also rejected. Specifically, the plaintiff alleged

that either “the mere nature of the conduct,” which plaintiff claimed was “outrageous,” or the attorney’s “illegitimate purpose” rendered the conduct “beyond the scope of the attorney-client relationship.” Ibid. Relying on Heffernan, the court held that “so long as it is within the scope of representation,” an attorney’s actions cannot qualify as part of a conspiracy. Ibid. Merely alleging that the attorney “acted in bad faith or with the illegitimate purpose of abusing process” was insufficient to state a claim of conspiracy where the attorney was acting within the scope of his engagement. Ibid.

Because these threshold requirements involve mens rea, “the indictment charging the commission of the offense must allege the existence of such intent.” See Algor, 26 N.J. Super. at 535. The State failed to allege this specific mens rea in the Indictment against Tambussi; this failure requires dismissal as to Tambussi.

D. The heightened, specific intent must apply to criminal allegations against an attorney.

It is true that these cases arose in the civil context. But that distinction should not matter here. Criminal standards must at least be equal to their civil counterparts, if not greater. Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 60 (2007) (noting that criminal law “typically” requires “the government prove something extra” for mens rea compared to civil law); State v. Cameron, 100 N.J. 586, 592 (1985) (noting that criminal laws generally “are subjected to sharper scrutiny and given more exacting and critical assessment” than civil laws). Indeed, the Supreme Court in LoBiondo

explicitly recognized the “wider implications” of its decision while it looked for guidance from broad principles and sources, such as the Restatement of the Law Governing Lawyers. LoBiondo, 199 N.J. at 72.

If guidance from the criminal context is needed, this Court need not look any further than how Congress has treated criminal prosecutions against attorneys. Federal law has a safe harbor for attorneys “providing ... lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.” 18 U.S.C. § 1515(c). The federal safe harbor ensures that “a lawyer [does] not risk prosecution for conduct that is objectively within the bounds of the rules of professional responsibility.” United States v. Gerace, 731 F. Supp. 3d 497, 521 (W.D.N.Y. 2024). The safe harbor does not provide complete criminal immunity to attorneys, but rather “the safe harbor prevents the criminalization of a lawyer merely for doing his or her job.” Id. at 507. “[I]f there is an objectively bona fide reason for taking a certain strategic action on behalf of a client, a lawyer who takes that action—even a lawyer who the government might think has a ‘corrupt’ motive—cannot be prosecuted.” Id. at 512. This is so because an attorney “performing bona fide legal representation” does not have the requisite mens rea to commit a crime; rather, the attorney’s intent—“to zealously represent his client”—“is fully protected

by the law.” United States v. Kloess, 251 F.3d 941, 948 (11th Cir. 2001).⁴

This Court must apply the precepts of LoBiondo to the criminal context and require, at a minimum, the same mens rea the Supreme Court imposed in the civil context. Alternatively, the Court can adopt a safe harbor provision like the federal one.⁵ The primacy of protecting the adversarial system requires it. Any different standard would “become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends.” LoBiondo, 199 N.J. 62 at 101.

An attorney cannot be held liable, including criminally liable, for providing

⁴ The State has previously argued that the attorney safe harbor is a defense, not an element, under federal law. How federal courts resolve an element of an offense compared to an affirmative defense is irrelevant. This Court must analyze whether, under New Jersey law, mens rea and an attorney safe harbor would be an element or a defense. State law leads to only one conclusion. In New Jersey, the requisite mens rea, the actor’s intent, is incorporated into “each material element of the offense.” N.J.S.A. 2C:2-2(a). Even assuming that the safe harbor is an affirmative defense, such an important defense still must have been charged in the Indictment because “the facts known to the prosecutor clearly indicate[d] or clearly establish[ed] the appropriateness of an instruction.” See State v. Saavedra, 222 N.J. 39, 66 (2015).

⁵ New Jersey courts “have on many occasions announced policy rulings which, though not constitutionally or legislatively compelled, have served to protect the proper interests of the defendant and to advance the sound administration of justice in our courts.” State v. J.M., 182 N.J. 402, 416 (2005) (exercising “duty to supervise” criminal trials to allow juvenile to present evidence at probable cause hearing where juvenile was not allowed to otherwise). See also State v. Hartley, 103 N.J. 252, 285 (1986) (relying on N.J. Const. art. VI, § 2, ¶ 3 to “create or enforce criminal defendants’ rights under our supervisory power” and adopt stringent admissibility requirements for defendant statements arising from custodial interrogation in joint investigation).

Additionally, constitutional principles of fundamental fairness permit courts to fill in gaps in statutory schemes to create a remedy where “‘someone [is] being subjected to potentially unfair treatment and there [is] no explicit statutory or constitutional protection to be invoked.’” State v. Njango, 247 N.J. 533, 548–49 (2021) (quoting Doe v. Poritz, 142 N.J. 1, 109 (1995)). This Court should fill that gap here.

legal services unless that attorney had a specific improper purpose. The dispositive issue in assessing if an attorney's legal representation is criminal should be whether the attorney had an objectively legitimate reason to take the legal action he took on behalf of a client. If an attorney had mixed motives—that is, an objectively legitimate reason, but also a nefarious or illegitimate purpose—the legal action still should not give rise to criminal liability. It is not the presence of an illicit purpose that makes lawyering criminal, it is the absence of any bona fide intent. See Gerace, 731 F. Supp. 3d at 513. As LoBiondo recognized, the improper purpose is singular; it is “a purpose” that must be the “the principal” or “overriding one.” LoBiondo, 199 N.J. 62 at 113 (emphasis added). An attorney's mixed motivations cannot suffice to attach criminal liability, provided there was an objectively legitimate purpose in acting for the client.

Because the State concedes that Tambussi was a “legal expert” who “wield[ed] his expertise,” (Sb72), but the Indictment failed to allege the required mens rea element to hold an attorney liable for utilizing his professional skill and expertise, this Court must affirm the Indictment's dismissal.

POINT TWO

THE INDICTMENT CRIMINALIZES THE ROUTINE PRACTICE OF LAW IN VIOLATION OF THE FEDERAL AND STATE CONSTITUTIONS.

The Indictment’s allegations against Tambussi all center on his practice of law. The minimal allegations were based on him being “actively engaged in lawyering.” (Sa191.) As the Opinion reasoned, what Tambussi did to allegedly “make himself part of this criminal enterprise,” was that he “represented clients.” (Sa185.) “The Indictment focuses on things Tambussi did as a lawyer.” (Id.) The Indictment also alleges that Tambussi and his firm failed to professionally uphold their end of the attorney-client relationship—specifically, that Tambussi inadequately communicated with the client, (Sa53, ¶ 135), and that the firm improperly failed to charge the client for the work preparing a pleading that was never filed, (id.).

The Indictment makes this conduct criminal by changing the definition of what constitutes the allowable practice of law. The way the State has done this is unconstitutional for two reasons. First, the State created new limitations on the practice of law that violate due process because no reasonable attorney could have been on advance notice that this professional conduct was criminal in nature. Second, the State violated the separation of powers by exercising the Supreme Court’s exclusive authority to define the scope of the practice of law in a manner

inconsistent with the explicit rules the Court has already adopted under its rulemaking authority.

This Court recently declared a law impacting attorneys unconstitutional on similar grounds. Anchor Law Firm v. State, ___ N.J. Super. ___ (App. Div. 2025). The Debt Adjustment and Credit Counseling Act prohibits “debt adjusters” from operating at a profit, although there is an exemption for any attorney “who is not principally engaged as a debt adjuster.” Anchor, (slip op. at 10) (quoting N.J.S.A. 17:16G-1(c)). Violations of the provision are subject to civil and criminal penalty. (Id. at 11.) This Court concluded that the provision was unconstitutional—for violating the separation of powers and for violating due process. (Id. at 3.)

Although dealing with a statute, this Court’s opinion focused on Executive Branch enforcement, concluding that the state constitution prohibits the Executive Branch from regulating activities of lawyers “at least when the attorney is engaged in the practice of law.” (Id. at 34.) This Court noted that the infrequency of Executive action did not impact the separation of powers analysis. “The rarity of actually-imposed sanctions does not mean the institutional encroachment is trivial.” (Id. at 38.) Allowing the Executive Branch to impose “heavy civil and criminal sanctions” on attorneys “can easily discourage lawyers from undertaking the representation of clients.” (Id. at 35.)

Supporting this Court’s conclusion that the law violated the separation of powers was the unconstitutional burden the law imposed on “lawyers [who] need to guess whether and when they are crossing the line.” (Id. at 36.) In finding the statute unconstitutionally vague, this Court noted that the Executive had “no rule, regulation, criteria, or methodology to determine when an attorney is principally engaged as a debt adjuster.” (Id. at 41.) When “attorneys must necessarily conjecture” about where the permissible line is, they are denied due process and are deprived of “adequate and fair notice or warning.” (Id. at 42.) “No attorney should be held responsible for conduct that the attorney could not reasonably understand to be prohibited.” (Id. at 43.)

A. The State’s criminalization of the routine practice of law violates due process because a reasonable person is without sufficient notice that such professional conduct is criminal.

The touchstone of due process is notice. Both the federal and state constitutions guarantee that a person cannot be charged criminally for conduct unless there is sufficient advanced notice that the conduct has been criminalized. Because no reasonable person, nor any reasonable attorney, could know that contemplating a declaratory judgment action, filing a motion in limine, or billing and communicating with clients could be criminal conduct, the current prosecution violates federal and state due process principles.

The fundamental problem with the State’s use of Tambussi’s practice of law

as the actus reus in the Indictment is that this approach “do[es] not draw clear lines separating criminal from lawful conduct.” See State v. Pomianek, 221 N.J. 66, 85 (2015). The State is prosecuting a standardless crime, which inherently cannot provide advanced notice.

The Indictment does not say what makes Tambussi’s contemplated declaratory judgment action or motion in limine criminal. It offers no line for attorneys to be aware not to cross. The line is not frivolity, as defined by Rule 1:4-8, as there is no allegation that Tambussi’s actions were frivolous. It is not a violation of the Rules of Professional Conduct, because there is no allegation that the RPCs were violated. All the Indictment alleges is that Tambussi did not communicate enough with his client and then his firm wrote-off the time. (Sa53, ¶ 135.) But when precisely do communications with a client become too “few[]” that prosecutors can criminalize a lawyer’s failure to communicate? (See ibid.) Moreover, where is the line drawn between an acceptable billing write-off to a long-time client and a criminal act?

Further, why is Tambussi charged for his involvement in the declaratory judgment research and motion in limine but not any of his colleagues, many of whom spent considerably more time working on these matters than Tambussi did? Where is the line—and how is it set—determining which attorney faces criminal charges?

Line setting is fundamental to our constitutional notions of due process.

Without a “clear line[] separating criminal from lawful conduct,” there is a due process violation. See Pomianek, 221 N.J. at 85. Clear lines of demarcation are especially important when the targeted conduct is attorney representation.

The State has provided “no definition or guidance” on what legal actions stray into criminal conduct, thus leaving all attorneys “to guess at what is and is not permissible in the government’s view, while already facing the threat of adverse actions during the guessing.” See Perkins Coie LLP v. U.S. Dept. of Justice, ___ F.Supp.3d ___ (D.D.C. 2025) (slip op. at 96) (finding that Executive Order did not adequately define permissible and impermissible conduct and client representation for attorneys). Proceeding without defined boundaries has left attorneys having “to predict” at what point proper attorney representation strays into illegal representation, creating a substantial “chilling effect.” See Wilmer Cutler Pickering Hale & Dorr v. Exec. Off. Of Pres., ___ F.Supp.3d ___ (D.D.C. 2025) (slip op. at 59). Because the State has not—and cannot—identify these required “clear lines” separating the lawful from unlawful, no attorney can ever be on notice when the practice of law would lead to criminal charges. The State has unconstitutionally created “a trap for the unwary” by prosecuting a standardless crime. See Pomianek, 221 N.J. at 85.⁶

⁶ Due process violations may arise on an “as-applied” basis, meaning the application to a particular defendant may render the prosecution unconstitutional even if there are valid ways to

This Court has specifically recognized the inherent difficulty in defining a line between what is and what is not the practice of law. In Anchor, that was the supposed difference between “the practice of law” or “the activity of a debt adjuster.” Anchor, (slip op. at 42.) But there was no ascertainable line for attorneys because “at any given moment,” “it is impossible to ascertain whether the task is dominantly ‘the practice of law’ or dominantly ‘the activity of a debt adjuster.’” (Id. at 42.) This Court criticized the practice of a non-lawyer employee being the one to draw the distinction and doing so without any defined “criteria” or “methodology.” (Id. at 41.) This Court found it “concerning” that an official “who is not a lawyer and who has no accredited legal education” would be “entrusted” with assessing the validity of “an attorney’s professional services.” (Id. at 37.) It should be equally concerning to this Court that a grand jury comprised of “lay people who are simply performing their civic duty” assessed the professional services Tambussi performed. See State v. Brady, 452 N.J. Super. 143, 166 (App. Div. 2017).

An application of criminal law is unconstitutional where it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” United States

apply it to other defendants. Thus, Tambussi need not show a lack of constitutional notice “in all conceivable contexts.” Rather, he must only show the application of criminal law to his conduct to “be unclear in the context of the particular case.” See State v. Cameron, 100 N.J. 586, 594 (1985).

v. Williams, 553 U.S. 285, 304 (2008) (citation omitted). The Indictment here violates both precepts. There has been no advanced notice that the routine practice of law could be subject to criminal sanction. And the Indictment applies criminal law in such a “standardless” manner, enforcement is necessarily going to be arbitrary or discriminatory.

1. No reasonable attorney would be on notice that this practice of law could give rise to criminal liability.

“A person should be on notice that he is engaged in wrongdoing before he ‘is brought to the bar of justice for condemnation in a criminal case.’” Pomianek, 221 N.J. at 85 (quoting Lambert v. California, 355 U.S. 225, 228 (1957)). Due process protects the enduring constitutional principle that “no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.” Bouie v. City of Columbia, 378 U.S. 347, 351 (1964) (quotation omitted). See also Lanzetta v. State of N.J., 306 U.S. 451, 453 (1939) (“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.”).

The practice of law in New Jersey has always been regulated civilly or administratively. This would be the first case where a court has criminalized the routine practice of law. But “due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” United States v. Lanier,

520 U.S. 259, 266 (1997). Applying criminal statutes to an attorney's professional work when there is no alleged violation of ethical or professional norms would be "a novel construction" of the Criminal Code that violates due process. See ibid.

Furthermore, the practice of law has always been policed through the Judiciary or through the legal profession itself. There are existing sanctions for attorneys who engage in frivolous litigation. See R. 1:4-8. Additionally, attorneys are subject to discipline for unethical conduct and violations of their professional responsibility. See R. 1:20-1; RPC 8.5. No advanced notice exists that the routine practice of law could ever result in criminal liability, rather than merely subjecting an attorney to potential sanction or disciplinary action.

The advanced notice actually provided to attorneys here would lead a reasonable person to believe that such conduct was in fact lawful. The Supreme Court has blessed the conduct here through its rule-making powers. Declaratory judgment actions are governed by Rule 4:42-3. Motions in limine are approved by Rule 4:25-8. Rule of Professional Conduct 1.3 requires an attorney to advocate for a client diligently and zealously. If the Supreme Court approves the filing of actions for declaratory judgment and motions in limine, but the State claims those actions can be criminal conduct, no attorney can be on notice how to comport themselves.

The State points to prior cases involving New Jersey attorneys who were criminally prosecuted. (Sb78–80.) But these cases highlight just how much the

prosecution of Tambussi stands alone.⁷ The attorney in IMO Goldberg, 105 N.J. 278 (1987) participated in a conspiracy to distribute methamphetamine. Dealing meth is in no way comparable to the legal work the Indictment alleges Tambussi performed. The State’s invocation of United States v. Bergrin, 650 F.3d 257 (3d Cir. 2011) rings most hollow. Paul Bergrin was indicted for conspiring to murder two witnesses and soliciting a hitman to kill a third. Id. at 262–63. Comparing legal research and arguing motions to not just obstructing justice and witness tampering, but to murder, is extreme—to say the least, cf. Berger v. United States, 295 U.S. 78, 88 (1935).

The State’s own examples demonstrate how this prosecution against Tambussi is a “novel construction” with no comparable “prior judicial decision” on point, thereby depriving him of constitutional due process notice that performing this type of legal work could be criminalized. See Lanier, 520 U.S. at 266.

2. Due process requires uniform enforcement of criminal law and prohibits arbitrary enforcement.

The constitutional problem with standardless criminal conduct is that it creates the substantial risk of arbitrary enforcement. Criminal laws must “be objectively, reasonably, and uniformly enforced.” State v. Ivory, 124 N.J. 582, 591

⁷ The State’s prior reliance on other examples fared no better. In IMO Verdiramo, 96 N.J. 183 (1984), the attorney tried to persuade a witness to testify falsely before a grand jury. In State v. Weleck, 10 N.J. 335 (1952), the attorney accepted a bribe payment to take a position contrary to his client’s interests. Suborning perjury and bribery are not acts of legal representation similar to arguing a motion or conducting legal research.

(1991). “An offense must be defined ‘with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.’” State v. Dalal, 467 N.J. Super. 261, 283 (App. Div. 2021) (quoting Kolender v. Lawson, 461 U. S. 352, 357 (1983)).

Arbitrary enforcement of laws is antithetical to our system of government. The Constitution is “designed to prevent government actors from singling out a person for arbitrary abuse.” Brunson v. Murray, 843 F.3d 698, 705 (7th Cir. 2016). This specifically includes instances where “a public official, with no conceivable basis for his action other than spite or some other improper motive . . . comes down hard” on an individual. Swanson v. City of Chetek, 719 F.3d 780, 784 (7th Cir. 2013) (cleaned up). That is the case here. The State dangerously seeks the power to pick and choose which attorneys it wishes to prosecute based on who those attorneys represent. See, e.g., Perkins Coie, ___ F.Supp.3d at ___ (slip op. at 80–83) (holding government action unconstitutional where it arbitrarily targeted one law firm but other law firms engaged in identical conduct were not subject to government action); WilmerHale, ___ F.Supp.3d at ___ (slip op. at 59) (holding government action regulating law firm and attorneys unconstitutional where it “fail[ed] to provide the precision and guidance [] necessary so that those enforcing the law do not act in an arbitrary or discriminatory way” (quotation omitted)).

B. The Indictment violates the separation of powers by usurping the Supreme Court’s exclusive authority to define the permissible scope of the practice of law and regulate attorneys.

In New Jersey, defining the bounds and limits of what is proper and acceptable legal representation is solely within the province of the Supreme Court. N.J. Const., Article VI, § 2, ¶ 3. “The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts.” Ibid.

The State’s efforts to develop its own definitions of “lawyering,” by redefining what is allowable for lawyers “represent[ing] clients,” unconstitutionally infringes upon the Supreme Court’s exclusive power to regulate the practice of law. (See Sa185, 191.) The State claims that “Tambussi was, inter alia, a legal expert, able to wield his expertise to the Enterprise’s advantage, beyond the scope of lawful practice.” (Sb72.) The State recognizes that Tambussi has been indicted for using his professional, legal skills. But the State’s position that these professional services were somehow “beyond the scope of lawful practice” does not change the legal framework for this Court to resolve.

The State’s position raises two immediate questions. What is “the scope of lawful practice”? And who defines “the scope of lawful practice”? Taking the second question first, the answer is our Supreme Court, which has exclusive authority to define and regulate the practice of law. The key problem in the Indictment against

Tambussi is that the State—as prosecutors for the Executive Branch—has redefined “the scope of lawful practice” in a manner that is inconsistent with the Court Rules and Rules of Professional Conduct promulgated by the Supreme Court.

Specifically, the State-created standards the State seeks to hold Tambussi to, including with respect to motions in limine, declaratory judgment actions, and the attorney-client relationship, are “irreconcilable” with the Supreme Court’s exclusive authority to regulate the practice of law and the Rules the Court has already adopted in these areas. See In re P.L. 2001, Chapter 362, 186 N.J. 368, 392 (2006) (declaring statute unconstitutional where Legislature infringed upon Supreme Court’s exclusive administrative authority over the State’s court system under Article VI).

Although it does not appear the Supreme Court has addressed this type of separation of powers issue in a case involving the Executive Branch, the limits of the Legislative Branch to “circumscribe[]” the Court’s “administrative rulemaking authority” must also apply equally to the Executive. See id. at 381–82. Neither the Legislature nor the Executive can undermine the professional rules and court procedures implemented by the Supreme Court. The Executive Branch cannot be permitted to create its own standards governing lawyers and then hold an attorney criminally liable for violating those invented standards.

1. The Supreme Court has the sole constitutional authority to regulate the legal profession, including declaratory judgment actions, motions in limine, and the attorney-client relationship.

The Supreme Court has “plenary constitutional authority” over the practice of law. Application of LiVolsi, 85 N.J. 576, 584 (1981). This includes the “exclusive constitutional responsibility” to oversee “admission to the bar,” “the practice of law,” “the conduct of attorneys,” and “the attorney-client relationship.” Taylor v. Bd. of Educ., 187 N.J. Super. 546, 553 (App. Div. 1983) (emphasis added).

The reason why the Judiciary retains exclusive authority to regulate its own procedure, rather than permitting others from a separate branch of government (like prosecutors) to do so is “obvious,” according to our Supreme Court: “Rules of court are made by experts who are familiar with the specific problems to be solved and the various ways of solving them.” Winberry v. Salisbury, 5 N.J. 240, 253 (1950).

This exclusive constitutional power extends to all corners of the practice of law. For nearly 70 years, the Supreme Court has “exercised plenary, exclusive, and almost unchallenged power over the practice of law in all of its aspects.” In re Supreme Court Advisory Comm. on Prof’l Ethics Opinion No. 697, 188 N.J. 549, 554 (2006) (citing In re LiVolsi, 85 N.J. 576, 585 (1981) (emphasis added)).

“The Court’s authority with respect to the administration of the courts is far-reaching; it encompasses the entire judicial structure and necessarily covers all aspects and incidents related to the justice system.” Knight v. City of Margate, 86

N.J. 374, 387 (1981). This includes procedural rules. State v. Andujar, 247 N.J. 275, 306 (2021) (declaring that “the area of practice and procedure is exclusively within the Court’s rulemaking power”).

The “practice of law” is not limited to litigating before a judge. “Our Supreme Court has long recognized the practice of law is not ‘limited to the conduct of cases in court but is engaged in whenever and wherever legal knowledge, training, skill and ability are required.’” Anchor, (slip op. at 30–31) (quoting Stack v. P.G. Garage, Inc., 7 N.J. 118, 121 (1951)).

The exclusive constitutional authority also extends to regulating the attorney-client relationship. “The relationship is governed both by the Rules of Professional Conduct and the Supreme Court’s exclusive jurisdiction to regulate the conduct of attorneys.” Kamaratos v. Palias, 360 N.J. Super. 76, 84 (App. Div. 2003) (citing N.J. Const. art. VI, § 2, ¶ 3).

“The separation of powers clause of the Constitution directs that one branch of government may not exercise powers that properly belong to another.” State v. Buckner, 223 N.J. 1, 37 (2015) (citing N.J. Const. art. III, ¶ 1). The “aim” of the constitutional separation of powers provision is “to guarantee a system of checks and balances.” State v. Leonardis, 73 N.J. 360, 370 (1977).

A court recently struck down similar executive branch overreach by the federal government. Executive Order 14250 sought to sanction the law firm

WilmerHale for its “harmful activity” representing clients in federal court. Exec. Order No. 14250, 90 Fed. Reg. 14549 (Apr. 3, 2025). When challenged by the firm, a court found the attempt to punish WilmerHale and its attorneys for actions taken during litigation violated the separations of powers doctrine. Wilmer Cutler Pickering Hale & Dorr v. Exec. Off. Of Pres., ___ F.Supp.3d ___ (D.D.C. 2025) (slip op. at 47–51). The President’s attempts to “sanction[] WilmerHale and its attorneys for their conduct before Article III courts” unconstitutionally “encroaches on the Judiciary’s exclusive power to sanction attorneys.” Id. at 50. This executive regulation of attorney conduct “usurp[ed] the Judiciary’s authority to resolve cases and sanction abuses of the judicial process.” Id. at 48. If the executive branch “believed the firm engaged in improper legal advocacy,” then the appropriate constitutional remedy would have been to “appeal[] to the judiciary to make appropriate findings and fashion an appropriate sanction.” (Id. at 50.)

Here, the separation of powers doctrine requires a check on the Executive Branch’s encroachment into the Supreme Court’s exclusive authority to define the “the scope of lawful practice.” The Executive Branch’s encroachment undermines the “require[d] . . . cooperative accommodation among the three branches.” See Buckner, 223 N.J. at 38 (citing Comm’n Workers of Am. v. Florio, 130 N.J. 439, 449 (1992)). Judicial authority would be “frustrated by any such dual exercise of rule-making power” across the Judiciary and another branch. See Winberry, 5 N.J.

at 246.

The State has ignored the constitutional structure. The State redefines the permissible scope of “the practice of law,” “the conduct of attorneys,” and “the attorney-client relationship.” See Taylor, 187 N.J. Super. at 553. This amounts to de facto rulemaking that supersedes the Court Rules on declaratory judgments and motions in limine, as well as the Rules of Professional Conduct.

2. Executive Branch prosecutors created their own standards for the practice of law that are inconsistent with multiple Court Rules and the Rules of Professional Conduct.

The State seeks to hold an attorney liable not for violating the Court Rules or Rules of Professional Conduct but for violating the State’s own standards on how the Executive Branch believes attorneys should behave. The Supreme Court “fully exercised its power” to define procedures for declaratory judgment actions and motions in limine. See Knight, 86 N.J. at 389. The Supreme Court has also “fully exercised its power” to define the appropriate professional standards for the attorney-client relationship, including communicating with clients and billing arrangements. See id. The Indictment interferes with that authority by declaring criminal what the Supreme Court has explicitly permitted. A close examination of the State’s prosecution theories demonstrates this.

a. Motions, pleadings, and oversight of attorney conduct

With respect to the motion in limine, Tambussi and Brown & Connery, as

counsel for Camden and the CRA, filed a motion in limine shortly before trial seeking to exclude mention of George and Philip Norcross at trial in a matter initiated by Developer-1. (Sa62, ¶ 155.) The State alleges this motion was designed to criminally “conceal the Norcross Enterprise’s plot,” (Sa62), because Tambussi moved to bar any evidence or testimony about George and Philip Norcross. The motion argued that non-parties and non-witnesses George and Philip Norcross “were not parties” to the executed financial agreement, and thus any mention of them would be irrelevant and confuse the issues for the jury. (Sa63, ¶ 157.) As the State must concede, this was a factually accurate representation by Tambussi to the court. The financial agreement was “a four-party agreement” among Dranoff Properties, Inc., Liberty Property Trust, Camden Partners Land LLC, and The Michaels Organization, and did not involve any individuals as parties. (*Ibid.*)

“A motion in limine is ‘[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial.’” Conforti v. Cnty. of Ocean, 255 N.J. 142, 170 (2023) (quoting Black’s Law Dictionary 1109 (9th ed. 2009)). The timing of filing motions in limine is governed by Appendix XXIII to New Jersey Court Rule 4:25-7(b). Specifically, absent the court ordering its own motion in limine schedule, such motions are to be filed seven days before trial. Appendix XXIII to R. 4:25-7(b). While judges are required to rule on motions in limine “in a timely manner,” they are not required to decide these motions before trial begins. R. 4:25-8(a)(4).

Precluding evidence—i.e., concealing that evidence from a jury—is the precise purpose of a motion in limine. That is what Tambussi did here, in accordance with the Supreme Court’s rules governing motion and trial procedure; he made a “pretrial request that certain inadmissible evidence not be referred to or offered at trial.” See Conforti, 255 N.J. at 170. Yet according to the State, Tambussi’s act of filing a motion to bar testimony about non-parties was part of a plot to conceal criminal activity, thereby extending a lapsed statute of limitations. (Sa62–63. ¶¶ 155–57; Sb81 n.25.)

As noted earlier, Judge Warshaw found that Tambussi filing the motion in limine was “simply a reasoned legal decision.” (Sa188–89.) Judge Warshaw’s characterization downplays the importance of motion practice. Tambussi had mandatory ethical and professional obligations to raise an argument that would aid his client at trial. “[A]ttorneys should present all the reasonable and well-grounded arguments necessary for proper resolution of the case.” Legal Svcs. Corp. v. Velazquez, 531 U.S. 533, 545 (2001). The failure to raise this argument could have subjected Tambussi to liability for not zealously representing his clients’ interests.

Additionally, the State adopted its own standard for the timing of motions in limine, indicating that there was something nefarious about filing a motion so close to trial and not having a judge resolve the motion before trial. “Despite trial being scheduled within two weeks, the assigned judge did not issue a ruling on the

motion.” (Sa62, ¶ 156.) The State’s invented standard contradicts a Supreme Court rule by erroneously indicating that a judge has some responsibility to immediately resolve a motion in limine. The Supreme Court under its rulemaking power has explicitly allowed judges to reserve until trial to render a decision (as judges often do). R. 4:25-8(a)(4).

With respect to declaratory judgment actions, courts are authorized “to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.” Chamber of Commerce of U. S. v. State, 89 N.J. 131, 140 (1982). Declaratory judgments are specifically allowable to determine the scope of a statute. Ibid. “A judgment for declaratory relief, if appropriate, is not precluded by the existence of another appropriate remedy.” R. 4:42-3.

As the Indictment stated, the contemplated legal action was “for CRA to file an application in Court to ask the Court to confirm that the power of eminent domain is available to extinguish the view easement.” (Sa52, ¶ 134.) Specifically, Tambussi and other lawyers contemplated seeking a declaration that “the CRA has the right to condemn the view easement.” (Id. ¶ 133.) This is, of course, a straightforward application asking a court “to declare rights, status and other legal relations” under the eminent domain statute. See Chamber of Commerce of U. S., 89 N.J. at 140.

Under the Court Rules, no more was needed for the attorneys to initiate a declaratory judgment action. But the State-created standard required that the lengthy

condemnation process take place before initiating a declaratory judgment action. (Sa51, ¶ 130) (detailing all steps required by the eminent domain statute); (Sa52, ¶ 131) (“There is no evidence that this condemnation process was intended to be followed by the CRA or the Norcross Enterprise here.”).

To make this conduct appear criminal, the State redefined what a declaratory judgment action is and imposed its own requirements, which neither Tambussi nor any other attorney had any obligation to satisfy. The State created its own standards involving all steps of “the condemnation process,” (Sa52, ¶ 131), then used Tambussi’s supposed violation of this heightened standard as grounds for the criminal allegations in the Indictment. Pursuant to the Supreme Court’s own rule though, declaratory relief was not dependent on pursuing full condemnation through the eminent domain statute. See R. 4:42-3.

Redefining the standards for motions in limine and declaratory relief unconstitutionally infringed upon an “area of practice and procedure [that] is exclusively within the Court’s rulemaking power.” See Andujar, 247 N.J. at 306. The import of this is Executive Branch prosecutors created their own standard for initiating legal actions to obtain an indictment, rather than adhering to the Supreme Court’s standards, which would have precluded any allegations of misconduct let alone criminality.

Not only does the State create its own procedural standards to invent criminal

conduct, but the State ignores the Supreme Court's role in regulating attorneys and the litigation process. Numerous Rules of Professional Conduct govern attorney conduct generally and with respect to filings before courts, such as motions and pleadings. RPC 3.1; RPC 3.3; RPC 8.4. Using its exclusive constitutional authority, the Supreme Court has also specifically provided for remedies when an attorney violates these rules. The Supreme Court adopted Rule 1:4-8 to allow for the sanction of attorneys who engage in frivolous litigation. Additionally, Rules 1:20-1 et seq. govern the discipline of attorneys who are alleged to have violated their ethical duties and professional responsibilities. The Supreme Court has ample tools, if needed, to exercise its oversight authority and discipline attorneys who violate the Court Rules. Notwithstanding this, the Executive has now deigned the practice of law under its supervision through the powers of prosecution.

b. Professional responsibilities and the attorney-client relationship

The oversight of the attorney-client relationship is a specific area in which the Supreme Court takes its exclusive authority to regulate most seriously. "There are very few of the business relations of life involving a higher trust and confidence than that of attorney and client, or, generally speaking, one more honorably or faithfully discharged; few more anxiously guarded by the law, or governed by sterner principles of morality and justice; and it is the duty of the court to administer them in a corresponding spirit, and to be watchful and industrious, to see that confidence

thus reposed shall not be used to the detriment or prejudice of the rights of the party bestowing it.” State in the Interest of S.G., 175 N.J. 132, 139 (2003) (citing In re Loring, 73 N.J. 282, 289–90 (1977)).

The Indictment, however, unconstitutionally redefined the Rules of Professional Conduct as they relate to the attorney-client relationship and imposed more onerous requirements on attorneys with respect to client communications and billing arrangements.

The State alleges that Tambussi and Brown & Connery communicated too little with their client, the CRA. “Fewer than five hours of this more than 86 hours of legal work involved contact with officials of the CRA, the client.” (Sa53, ¶ 135.) It is unclear precisely what standard the State is imposing for client communications, but it certainly is not the “reasonableness” standard imposed by the Supreme Court. See RPC 1.4(b) (“A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”); RPC 1.4(c) (“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

“Fewer than five hours” of communication in a 7-day period is too little contact under the standard the State creates out of whole cloth. (Sa53, ¶ 135.) But importantly, the attorneys satisfied the Supreme Court requirements of keeping a client “reasonably informed.” See RPC 1.4(b); RPC 1.4(c). The Indictment contains

no allegations that the CRA was not “reasonably informed” about the progress of the declaratory judgment action or was unable to “make informed decisions” (such as declining to file the action). Nor are there allegations that Tambussi or Brown & Connery failed to comply with any requests for information by the client. Yet the Indictment still creates its own standard, declaring that this reasonable communication amounted to “no meaningful participation by the CRA.” (Sa51, ¶ 129.) The standards governing communications between attorney and client already exist. Executive Branch prosecutors cannot redefine those standards.

Moreover, it is not for prosecutors to regulate attorneys for alleged shortcomings in meeting those standards. The Supreme Court has exercised its plenary authority to oversee inadequate client communications. Violations of Rules of Professional Conduct 1.4(b) and 1.4(c) are often raised in ethics complaints, leading to disciplinary action. The State not only infringes on the Supreme Court’s authority by redefining adequate communication, but by criminally prosecuting supposed inadequate communication, the State usurps the Supreme Court’s exclusive role as regulator of the attorney-client relationship.

The Indictment also redefined permissible billing arrangements between attorney and client. Brown & Connery “did not charge” the CRA for the work done to research and prepare a declaratory judgment action that was never filed. (Sa53, ¶ 135.) The State insinuates that this write-off was improper behavior for Brown &

Connery but does not allege why.

Nonetheless, the payment of fees from a client to an attorney is in the heart of the Supreme Court’s plenary authority to regulate the practice of law. “Given the critical importance of the constitutional power of this Court over the practice of law, and its pervasiveness, starting with admission, ending with disbarment, and covering everything in between, we have no doubt that the power extends to every aspect of fee agreements between lawyers and clients.” Application of LiVolsi, 85 N.J. 576, 585 (1981) (emphasis added). This has been the situation “[f]rom the outset in New Jersey, following English precedents” that counsel fees were within the province of the courts to regulate. State v. Otis Elevator Co., 12 N.J. 1, 5 (1953).

Attorneys in private practice are “ethically [] obligated” to exercise “billing judgment,” that is, removing from a client’s bill “hours that are excessive, redundant, or otherwise unnecessary.” Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (quotation omitted). See, e.g., Bd. of Prof’l Resp. v. Allred, 378 P.3d 594, 599 (Wyo. 2016) (imposing sanction on attorney for “failing to exercise appropriate billing judgment in the case by writing off unproductive, excessive and redundant hours billed to the client”).

The inherent standard for billed attorney fees is whether they are “reasonable.” RPC 1.5(a). In fact, the Supreme Court has adopted eight specific factors to consider in determining the reasonableness of an attorney’s fee. RPC 1.5(a)(1)–(8). The

Indictment contains no allegation that writing-off charges for legal work performed on an unfiled pleading was unreasonable. By adopting a different standard than reasonableness, the State infringes upon the Supreme Court's exclusive constitutional authority to regulate attorney-client payments.

The State's invented standard also ignores rudimentary basics of client relations. Write-offs are an everyday part of the private practice of law. Brown & Connery's decision to not bill for its work where no litigation was filed was well within the acceptable practice of law. Private attorneys frequently write-off their time to maintain client relationships and win continued (or new) business.

3. Allowing prosecutors to regulate the legal profession would chill the practice of law and harm clients.

The Supreme Court has a fundamental interest in seeing that clients are adequately represented in judicial proceedings. Criminalizing the practice of law risks chilling attorneys' obligations to zealously advocate for their clients. Attorneys should not be forced to compromise representation of their clients over fear of prosecution.

The Supreme Court and the rest of the Judiciary adequately police the Bar. The Rules of Professional Conduct and the attorney discipline system serve as an effective check on attorney conduct. There is no need to create a new check, under the expansive prosecutorial power of the Executive Branch, especially for conduct that is not even alleged to violate ethical or professional rules. "The only lawyers

who should fear prosecution for strategic choices they make in representing their clients are those who engage in conduct that is without question criminal—for example, falsifying affidavits, intimidating witnesses, falsely promising clients that the attorney could bribe government officials to drop the charges against the client, concocting a representation to prevent a witness from testifying, and the like.” Gerace, 731 F. at 515–16 (citations omitted).

Ultimately, those harmed by the prosecution of the practice of law are clients who will not receive full-throated advocacy from their attorneys. Limiting an attorney’s ability, whether “consciously” or “unconsciously,” to provide robust representation of a client “threatens severe impairment of the judicial function.” Velazquez, 531 U.S. at 546. “The lawyer’s principal responsibility is to serve the undivided interests of his client. . . . If there is any constraint on counsel’s complete and exuberant presentation, our system will fail because the basic ingredient of the adversary system will be missing.” United States v. DeFalco, 644 F. 2d 132, 136 (3d Cir. 1979). Courts must be particularly wary where “a practice places the lawyer in an irreconcilable ethical conflict which will only serve to undermine the public’s confidence in the profession.” Kamaratos, 360 N.J. Super. at 89 (Fuentes, J., concurring).

Criminal defendants may be the clients who suffer the most when the attorney-client relationship is chilled by Executive action. The Sixth Amendment provides

criminal defendants with the right to counsel. “[A]rbitrarily” interfering with and chilling those attorney-client relationships “would be a denial ... of due process in the constitutional sense.” Powell v. Alabama, 287 U.S. 45, 69 (1932).

This fundamental right requires that a lawyer advance the client’s interests and be independent of outside influences. But a prosecutor who could wield criminal sanction over both attorney and client jeopardizes the client’s right to full and effective legal advice. Given the fundamental constitutional rights at stake, the Supreme Court and Judiciary must remain the exclusive regulators of overseeing an attorney’s practice of law.

Federal courts have recently been faced with challenges by lawyers arguing that federal executive branch actions have impermissibly chilled the attorney-client relationship. The guidance from those courts is useful for analyzing this prosecution.

Perkins Coie challenged one Executive Order, and a court permanently enjoined application of the Executive Order on numerous grounds. Perkins Coie, ____ F.Supp.3d ____ (slip op.). The District Court’s opinion highlighted the importance of lawyers in a well-functioning legal system. (Id. at 1–3.) This was evident before our nation’s founding and enshrined in the Fifth and Sixth Amendments. (Id.) The District Court further concluded that “interfering with the ability” of an attorney to represent his clients “unconstitutionally interferes with both Fifth and Sixth Amendment constitutional protections.” (Id. at 84–88.)

WilmerHale challenged another Executive Order that the District Court found unconstitutional on multiple grounds. WilmerHale, ___ F.Supp.3d ___ (slip op.). The effect of the Executive Order targeting the firm and its attorneys would unconstitutionally “leave[] attorneys wary of making certain arguments and representing certain clients for fear of retribution from the Executive Branch.” (Id. at 50.) This chilling effect would deprive the public of their Sixth Amendment right to counsel “by eviscerat[ing] the Firm’s ability to provide effective representation and advocacy for its clients.” (Id. at 66.)

The State will object to having this prosecution compared to the President’s illegal orders targeting law firms. And, it is true, there are differences. The State does not appear to have acted with the same vindictiveness and malice. But this Court should focus on the similarities. Namely, the grave impact on chilling legal advocacy. It does not matter if the federal government or the state government is taking action that impedes legal representation. Courts must remain vigilant and protect against all threats to lawyers and the judicial system.

CONCLUSION

For the foregoing reasons, this Court should affirm the dismissal of the Indictment against William Tambussi, Esq. In addition to all the reasons set forth in the Omnibus Brief, this Court should also affirm the Indictment's dismissal for failing to allege the specific mens rea requirement necessary to hold a lawyer liable when engaged in the practice of law. This Court should also affirm the dismissal of the Indictment as unconstitutionally (1) violating due process notice and (2) infringing upon the Supreme Court's plenary authority to regulate and monitor the legal profession.

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OF COUNSEL AND ON THE
BRIEF

Dated: July 23, 2025

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 dated February
26, 2025

Submitted: July 23, 2025

Trial court Docket No.:

MER-24-001988

Sat Below:

Hon. Peter E. Warshaw, Jr., P.J.Cr.

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PRELIMINARY STATEMENT

The trial court rightly dismissed the State’s defective and unprecedented Indictment. Over the course of its 111 pages, the Indictment purports to tell a story of *extortion*—but it does not allege any violence or unlawful threats; only ordinary economic bargaining among sophisticated businessmen represented by experienced counsel. The Indictment pitches a tale of *corruption*—but there are no bribes or kickbacks; only routine and constitutionally protected politics. It also promises *racketeering*—but no organized criminal elements ever appear; only respected leaders trying to revive a long-suffering city. To make matters worse, the Indictment’s allegations are stale, with nothing of consequence happening in almost a decade. No wonder, then, that the U.S. Attorney’s Offices in New Jersey and Philadelphia declined to pursue these charges. And no wonder that the trial court dismissed the charges as both meritless and untimely.

The Indictment is defective, first and foremost, because it charges lawful bargaining as criminal extortion. Threats of economic loss in private business dealings are a routine, accepted part of our free-market system. A businessman does not commit extortion when he threatens to walk away from the bargaining table, to file a lawsuit, or to never work with someone again. And there are no special rules for the “politically connected.” Otherwise-lawful bargaining does not become extortion merely because its speaker has ties to City Hall.

Under those well-settled principles, the Indictment comes nowhere close to alleging an unlawful threat. Its core allegation is that George Norcross and other civic leaders “threatened” their business rivals with economic loss when negotiating several development deals. The State has never cited a single case, from any court anywhere, that treats even remotely analogous facts as extortion. And that omission is no surprise: If it were a crime to warn of “consequences” if a deal is not reached, or to use expletives in doing so, New Jersey would need to build more prisons. Nor does it help the State that some Defendants have close connections with Camden’s government. That is an unremarkable feature of democratic self-government. And it is certainly not a crime.

Contrary to the State’s contentions, the glaring flaws in the Indictment were ripe for resolution on a motion to dismiss. Defendants moved to dismiss the Indictment because its factual allegations (taken as true) do not amount to a crime. That is a pure question of law that turns on the scope of the charged offenses, not the “sufficiency of the evidence.” New Jersey courts regularly decide similar, purely legal issues at the motion-to-dismiss stage. And here, the Indictment’s failure to allege a single act of extortion is dispositive. Because every count in the Indictment hinges on the existence of an unlawful threat, and the alleged facts make clear that there were no such threats, the Indictment is defective as a matter of law. The trial court rightly dismissed it.

As if that were not enough, the Indictment is plainly time-barred. Most of its allegations stretch back a decade. The State tries to evade the relevant limitations periods by alleging that businesses affiliated with the Defendants received tax credits more recently, in connection with Defendants' successful development of the Camden Waterfront. But the State approved those credits, and there is no claim that they were obtained through fraud. Investments were made, buildings were built, and offices were occupied. The State paid the credits as the economic incentive the Legislature intended. As the trial court correctly held, that stream of legitimate income does not create a never-ending conspiracy.

At bottom, the Indictment paints George Norcross as a villain who used political influence to advance his own private interests. Many others would call him a hero who used his substantial resources and sheer force of personality to save the City of Camden. The citizens of Camden can have that debate. If they do not want their elected officials to collaborate with (or, on the State's account, kowtow to) Norcross, they can vote them out and replace them with candidates who promise a new approach to the City's government. But that is not the purpose of a criminal prosecution. Wealth, success, and power may make someone an attractive target for prosecutors, but at least in America they are not grounds for imprisonment. This Court should affirm the Indictment's dismissal and close the door on this misconceived and abusive prosecution.

PROCEDURAL HISTORY

On June 13, 2024, a State Grand Jury returned an Indictment, No. 24-06-00111, charging Defendants George E. Norcross, III, Philip A. Norcross, William M. Tambussi, Dana L. Redd, Sidney R. Brown, and John J. O'Donnell with racketeering conspiracy (Count 1), conspiracy (Counts 2–4), financial facilitation of criminal activity (Counts 5–10), misconduct by corporate official (Counts 11–12), and official misconduct (Count 13). (Pa1–111). On February 26, 2025, following extensive motions practice, the trial court dismissed the Indictment for several reasons, including failure to allege a crime. (Pa112–211).

STATEMENT OF FACTS

This case arises out of an effort by a set of civic and business leaders to revitalize Camden—once among the most dangerous cities in America—including its previously “abandoned” Waterfront area. (Pa11). The Indictment’s theory is that Defendants, dubbed members of the “Norcross Enterprise,” agreed to “extort and coerce” others to facilitate a series of real-estate transactions. (Pa2). The Indictment never alleges that any Defendant threatened anyone with violence or blackmail; nor does it allege any bribery or corruption of public officials. Rather, it rests on the notion that Defendants pursued their goals through economic pressure and political influence. This brief assumes (for the purpose of this appeal) the veracity of the facts alleged in the Indictment.

A. Defendants' Plan to Develop the Camden Waterfront

George Norcross is a successful businessman and longtime chairman of Cooper Health. (Pa7). He is also a noted political force in New Jersey. (Pa7). The other members of the ostensible “enterprise” include his brother Philip Norcross, CEO of a law firm; his long-time personal attorney William Tambussi, who is counsel to a number of groups in Camden and the City itself; Dana Redd, who served as Camden’s mayor from 2010 to 2018; John O’Donnell, the CEO of a residential development company; and Sidney Brown, the CEO of a trucking and logistics company. (Pa7–9). George Norcross, O’Donnell, and Brown are among a group of investors that owns multiple properties in the area. (Pa7–9).

According to the Indictment, George Norcross and others began to reimagine the Camden Waterfront in late 2013. (Pa37–38). Once a vibrant part of the city, the Waterfront had become a shell of its former self after decades of “economic decline” and the departure of its “industrial and manufacturing” businesses. (Pa11). The basic “plan”—for George Norcross and others committed to the future of Camden—was to invest large sums of money to revitalize the city’s Waterfront area. (Pa42).

This plan required skill, coordination, and significant capital: The Waterfront had been plagued for decades by a persistent blight that was not going to be cured with piecemeal renovations and development. (Pa11–12).

Instead, “local leaders” had to “commit[]” to a total overhaul, one that involved adding “office space, a hotel, retail, and a residential component.” (Pa44); *see also* (Pa11). George Norcross led this effort. While he did not have a stake in each of the area’s redevelopment projects, he and some other Defendants contemplated moving the national headquarters of their businesses into the City as part of the revitalization plan, and invested substantial personal and business assets to use or acquire some Waterfront properties for that purpose. (Pa44). This case concerns those transactions. And despite the Indictment’s length, its allegations center around a few specific properties.

1. The Triad 1828 Centre and 11 Cooper

A major focus of the Indictment concerns George Norcross’s interactions with Dranoff Properties Incorporated and its principal, Developer-1 (Dranoff), who is litigating parallel civil claims against several Defendants. As part of their plan to revitalize the Camden Waterfront, Norcross and others sought to construct both an office tower (the Triad1828 Centre) and a residential building (11 Cooper). (Pa38–39). Due to his role in a prior development, however, Dranoff held certain rights that impeded those projects: a view easement that would have limited the height or location of new buildings until 2022, and redevelopment options, including a right of first refusal. (Pa16–17, 38–39).

From September 2015 to October 2016, Dranoff negotiated with Liberty Property Trust (“LPT”)—a prominent, publicly traded entity designated as the “master developer” for the Waterfront—over releasing these rights. (Pa9, 44–45). LPT worked closely with the Camden Partners Tower Group (“Camden Partners”)—which included George Norcross, Brown, and O’Donnell, and was represented by Philip Norcross—on both Triad1828 and 11 Cooper. (Pa44). Camden Partners and Philip Norcross directly participated in LPT’s well-lawyered negotiations with Dranoff. (Pa45, 47).

The Indictment alleges that, as Dranoff dragged his feet—and as the fate of the Camden renaissance hung in the balance—George Norcross ratcheted up the rhetoric. In the summer of 2016, he allegedly told Dranoff, “in substance”: “if you f**k this up, I’ll f**k you up like you’ve never been f**ked up before. I’ll make sure you never do business in this town again.” (Pa47). As George Norcross later explained to his business partners, he was “irritated” that Dranoff, who had originally promised that releasing his view easement would be “no problem,” was now moving the goalposts. (Pa48–49). Those tactics were jeopardizing the entire project because Camden Partners would be forced to “walk away” if LPT could not buy out Dranoff’s easement. (Pa48–49). And that implosion would undeniably be a “bad thing for the city.” (Pa48–49).

Dranoff, himself a sophisticated real-estate developer, did not wilt as soon as George Norcross dropped a few “f-bombs.” (Pa10). Instead, he stuck to his hardball tactics. That fall, as Norcross would later recount, Dranoff had it out with him for “an hour and a half” on the phone, during which Dranoff tried to “shake us down.” (Pa53). To this, George Norcross told Dranoff that his tactics were “unacceptable” and that “there would be consequences” if he kept them up. (Pa53–54).

In parallel, the Indictment alleges that George Norcross and others discussed how to gain economic leverage over Dranoff. Camden Partners’ lawyer, Philip Norcross, advised Mayor Redd to stop returning his calls. (Pa49–50). The group also considered whether the City of Camden could use eminent domain to condemn Dranoff’s view easement (*i.e.*, seize it and pay Dranoff its objective fair value). (Pa50–51). The thinking was that Dranoff would hold out “until you got a bat over his head,” figuratively speaking; the prospect of having the City condemn his easement (likely at a lower value than he was being offered) was legal leverage that might finally lead to a compromise. (Pa57–59). According to William Tambussi, there was a “very strong argument” for condemning the view easement—as needed to allow the Triad1828 and 11 Cooper projects to move forward—because the development would “enhance the value of [Dranoff’s] [own] property.” (Pa58).

No condemnation action ever happened; the City never seized the view easement. (Pa60). Nor is there any allegation that anyone threatened such a seizure to press Dranoff to cave. Instead, LPT agreed to sweeten the deal, and Dranoff accepted almost \$2 million to “resolve the matter.” (Pa60, 62). Triad1828 and 11 Cooper have since been built and occupied. (Pa66–68).

2. The Radio Lofts

The Indictment also alleges that, years later, Philip Norcross petitioned the City to terminate another never-used redevelopment option held by Dranoff, this time for the nearby “Radio Lofts” building. (Pa72). On this point, the Indictment does not allege that anyone in the “Norcross Enterprise” threatened Dranoff (or anyone else) in any way. Rather, it alleges that private citizens asked city officials to “slow[] down” approvals for one of Dranoff’s pending deals, as part of an effort to “take away” the redevelopment option for Radio Lofts. (Pa59, 72–74). In April 2018, the City sent a letter to Dranoff purporting to terminate the redevelopment option; soon after, Dranoff sued. (Pa75). The suit settled in 2023, with *Dranoff* surrendering his option and other assets and paying the *City* \$3.3 million, supposedly because he feared “corruption” in the “court system.” (Pa76). There is no allegation that any member of the Enterprise acquired Dranoff’s Radio Lofts rights.

3. The L3 Complex

The final allegations center around Cooper's Ferry Partnership (CFP, now Camden Community Partnership), a nonprofit that worked to "redevelop the Camden Waterfront." (Pa9). Around 2013, CFP began looking into acquiring the L3 Complex, a pair of buildings on a large lot near the Waterfront. (Pa21). Around the summer of 2013, Mayor Redd's chief of staff allegedly advised CFP's CEO that he should start meeting regularly with Philip Norcross, who represented one of the nonprofit's major backers, in order to ensure that CFP maintained the stakeholder approval for its various projects. (Pa22).

CFP's would-be acquisition of L3 concerned George Norcross. He worried CFP "would fail" because they "should not be in the development business" and "did not know what they were doing." (Pa24–25). Norcross did not want the L3 project to fail, as the building was a potential future relocation site for the Cooper Health offices. (Pa27–28). And concerns spiked after CFP announced it was going to partner with a non-local firm (KPG/MC) to handle the project. (Pa25, 27). Given those concerns, Philip Norcross pressed CFP to partner with Investor-1 instead. *See* (Pa25, 27).

CFP did not want to abandon KPG/MC because it allegedly offered better terms. (Pa29). But CFP eventually relented, after Philip Norcross allegedly told the CEO of CFP that it was "not allowed" to use KPG/MC, and "should only use

Investor-1.” (Pa28). The CEO allegedly “understood” this instruction to be an implicit “threat”—based not on what was said but on who said it. (Pa28). In the CEO’s view, George Norcross had “political power” in New Jersey, and was not known as an easily spurned man. (Pa23, 28). The Indictment traces the CEO’s concern to his beliefs, *first*, that George Norcross caused a reduction in CFP’s funding in the “early 2000s” and, *second*, that George Norcross sought to induce the firing of a municipal employee “in 2001.” (Pa23, 28).

The result was that CFP scrapped plans to partner with KPG/MC, and an investor group eventually acquired and redeveloped L3. (Pa31–32). Cooper Health later moved hundreds of personnel into the building. (Pa33–34).

4. The Associated Tax Credits

Following the construction of the Triad1828, 11 Cooper, and L3 buildings, businesses associated with George Norcross, Brown, and O’Donnell applied for and received tax credits from the State of New Jersey. (Pa32, 64, 68–69). The State provided the tax credits through the Grow New Jersey Assistance Program (“Grow NJ”), which exists in part to promote development and job creation in Camden. (Pa13–15). To obtain the tax credits, each business had to show (i) that the availability of the credits was “a material factor in [its] decision to make a capital investment in Camden,” and (ii) that its “capital investment and creation of jobs would result in a net positive benefit to the State at least equal

to the amount of tax credits requested.” (Pa14–15). Having made those showings, several Defendants’ businesses became eligible to receive credits for up to ten years, contingent on continued compliance with their “tax credit award[s].” (Pa32, 65–66). The State has provided those tax credits throughout this litigation, *see* (Pa205), even as the Office of Public Integrity and Accountability has tried to frame them as the proceeds of a criminal conspiracy.

B. The State’s Indictment

The Indictment alleges that the “Norcross Enterprise” agreed to use threats to obtain a collection of property interests along the Camden Waterfront. *See* (Pa77–80). Its basic assertion is that these alleged “threats” amounted to extortion and coercion under both state and federal law. All the charges rest upon that premise.

Count 1 charges a racketeering conspiracy with extortion and derivative offenses as its predicates. Counts 2 through 4 charge individual conspiracies, embracing extortion, coercion, and related offenses, with respect to each of the above transactions (Triad1828 Centre and 11 Cooper; Radio Lofts; and the L3 Complex). Counts 5 through 10 charge “financial facilitation of criminal activity” based on the possession and sale of tax credits relating to those properties. Counts 11 and 12 charge “misconduct by a corporate official,” claiming that Defendants used their businesses as vehicles for the other

supposed crimes. Finally, Count 13 charges “official misconduct,” premised on Mayor Redd’s supposed role in facilitating those same crimes. (Pa81–110).

C. The Trial Court’s Decision

The trial court dismissed the Indictment for two independent reasons.

First, the trial court held that the Indictment “must be dismissed because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153). The Court began by explaining that an indictment is “facially and palpably defective” when its alleged facts “do not, as a matter of law, constitute a crime.” (Pa152). The Court also determined that the “validity of every count in this thirteen-count indictment depends upon the existence of unlawful threats.” (Pa155). And after carefully walking through the Indictment’s lengthy allegations, the Court concluded that they did not amount to a single “wrongful or unlawful threat[.]” (Pa174).

The trial court rested that conclusion on established principles of criminal law, under which “[n]ot every threat is criminal, or even wrong.” (Pa159) (citation omitted). Indeed, an extortion statute that prohibited “every threat made for the purpose of obtaining property would encompass a significant portion of accepted bargaining.” (Pa159) (citation omitted). For that reason, New Jersey does not criminalize threats “to breach a contract” or “to cease doing business”—so long as there is some “economic or commercial nexus between

the actor who utters these protected threats and the underlying transaction.” (Pa159–60). In that way, New Jersey law “tolerate[s] considerable ‘economic coercion’ as incident to free bargaining.” (Pa160).

Applying those principles, the trial court held that the Indictment describes no more than ordinary commercial bargaining. To start, the Court noted that the alleged “threats” to Dranoff occurred in business negotiations “between two heavyweights, both accompanied at times by at least one lawyer.” (Pa161–62). In that context, George Norcross’s “amorphous threat to make sure you never do business in this town again” was “precisely the sort of economic coercion that [New Jersey law] recognize[s] as incident to free bargaining.” (Pa163). As for the negotiations regarding the L3 building, the Court held that the alleged “political muscle and brass knuckle vindictiveness of the Norcross brothers” could not “convert Philip Norcross’s strong statement” to CFP’s CEO into an unlawful threat. (Pa170). To the contrary, the Court found that the “‘threat’ made by Philip Norcross must be construed as one which is purely economic in nature, just hard bargaining.” (Pa171). The Court thus held that the Indictment fails to allege a single instance of criminal extortion, meaning that all its charges “collapse” and merit dismissal “as a matter of law.” (Pa153, 174).

Second, the trial court held that the Indictment “must be dismissed because the charges are facially time-barred.” (Pa200). As the Court explained, virtually all the allegations in the Indictment—including the alleged extortion—fall outside New Jersey’s five-year statute of limitations. (Pa201–03). And although the State argued that its charged conspiracies continued into the present, the Court rejected the State’s theories to that effect. Most notably, the Court held that the continued payment of the Grow NJ tax credits did not prolong the limitations period because those credits “are not proceeds of a crime.” (Pa204). It also reasoned that accepting the State’s reliance on those credits would mean that “no conspiracy would end until every conspirator no longer retained any economic benefit[,] no matter how residual.” (Pa205) (citation omitted).

That left only the official misconduct charge in Count 13, which is subject to a seven-year statute of limitations. The State argued that this charge was timely because Redd accepted a job on a university’s board of governors within that seven-year period. But although the State “suggest[ed] that the job was a reward for faithful service and fidelity to the Enterprise,” the Indictment did not allege a bribe or a *quid pro quo*. (Pa210). The Court thus held that accepting the job did not extend the limitations period for Count 13.¹

¹ The trial court also held that Count 1 must be dismissed because the Indictment fails to allege a criminal enterprise, and that Count 13 must be dismissed because the Indictment fails to allege official misconduct.

ARGUMENT

The trial court got it exactly right: Although the lengthy Indictment includes over a dozen counts, its own factual allegations show that no Defendant committed a single crime. This flaw in the Indictment is purely legal. For the purpose of this motion, Defendants do not contest the truth of the Indictment's allegations. Nor do they contest whether the State presented sufficient evidence of those allegations to the grand jury. Instead, Defendants contend (and the trial court agreed) that the economic "threats" alleged in the Indictment do not violate either New Jersey or federal law. The threats, in short, are *not crimes*.

This Court should affirm the trial court's dismissal of the Indictment for three reasons. *First*, the question whether the allegations in the Indictment amount to a crime is a pure question of law that the trial court properly resolved on a motion to dismiss. *Second*, the entire Indictment hinges on purported violations of the threat statutes—extortion and coercion. Thus, if the allegations in the Indictment do not make out violations of those statutes, the entire Indictment is defective. *Finally*, the allegations in the Indictment do *not* amount to criminal extortion as a matter of law. The allegations instead describe hard commercial bargaining—a routine, accepted part of the American economy. If these allegations are criminal, then virtually any businessman could be indicted at any time. The entire Indictment therefore fails to state a criminal offense.

In the alternative, this Court should affirm the trial court’s ruling that the charges are time-barred. The Indictment alleges that its cornerstone offenses—extortion and coercion—occurred almost a decade ago. To overcome that obvious time bar, the State seeks to prosecute those offenses as part of some purported “conspiracies” that supposedly continue into the present. But the Indictment’s only allegations to that effect—that Defendants received tax credits from a state agency, filed pretrial motions, and talked to reporters—do not a continuing conspiracy make. The State’s gambit to evade the statute of limitations thus fails as a matter of law.

POINT I: THE TRIAL COURT CORRECTLY DISMISSED THE INDICTMENT FOR FAILING TO ALLEGE A CRIME.

The Indictment invokes three criminal statutes that prohibit unlawful threats. Under New Jersey law, theft by extortion means “purposely and unlawfully obtain[ing] property of another” by “purposely threaten[ing]” to inflict certain enumerated harms. N.J.S.A. 2C:20-5. “Criminal coercion” means threatening certain harms “with purpose unlawfully to restrict another’s freedom of action.” N.J.S.A. 2C:13-5. And the Hobbs Act—the only federal statute at issue—forbids taking property “by wrongful use of actual or threatened force, violence, or fear.” 18 U.S.C. § 1951(b)(2). These three statutes form the backbone of the charges in this case. Because the Indictment’s allegations do not violate any of them, this Court should affirm the dismissal.

A. The Entire Indictment Hinges on Whether the Alleged “Threats” Were Criminally Extortionate.

The core question on appeal is whether the “threats” alleged in the Indictment constitute extortion within the meaning of New Jersey and federal law. Part I.A.1 explains why that purely legal question was properly before the trial court. Part I.A.2 then shows that every count in the Indictment “depends upon the existence of an unlawful threat,” such that the failure to allege such a threat renders the entire Indictment “defective.” (Pa152, 155).

1. Indictments Must Be Dismissed When They Do Not Allege a Crime.

The New Jersey Constitution provides that “[n]o person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury.” N.J. Const. art. 1, para. 8. To satisfy that constitutional mandate, an indictment must set forth both “the essential elements [that] constitute the offense alleged” and the “critical facts” that establish those elements. *State v. Wein*, 80 N.J. 491, 497 (1979). As particularly relevant here, it is black-letter law that the “essential facts constituting the crime must be directly stated in the indictment,” rather than “supplied by inference or implication.” *State v. De Vita*, 6 N.J. Super. 344, 347 (App. Div. 1950); *see also State v. Dorn*, 233 N.J. 81, 93–94 (2018); *State v. Saad*, 461 N.J. Super. 517, 522–23 (App. Div. 2019); *State v. Newell*, 152 N.J. Super. 460, 466–68 (App. Div. 1977) (per curiam) (similar).

Under those principles, an indictment is “manifestly deficient” and must be dismissed when it charges conduct that is not a crime. *State v. Perry*, 439 N.J. Super. 514, 532 (App. Div. 2015) (citation omitted); *see also State v. Bleichner*, 11 N.J. Super. 542, 547 (App. Div. 1951) (an indictment is “insufficient” when its alleged facts do not “constitute [] an offense” within the “terms and meaning” of the charged statutes). Indeed, this Court has long affirmed the dismissal of indictments when their allegations do not make out the “essential facts” of the charged crimes.

This Court did just that in *State v. Thompson*, 402 N.J. Super. 177 (App. Div. 2008). The central question in that case was whether the allegations against several State employees amounted to official misconduct within the meaning of N.J.S.A. 2C:30–2. *See* 402 N.J. Super. at 181–82. The trial court held that they did not. *See id.* at 182. In particular, the court dismissed thirty-two counts against the defendants based on their “*legal* insufficiency,” without addressing whether the “evidence presented to the grand jury was *factually* insufficient.” *Id.* (emphases added). This Court then affirmed as to 28 of those counts, likewise confining its review to the four corners of the indictment. *Id.* at 195–204. It thereby held that the facts alleged—*i.e.*, that the State employees accepted gifts, failed to report them, and committed no other wrongdoing—did not constitute official misconduct. *See id.* at 201.

New Jersey courts have never shied away from such review. Like *Thompson*, multiple cases have affirmed the dismissal of an indictment because its factual allegations did not violate the charged statutes. See *Perry*, 439 N.J. Super. at 519, 532 (none of defendant’s alleged conduct “occurred during the relevant court-imposed period of [license] suspension”); *State v. Mason*, 355 N.J. Super. 296, 300, 305 (App. Div. 2002) (allegations showed that defendants did not qualify as public servants for the purpose of an official misconduct charge); *State v. Moscato*, 253 N.J. Super. 253, 255, 262 (App. Div. 1992) (the “State’s version of the facts” did not constitute a crime); *State v. Pandozzi*, 136 N.J. Super. 484, 491 (App. Div. 1975) (per curiam) (none of the alleged conduct “would constitute a violation of the statute”); see also *State v. Higginbotham*, 257 N.J. 260, 269–70, 281 (2024) (holding, on a motion to dismiss an indictment, that the charged child-endangerment offense was “unconstitutionally overbroad”).

Defendants seek that same review here. The question presented at this stage is whether the Indictment’s allegations (taken as true) amount to violations of the charged offenses. In other words, the question is whether the Indictment alleges the essential fact of an *extortion* charge—namely, a threat that violates the relevant extortion statutes. And as *Thompson* confirms, the question whether a particular threat is “illegal” under those statutes “is a question of law, to be settled by the court.” *Brown v. State*, 49 N.J.L. 61, 62 (1886).

That legal issue was ripe for resolution by the trial court. Just as in *Thompson*, there is no point in having the State seek to prove a story that, even if true, involves no crimes. Indeed, even the State admits that measuring the allegations against statutory and constitutional standards is entirely proper at the indictment stage. (Pb1, 35–36). And contrary to the State’s mischaracterizations, that is exactly (and exclusively) what Defendants asked the trial court to do. The motion to dismiss did not contest the truth of the factual allegations or the sufficiency of the evidence presented to the grand jury. All the motion did was explain why the allegations—like the allegations in *Thompson*—are not crimes as “a matter of statutory interpretation.” (Pb1).

To be clear, the fact that this speaking Indictment includes lengthy factual allegations “does not change the standards governing a motion to dismiss,” (Pa151)—or, as the State says, confer a “windfall” on Defendants, (Pb34). Whether an indictment is detailed or sparse, the key question remains the same: Does it include “essential facts constituting the crime”? *De Vita*, 6 N.J. Super. at 347. The Indictment here includes the alleged facts that the State contends constitute the crimes, but the State is wrong as a matter of law because those alleged facts—even if entirely true—do not constitute criminal offenses. The *legal theory* on which the Indictment rests is thus palpably deficient. And no amount of evidence for the State’s allegations can fix that fatal flaw.

In other words, this disagreement was ripe for resolution by the trial court precisely because the parties disagree over the *law* rather than the *facts*. Most criminal prosecutions rise or fall on the facts. But especially for those that rest on novel and aggressive legal theories, the Court must test those theories at the threshold. “[C]ourts have as much of a responsibility to police criminal indictments as they do civil complaints,” and must dismiss when the allegations, “even if true, would not state an offense.” *United States v. Brewbaker*, 87 F.4th 563, 572 (4th Cir. 2023); *see also Bleichner*, 11 N.J. Super. at 547. This is such a case. The thrust of Defendants’ motion is that the Indictment presents routine, lawful, and (often) constitutionally protected conduct as sinister, but does not allege actual extortion. That is the legal issue this case turns on, it is what the trial court properly decided below, and it is what Defendants address here.

2. Every Count in this Indictment Depends on a Theory of Criminal Extortion.

To evaluate whether the Indictment properly alleges crimes, it is necessary to understand how its counts fit together. While the Indictment charges thirteen counts, some with separate criminal objectives or predicates, the State has acknowledged that the whole case ultimately rests on the alleged “threat” offenses: extortion and the closely related crime of coercion. *See* (Pb46). Indeed, a careful reading of the Indictment shows that all its Counts depend on other, predicate crimes—at bottom, extortion and coercion.

Begin with Counts 11 and 12, which concern “misconduct by a corporate official.” Those Counts charge Defendants with using, controlling, or operating a corporation “for the furtherance or promotion of any criminal object.” N.J.S.A. 2C:21-9(c). This is a derivative offense; the corporation must advance some “criminal object.” *Id.* The Indictment identifies three such predicate offenses: theft by extortion, criminal coercion, and financial facilitation of criminal activity. *See* (Pa105–08). The extortion and coercion offenses, as discussed, are at the heart of this case. And the “financial facilitation” counts, addressed next, depend entirely on the extortion and coercion charges.

“[F]inancial facilitation of criminal activity,” as charged in Counts 5 through 10, is a form of money laundering that involves proceeds of a separate crime. N.J.S.A. 2C:21-25. This too is a derivative offense—there must be “criminal activity” from which the property has been “derived.” *See State v. Harris*, 373 N.J. Super. 253, 266 (App. Div. 2004) (explaining that statute requires “underlying criminal activity” that “generat[es] the property”); *see also* (Pa99–104) (alleging possession or transactions involving property “derived from criminal activity”). The financial facilitation counts identify only three forms of criminal activity: extortion, coercion, and official misconduct. And as discussed below, official misconduct similarly depends on the State’s theories of extortion and coercion.

Official misconduct, as charged in Count 13, requires a public official to willfully undertake an “unauthorized exercise of his [or her] official functions.” N.J.S.A. 2C:30-2. The Indictment’s theory is that Mayor Redd engaged in official misconduct by assisting with the actions described “in Counts 1 through 3 and 5 through 12 of th[e] Indictment.” (Pa109–10); *see* (Pb73–78). In other words, the official misconduct count, too, depends on the existence of other crimes. So if no other crimes are alleged, then neither is official misconduct.

That leaves only the conspiracy counts: Count 1, which charges a racketeering conspiracy, and Counts 2 through 4, which charge what the State has called “extortion and coercion conspiracies.” (Pb52). All those conspiracies depend on predicate acts. And the predicate acts are all addressed above: extortion, coercion, misconduct by a corporate official, financial facilitation, and official misconduct. *See* (Pa87–98).

In sum, the foundational offenses in the Indictment are extortion and coercion. Remove those offenses from the equation and the counts would simply cross reference each other, with no independent ground for criminal liability. Therefore, as the trial court held that the Indictment alleges no unlawful threats, all that remained was racketeering with no predicates, conspiracy to commit no crimes, transactions with lawfully generated property, and operating corporations for legitimate ends—in short, an Indictment ripe for dismissal.

B. The Indictment Does Not Allege Criminal Extortion, Only Ordinary Commercial Bargaining.

The trial court correctly dismissed the Indictment “because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153). This Court should affirm that dismissal.

1. Threats Are Unlawful Only in Narrow, Defined Circumstances.

Starting with first principles, many extortion cases involve threats to do something unlawful. The logic in those cases is simple: Because it is unlawful to attack a person, it is also unlawful to threaten to attack him in order to obtain his property. *See* N.J.S.A. 2C:20-5(a).

Extortion statutes also prohibit certain other threats, even though the threatened actions are not independently criminal. There is a long common-law tradition of proscribing blackmail—a threat to expose an embarrassing fact about someone in exchange for a payoff. N.J.S.A. 2C:20-5(c); N.J.S.A. 2C:13-5(a)(3); *see also United States v. Nardello*, 393 U.S. 286, 293–96 (1969) (discussing historical relationship between extortion and blackmail). It is also unlawful for a public official to abuse power by threatening to “[t]ake or withhold action” in exchange for property, *see* N.J.S.A. 2C:20-5(d); N.J.S.A. 2C:13-5(a)(4)—a type of extortion that is akin to bribery, *see Evans v. United States*, 504 U.S. 255, 263–66 (1992).

At the same time, it is obvious that “not every threat . . . is criminal or even wrong.” *State v. Monti*, 260 N.J. Super 179, 185 (App. Div. 1992). Many “benign threats” are facts of life. *Id.* Imagine a guest bitten by bed bugs who warns a hotel manager he will post a bad review on Yelp if his room charge is not refunded. Or an activist investor who demands a seat on the board while gearing up for a hostile takeover. Or a savvy customer who threatens to walk away from a car dealership. The word “unlawfully” in N.J.S.A. 2C:20-5 makes clear that the statute does not “cover situations,” like these, “in which people are acting in ways tolerated in commercial and personal life.” *State v. Roth*, 289 N.J. Super. 152, 158 n.4, 160 (App. Div. 1996) (quoting Cannel, N.J. Criminal Code Ann., cmt. 3 N.J.S.A. 2C:20-5 (1995)); *see id.* at 160 (the statute does not reach “every threat made for the purpose of obtaining property”). The word “wrongful” in the Hobbs Act plays that same role. *See Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 522 (3d Cir. 1998) (not all threats are “wrongful”); *United States v. Jackson*, 180 F.3d 55, 70–71 (2d Cir. 1999) (same).

In general, economic threats in the commercial sphere—among private parties negotiating deals in a free-market system—are neither “wrongful” nor “unlawful[.]” N.J.S.A. 2C:20-5; 18 U.S.C. § 1951(b)(2). That is because “there is nothing inherently wrongful about the use of economic fear to obtain property.” *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989). Indeed, “fear of

economic loss is a driving force of our economy that plays an important role in many legitimate business transactions.” *Brokerage Concepts*, 140 F.3d at 523. For that reason, the Hobbs Act does not reach using “fear of economic loss ... as leverage in bargaining, in which each side offers the other property, services, or rights it legitimately owns or controls.” *United States v. Capo*, 791 F.2d 1054, 1062 (2d Cir. 1986), *vacated on other grounds*, 817 F.2d 947 (2d Cir. 1987) (en banc); *see also Brokerage Concepts*, 140 F.3d at 523 (same).

New Jersey follows the same rule. In drafting the Penal Code, the Criminal Law Revision Committee noted that banning “all threats made for the purpose of obtaining property would embrace a large portion of accepted economic bargaining.” II Final Report of the New Jersey Criminal Law Revision Comm’n, Commentary 227 (1971) (“1971 Commentary”). But “a private property economy must tolerate considerable ‘economic coercion’ as an incident to free bargaining,” and “theft penalties would be quite inappropriate” for “coercive economic bargaining.” *Id.* at 227–28. The 1971 Commentary thus identified threats “to refuse to do business or to cease doing business,” “to breach a contract,” and “to sue” as among those “which ought not to be included” in the statute’s reach. *Id.* at 227. This Court has treated that guidance as authoritative. *See Roth*, 289 N.J. Super. at 161 (recognizing that “commercial or economic menaces have been excluded from the purview of the statute”).

Indeed, a threat of economic loss may constitute extortion only in very narrow circumstances. One category of cases arises when there is no “natural” “economic or commercial nexus between the actor who utters [a] ‘protected’ threat[] and the underlying transaction.” *Id.* at 161–62. For example, one person may not threaten to fire another’s relative from an unrelated job, over which the first person happens to have influence, unless the second person hands over his watch. Another category of cases arises when the victim held a “preexisting right to be free of the economic fear that the defendant utilized.” *United States v. Tobin*, 155 F.3d 636, 640 (3d Cir. 1998) (Alito, J.). For example, when a firm is “legally entitled” to a “level playing field” for bidding on government contracts, a threat to scrap its bids may constitute extortion. *United States v. Collins*, 78 F.3d 1021, 1030 (6th Cir. 1996). But courts have construed the “pre-existing right” exception narrowly. *See, e.g., Viacom Int’l Inc. v. Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), *aff’d*, 946 F.2d 998 (2d Cir. 1991) (no right to be free from corporate takeover); *United States v. Albertson*, 971 F. Supp. 837, 838, 845 (D. Del. 1997) (no right to be free from “legitimate legal and political opposition”). And the Third Circuit has held there is no “right to a level playing field” in business dealings between “private parties”—absent a statute that creates such a “legal entitlement.” *Brokerage Concepts*, 140 F.3d at 526.

Applying those principles, courts have consistently held that the “exploitation of an alleged victim’s fear” in a business negotiation is “‘hard-bargaining’ rather than extortion.” *Viacom*, 747 F. Supp. at 213; *see, e.g., Brokerage Concepts*, 140 F.3d at 526 (“this case provides an example of hard bargaining rather than extortion”); *George Lussier Enters., Inc. v. Subaru of New Eng.*, 393 F.3d 36, 51 (1st Cir. 2004) (rejecting civil RICO claim because conduct was “lawful hard-bargaining, not unlawful extortion”); *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep’t, AFL-CIO*, 770 F.3d 834, 838–39 (9th Cir. 2014) (similar); *see also Continental Bank of Pa. v. Barclay Riding Acad., Inc.*, 93 N.J. 153, 177 (1983) (distinguishing “driving a hard bargain” from duress).

This distinction “between legitimate use of economic fear—hard bargaining—and wrongful use of such fear—extortion” is a legal question for the courts. *United Bhd. of Carpenters*, 770 F.3d at 838. After all, the question whether the Indictment’s allegations describe lawful or unlawful threats is inherently a question of law. That question goes directly to whether the Indictment alleges the “essential fact[]” of its charged extortion offense—namely, the existence of an extortionate threat. *De Vita*, 6 N.J. Super. at 347. And absent the allegation of facts that would constitute an extortionate threat, the Indictment was obviously deficient and was properly dismissed.

2. The Indictment Does Not Allege Extortionate Threats.

The Indictment comes nowhere close to alleging an extortionate threat. To the contrary, the trial court correctly held that the Indictment alleges nothing more than hard bargaining in business negotiations. (Pa153–174).

i. The Alleged Threats to Dranoff

The only express “threats” by any Defendant were those allegedly made by George Norcross to Dranoff. (Pa47, 53–54). As the Indictment details, Norcross made his alleged threats in response to Dranoff’s use of hardball tactics in a business negotiation. Dranoff was leveraging his view easement to block much of the planned redevelopment of the Camden waterfront until he obtained a payout. (Pa44, 47). Norcross told others that it would be a “bad thing for the city” if the redevelopment fell apart. (Pa48–49). He also told his business partners that Dranoff was trying to “shake us down.” (Pa53–54). And he worked with Dranoff to reach an accord, including over an “hour and a half”-long phone call. (Pa53–54).

During the negotiations, George Norcross allegedly lost patience and told Dranoff in 2016: “if you f**ck this up, I’ll f**ck you up like you’ve never been f**cked up before. I’ll make sure you never do business in this town again.” (Pa47). *Months later*, Norcross warned that continuing to hold up the project was “unacceptable” and would “have enormous consequences.” (Pa53–54).

Those allegations describe classic hard bargaining, not criminal extortion or coercion. Norcross and Dranoff were sophisticated businessmen engaged in a prolonged commercial negotiation, with both trying to extract favorable terms. The Indictment concedes that the threatened “consequence[.]” (Pa53–54) was *economic*, with Dranoff allegedly worried about his “financial interests.” (Pa47). And the contemplated exchange was mutually beneficial: In return for allowing redevelopment to proceed, Dranoff was to be paid a large sum—ultimately, \$2 million. (Pa60). It is “not ... unlawful” to use “fear of economic loss” as “leverage” in bargaining when, as here, “each side offers the other property, services, or rights it legitimately owns.” *Capo*, 791 F.2d at 1062.

Indeed, the only specific threat—to stop Dranoff from “do[ing] business in this town” (Pa47)—is *specifically* “carve[d] out” from the charged offenses. *Roth*, 289 N.J. Super. at 161. As the trial court observed, this was a threat “to cease doing business”—the sort of “coercive economic bargaining” that is unavoidable in a free-market economy and for which “theft penalties would be quite inappropriate.” 1971 Commentary, at 227–28; *see* (Pa163). The threat also had a clear “nexus” to the subject at hand: the parties’ negotiations over developing the Camden waterfront. *Roth*, 289 N.J. Super. at 162. If Dranoff had leveraged his view easement to torpedo the development of Camden’s Waterfront, *of course* he would have become toxic “in th[at] town.” (Pa47). He

certainly had no “preexisting right to be free of the fear” that others would shun him if he blew up the neighborhood’s revitalization. *Brokerage Concepts*, 140 F.3d at 525. And while Norcross’s language may have been heated, swearing in business negotiations is not a crime.

Norcross’s only other alleged threat—the pledge that “consequences” would follow Dranoff blowing up the deal—is even more obviously insufficient. (Pa53–54). As discussed, the criminal statutes forbid only certain types of threats. Warning of adverse “consequences” in a business negotiation, without more, cannot possibly expose citizens to indictment. Thus, the allegation that Norcross threatened “consequences” fails to supply the “essential fact[]” of an extortion charge: namely, an unlawful threat. *De Vita*, 6 N.J. Super. at 347.

Recognizing this problem, the State’s brief pitches elaborate theories about what the word “consequences” might mean. *See* (Pb55–57 & n.18); *infra* 50–53. But none of those theories are set forth or supported in the Indictment. And it is black-letter law that the “essential facts” of a charged offense “must be directly stated in the indictment,” rather than “supplied by inference or implication.” *De Vita*, 6 N.J. Super. at 347. Thus, the State cannot salvage its “deficient” indictment by using its appellate briefing to “postulate alternate theories of the case” that would allow it to indict *any* businessman. *State v. Bennett*, 194 N.J. Super. 231, 236 (App. Div. 1984).

The State's alternative theories of this threat also fail on their own terms. The common denominator of those theories is that Norcross's threats should be treated as criminal because of his "political influence" in Camden. (Pa1–2). Given that influence, the State argues that each of Norcross's actions carried an implicit threat to wield the City's authority against his rivals. *See, e.g.*, (Pb57–58). The core problem with that argument is that it seeks to criminalize conduct that is constitutionally protected under both the United States and New Jersey Constitutions: namely, interacting with and petitioning the Government.

Developing and exercising political influence, for good reasons or bad, is not and cannot be a crime. The *Noerr-Pennington* doctrine provides that "those who petition the government for redress are afforded immunity for their action." *Structure Bldg. Corp. v. Abella*, 377 N.J. Super. 467, 471 (App. Div. 2005). This doctrine is grounded in the "constitutional" right "to petition." *E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961). And it applies even if a person seeks government action for "selfish" reasons. *Fraser v. Bovino*, 317 N.J. Super. 23, 38 (App. Div. 1998); *see Noerr*, 365 U.S. at 139 ("It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors").

The State's position runs headlong into *Noerr-Pennington*. To paint Norcross as controlling the Camden government, the State alleges: (i) that he helped craft a state statute, (ii) that he sought to induce the firing of a municipal employee, (iii) that he prompted a funding cut to CFP, (iv) that his brother asked Mayor Redd to turn down Dranoff's calls, and (v) that his brother asked city officials to slow down a development project. *See* (Pa7, 17–19, 23, 50, 74). Each of those activities was lawful petitioning activity because each of them entailed no more than asking the Government to act. Again, the Indictment never alleges any act of violence, bribery, or blackmail.

The constitutional right to petition the Government does not disappear when one does so successfully. Any attempt to distinguish legitimate political influence from “excessive” influence would be both unprincipled and dangerous. *See Percoco v. United States*, 598 U.S. 319, 330 (2023). Indeed, the Supreme Court recently rejected a theory of bribery because it risked criminalizing the petitioning activity of “particularly well-connected and effective lobbyists.” *Id.* at 331. Nor does it matter that Camden's former mayor is named as a Defendant. The *Noerr-Pennington* doctrine lacks a “conspiracy exception.” *Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 383 (1991). And it would be perverse to treat a businessman as a walking extortion machine simply because he has a good relationship with City Hall.

For all those reasons, the State may not use Norcross’s political influence to turn his lawful business negotiations into unlawful threats. This segment of the Indictment instead concerns nothing more than “threats” about the *business* consequences of refusing to reach *business* deals in *business* contexts. The State has not identified any authority that treats even remotely similar threats as criminal. And if New Jersey wished to criminalize such ubiquitous business behavior, it would need to do so more clearly. *Cf. Perry*, 439 N.J. Super. at 527 (rule of lenity). This segment of the Indictment thus fails to allege a crime.

ii. The Alleged Interactions with CFP

Although that covers the waterfront of actual threats allegedly made by any Defendant, the Indictment says that Philip Norcross made a remark in 2014 that someone “took as a threat.” (Pa28). The trial court correctly held that this fares no better as a source of criminal liability. *See* (Pa169–74).

The context here was CFP’s effort to redevelop the L3 Complex. According to the Indictment, CFP originally intended to partner with KPG/MC, but faced pushback because KPG/MC was “not a ‘local firm.’” (Pa24, 27). Philip Norcross allegedly “told” the CEO of CFP that his nonprofit was “not allowed” to work with KPG/MC and “should only use Investor-1” as a partner. (Pa28). The CEO allegedly “took” that direction “as a threat” of some sort, and therefore “agreed to partner with Investor-1.” (Pa28).

These allegations do not amount to extortion for four reasons. *First*, there is no threat. The Indictment says that Philip Norcross “told” CFP what to do. (Pa28). But bossing someone around is not extortion. And although the law recognizes that a threat can be implicit in certain contexts, *see* (Pb51 & n.15), this is not one of them. According to the Indictment, Philip Norcross and the CEO of CFP were involved in multiparty negotiations regarding real estate development—a process carried out over regular “stakeholder” meetings and with the blessing of the Mayor’s office. (Pa22–23, 28). Those allegations are far afield from the implied-threat cases on which the State relies, which all involve hints at or histories of violence. *See, e.g.*, (Pb51) (citing *inter alia* *United States v. DiSalvo*, 34 F.3d 1204 (3d Cir. 1994)—a case about the mafia).

Second, to the extent the Indictment alleges a threat, it does not allege that the threat was *unlawful*. In particular, the Indictment does not allege the “essential facts” of an unlawful, *extortionate* threat, *De Vita*, 6 N.J. Super. at 347, as distinct from a purely economic threat for which “theft penalties would be quite inappropriate,” 1971 Commentary, at 227–28. That omission is fatal to charging extortion. *See supra* 32.

Nor would it help the State to spot it an allegation that Philip Norcross threatened to seek a reduction in CFP’s funding—or the replacement of its CEO. That threat would have been purely economic and entirely lawful. *See supra*

28–29. There would have been a clear nexus between the threat and the subject of the negotiation, as it is only natural to hinge one’s support for a nonprofit on how that nonprofit conducts its affairs. *See* (Pa24–25) (noting George Norcross’s concern that CFP “did not know what [it] [was] doing”). And there is no argument that CFP had a pre-existing right to public funding, or that its CEO was “legally entitled” to keep his job. *Collins*, 78 F.3d at 1030.

Finally, the State’s theory on this issue runs afoul of *Noerr-Pennington*. The Indictment alleges that the CEO of CFP took Philip Norcross’s directive as a threat because he believed that: (i) George Norcross once had a dispute with a prior CEO, after which Camden “cut off or reduced funding to CFP;” and (ii) George Norcross once tried to “induce” a councilman in Palmyra “to fire a municipal employee.” (Pa23). Putting aside whether the supposed funding cut and termination were deserved, the episodes were constitutionally protected petitioning. No less than any other citizen, George Norcross is entitled to urge that public funding be redirected, or that a public employee be replaced. *See supra* 33–35.

It makes no difference that an “unidentified co-conspirator” allegedly pressured the CEO to resign—*three years after* the supposed extortion regarding the L3 Complex. The conspirator allegedly threatened that the CEO would be fired if he did not resign, and the CEO allegedly worried that being fired would

“harm him reputationally.” (Pa69–70). But contrary to the State’s suggestion, this does not mean that the conspirator himself threatened the CEO with reputational harm. *See* (Pb11–12, 58); *infra* 55, 57–60. The co-conspirator instead threatened “to breach a contract”—an economic threat that the 1971 Commentary singled out as lawful, and from which any reputational harm would be downstream. 1971 Commentary at 227. And even putting all that aside, this allegation has nothing to do with the development of Camden’s waterfront, the associated tax credits, or any charged offense. For all those reasons, this segment of the Indictment, too, fails to allege a crime.

***iii. The Alleged Efforts to Gain Leverage Through
Petitioning Activity***

The remaining allegations are far afield from any threat—extortionate or otherwise. They suggest Defendants sought business “leverage” through improper means. (Pa3–4). But on this, again, the Indictment botches the law.

For instance, the Indictment alleges that the Defendants discussed whether to ask a state agency to condemn Dranoff’s view easement. (Pa50–53, 56–60). The condemnation action would have granted Defendants greater “leverage” over Dranoff in their protracted development negotiations. (Pa57–58). According to the Indictment, Tambussi believed that there was a “very strong argument” for condemnation, in part because revitalizing Camden’s waterfront would “enhance the value of [Dranoff’s] [own] property.” (Pa58).

These eminent domain allegations do nothing for the State’s case. For one, no condemnation action occurred; Dranoff sold his easement for \$2 million. (Pa60). In addition, there is no allegation that anyone threatened Dranoff with condemnation, or even alerted him to the possibility. And such a threat would have been lawful anyway. *See* 1971 Commentary, at 227 (the extortion statutes do not reach threats “to sue”); *see also Deck v. Engineered Laminates*, 349 F.3d 1253, 1258 (10th Cir. 2003) (“Extortion is the antithesis of litigation as a means of resolving disputes”).

Moreover, Defendants had *every right* to petition the government to condemn the view easement. The *Noerr-Pennington* doctrine protects the right “to advocate” for one’s “business and economic interests” before “state ... agencies and courts.” *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972). This includes the right to petition for a “municipal body’s condemnation of property.” *Zemenco, Inc. v. Devs. Diversified Realty Corp.*, 2005 WL 2545303, at *10 (W.D. Pa. Oct. 7, 2005), *aff’d*, 205 F. App’x 82 (3d Cir. 2006) (GNa8). Indeed, there was a strong case for eminent domain here, as the view easement “st[ood] in the way of development of the Camden waterfront.” (Pa61–62). There is no allegation that Defendants sought to obtain the condemnation action via bribery or some other improper means. The State thus has no path for connecting the eminent domain allegations to any crime.

For all the same reasons, the Indictment does not state an offense by alleging that Defendants discussed “having the CRA take away” Dranoff’s Radio Lofts redevelopment option, or urged the city to “slow[] down” approval of a Dranoff agreement. (Pa59, 72–74). There are no allegations that any of this was ever used as a threat—much less a threat to obtain property. Nor can the State argue that the actions themselves were criminal, as there is no allegation that Defendants *bribed* the CRA or otherwise did anything other than ask government officials to take certain actions. And of course, Defendants had a constitutional right to petition the City to do something about the blighted Radio Lofts site, for good reasons or bad ones. *See Noerr*, 365 U.S. at 139.

* * *

The entire Indictment rests on a theory of extortion that is legally bogus. It is not extortion for one businessman to warn another about the economic blowback of scuttling a deal, or for the politically influential to use that influence for their private ends by asking government officials to take some action. The State’s novel theory would revolutionize the law, cast a pall over constitutionally protected conduct, and enable the State to indict virtually every businessman who engages in hard bargaining or political lobbying. This Court should thus reject that legally invalid theory and affirm the Indictment’s dismissal.

C. The State’s Contrary Arguments Fail.

The State’s remaining arguments mark a sharp retreat from both the allegations in the Indictment and the legal theories that underlie them. The State first disputes the standard of review, asserting that Defendants cannot challenge whether the Indictment alleges a crime. *See infra* Part I.C.1. The State then attempts to rewrite the Indictment, abandoning the document’s focus on economic threats and recasting its allegations as threats of reputational harm and governmental retaliation. *See infra* Part I.C.2. Those arguments all fail.

1. The State Is Wrong on the Standard of Review.

As discussed above, it is well-settled that an indictment is “manifestly deficient” and must be dismissed when it charges conduct that is not a crime. *Perry*, 439 N.J. Super. at 532; *see supra* 18–22. This rule arises from the requirement in the New Jersey Constitution that the “essential facts constituting the crime must be directly stated in the indictment,” rather than “supplied by inference or implication.” *De Vita*, 6 N.J. Super. at 347. The trial court applied that exact rule here, holding that the Indictment “must be dismissed because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153). And this Court has applied the same rule in many prior cases, including *Thompson*, *Perry*, and *Mason*. *See supra* 19–20.

The State’s opposition to that manner of reviewing indictments is wrong. According to the State, Defendants cannot challenge whether the Indictment alleges a crime—in other words, whether it was manifestly defective under the New Jersey Constitution—without also challenging the evidence that was presented to the grand jury. *See* (Pb20–38). But the State *concedes* that New Jersey courts may review indictments for legal sufficiency. That is exactly what happened here. And the question whether an Indictment *alleges* a crime is both legally and logically distinct from the sufficiency of the *evidence* that the grand jury reviewed. For those reasons, and many others, the State’s arguments on the standard of review fall flat.

i. Defendants’ Facial Challenge Is Proper.

It is helpful to begin with the State’s concessions. The State acknowledges that there are two different “types of motions to dismiss in criminal practice”: a “facial motion” (which challenges the Indictment’s allegations) and a “some evidence” motion (which challenges the evidence before the grand jury). (Pb1); *see also* (Pb21–27). The State also concedes that a facial challenge to an indictment is proper when “guilt hinges entirely on a matter of statutory interpretation.” (Pb1). In particular, the State concedes that New Jersey law allows motions to dismiss that raise “matters of pure statutory interpretation applied to a fixed universe of uncontested facts.” (Pb36).

Those concessions doom the State’s argument on the standard of review. Defendants here have raised a “matter of statutory interpretation” (Pb1)—whether the alleged threats violate the New Jersey extortion statutes or the Hobbs Act. Defendants have raised that purely legal question as “applied to a fixed universe of uncontested facts” (Pb36)—the allegations in the Indictment. And the State has conceded that such a “facial motion” is distinct from a motion that contests the “evidence” before a grand jury. (Pb1). Defendants have thus raised a proper facial challenge, even under the State’s view of the law.

Despite that agreement on legal principle, the State repeatedly misrepresents Defendants’ position. Defendants’ motion to dismiss did not contest the Indictment’s factual allegations. Or challenge the “sufficiency” of the evidence. (Pb21). Or seek to “weigh the evidence that the Government has presented.” (Pb25). Nor did the trial court conduct “sufficiency-of-the-evidence[]” review. (Pb19); *see also* (Pb2, 29–30, 35, 37–38, 45, 58–59, 77). To the contrary, the trial court accepted all the facts alleged in the Indictment and limited its review to the “purely legal” question of “whether the indictment charges a crime.” (Pa153). And the trial court explicitly “disagree[d] with the State’s argument that defendants are really just attacking the persuasiveness of the Indictment’s narrative.” (Pa153). In that way, the trial court rejected the very misrepresentation of Defendants’ position that the State advances here.

Indeed, the trial court explained how it limited its review to pure questions of law. The Court “assume[d] that every factual allegation in the Indictment [was] true and was adequately supported before the grand jury.” (Pa152). The Court “construed” those allegations “in the most favorable way to the State.” (Pa152). The Court refrained from making “even one credibility determination” and reviewed the “entire indictment” in its totality. (Pa125). And after conducting that thorough review, the Court reached the “purely legal” conclusion that the Indictment’s “factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa152–53). For those reasons, no matter how often the State asserts that the trial court weighed the “sufficiency of the evidence” (*passim*), the claim is patently false.

The State fares no better in its efforts to exaggerate the standard of review for facial challenges. It makes three main arguments:

First, the State argues that a facial challenge must prove “facial impossibility”—a phrase that the State must have invented, as it appears in no case law. (Pb23). The State’s descriptions of its “impossibility” standard vary throughout its brief. But most egregiously, the State argues that it is not enough to show that the allegations in an indictment describe lawful conduct; a defendant must also show that the “facts alleged ... *disprove* the possibility of a crime.” (Pb24). (emphasis in original). That requirement has no basis in law.

The State has not identified any authority that requires a motion to dismiss to “disprove” the commission of a crime. In advancing that position, the State points to a single New Jersey decision: *State v. Shipley*, 10 N.J. Super. 245 (App. Div. 1950). But *Shipley* held only that it is “improper” for a motion to dismiss to “question the facts stated in the indictment,” which must be “taken as true.” *Id.* at 250. The remainder of the State’s argument on this issue instead relies on decisions from federal courts and courts in other States, which are irrelevant to the standard for challenging indictments under New Jersey law. *See* (Pb25–26).

Moreover, federal law does not impose the “impossibility” standard the State envisions. Indeed, the State’s leading case acknowledges that an indictment must be dismissed when its “factual allegations” do not constitute a crime “as a matter of law.” *United States v. Sittenfeld*, 522 F. Supp. 3d 353, 366 (S.D. Ohio 2021). And federal courts have long dismissed indictments for failing to allege a crime. *See, e.g., United States v. Enmons*, 410 U.S. 396, 410–12 (1973) (affirming dismissal of Hobbs Act extortion charge); *Brewbaker*, 87 F.4th at 573–83 (same for a Sherman Act charge); *United States v. Landham*, 251 F.3d 1072, 1081–83 (6th Cir. 2001) (holding kidnapping and threats charges should have been dismissed). Each of those cases turned on whether the alleged facts, taken as true, showed the commission of a crime. None tasked the defendant with “disprov[ing]” the commission of a crime. (Pb24).

Second, the State contends that Defendants’ facial challenge faces a heavy burden because the Indictment alleges complex rather than “one-dimensional facts.” (Pb29). But the standard for reviewing an indictment does not depend on the document’s complexity. *See supra* 21. Nor can the State immunize its indictments merely by adding extraneous allegations. Instead, all legal sufficiency challenges ask the same question: whether the indictment alleges the “essential facts” of the charged offenses. *De Vita*, 6 N.J. Super. at 347.

It is true that this case involved extensive briefing for a motion to dismiss. But the length of that briefing was the natural result of the State’s decision to issue a 111-page Indictment. Given that decision, the State cannot complain that the trial court issued a “96-page opinion” that thoroughly “pars[ed]” the Indictment. (Pb29). Nor did the trial court go astray in noting that the 111-page indictment “open[ed] the door” to such extensive briefing. (Pa152). The State presents that comment as evidence that the trial court applied a heightened standard to the review of a speaking indictment. *See* (Pb20, 31, 34). But the trial court made clear that the State’s use of a speaking indictment “does not change the standards governing a motion to dismiss.” (Pa151). The court thus disclaimed the very misreading of its opinion that the State now advances.

Third, the State argues that the line between lawful and unlawful threats turns on “matters of intent” that cannot be resolved on a motion to dismiss.

(Pb27–28); *see also* (Pb51–52). But here again, the State is wrong. An unlawful threat requires both guilty intent *and* an objective communication of the threat, and whether the facts alleged in an indictment constitute an unlawful threat is a question of law. *See Perry*, 439 N.J. Super. at 532; *Brown*, 49 N.J.L. at 62; *supra* 18–22. Indeed, courts have repeatedly held—on motions to dismiss—that the facts alleged in an indictment do not amount to an unlawful threat. *See, e.g., Enmons*, 410 U.S. at 410–12 (indictment did not allege Hobbs Act extortion); *Landham*, 251 F.3d at 1082–83 (indictment did not allege a true threat of violence); *Grider v. Keystone Health Plan Cent., Inc.*, 2003 WL 22182905, at *18–19 (E.D. Pa. Sept. 18, 2003) (indictment alleged lawful “hard bargaining,” not extortion) (GNa22–23). This Court should do the same here.

ii. Defendants Had No Obligation to Challenge the Evidence Before the Grand Jury.

The State’s remaining argument on the standard of review is that the trial court should have reviewed the significant volume of evidence that went to the grand jury, including “some 2,000+ pages of transcripts.” (Pb34). As noted above, the State has conceded that there is a distinction between “facial motion[s]” to dismiss and motions that challenge the “evidence” before the grand jury. *See* (Pb1); *supra* 42–43. Because Defendants here have raised a proper facial challenge, they have no obligation to challenge the grand jury’s evidence, and the trial court thus had no obligation to consider that evidence.

The State nonetheless insists that its “own . . . rights” were prejudiced by its inability to rely on the full transcript of the grand jury proceedings. (Pb33). But that misunderstands the issue. This appeal concerns Defendants’ right under the New Jersey Constitution to an indictment that alleges the “essential facts” of the charged offenses. *De Vita*, 6 N.J. Super. at 347. When the State violates that right, it is no answer to point to evidence *outside* the indictment. If that were allowed, the constitutional right to an indictment would have little meaning. And hornbook law prevents the State from amending indictments by pointing to extrinsic materials. *See Newell*, 152 N.J. Super. at 467 (“[A]n indictment is not amendable by the court to charge an offense not found by the grand jury, either by a substitution of offense or to supply substantive omissions”); *see also Russell v. United States*, 369 U.S. 749, 770 (1962) (similar). Thus, introducing “2,000+ pages” of grand jury transcripts could not help the State. (Pb26).

The State’s claim of prejudice is also not credible. It says the grand jury materials would “color[] and provide[] context for” the allegations. (Pb30). It also says the materials show the “amount of control” Defendants “exercised” in Camden. *Id.* But no amount of “color” can overcome the deficiencies in the State’s legal theories. And to the extent that the State wants additional material to play up George Norcross’s political influence, its preferred strategy runs headlong into the *Noerr-Pennington* doctrine. *See supra* 33–35.

The State's policy argument is equally unpersuasive. The State contends that the decision below discourages it from filing speaking indictments in future cases. Putting aside that filing a speaking indictment did not change the standard of review, *see supra* 21, and that New Jersey law has long allowed facial challenges just like this one, *see supra* 19–20, the State did not file a speaking indictment for Defendants' benefit. Rather, it did so to comply with its constitutional duty to notify Defendants of the charges against them, *see Dorn*, 233 N.J. at 93—a duty that, given the convoluted nature of its case, necessarily required a hefty page count. The State also claims that it often files speaking indictments to avoid litigation over bills of particulars, (Pb31), litigation that certainly would have occurred here had the State issued a bare-bones indictment. And in high-profile cases, the State understands that a speaking indictment can serve double duty as a press release. The State's threat to abandon speaking indictments is accordingly empty.

* * *

In sum, Defendants' motion does not challenge the sufficiency of the *evidence* that the State presented to the grand jury, or that the State hopes to admit at a hypothetical trial. Rather, Defendants argue that the *allegations* in the Indictment, taken as true, describe only lawful hard bargaining, not criminal extortion. This Court can and should resolve that purely legal question.

2. The State Is Wrong on the Merits.

On the merits, the State barely disputes Defendants’ core argument: the criminal law does not prohibit hard bargaining in business negotiations. *See supra* 25–29. Instead, the State raises a series of new and implausible theories for bringing this case outside that black-letter rule. Most notably, the State tries to present the Indictment’s threats of economic harm as something that is supposedly more sinister—namely, what the State calls threats of “reputational harm and to cause [public] officials to take or withhold action.” (Pb1). The State also argues that this Court *must* read the Indictment to allege this supposedly sinister conduct, on the theory that courts must draw “State friendly conclusion[s]” at motion-to-dismiss stage. (Pb42). This effort fails many times over. The State may not use its appellate briefs to rewrite a plainly deficient Indictment. And even if it could, the State’s new theories are wrong on the law and inconsistent with the alleged facts.

i. The State Cannot Rewrite the Indictment in its Appellate Briefing.

The State opens its argument on the merits by demanding “State-favorable inferences” that would effectively rewrite the Indictment. (Pb38–45). Consider the alleged threat by George Norcross that Dranoff would face “enormous consequences” if he continued to “shake [] down” the Waterfront’s developers. (Pa53–54). The Indictment says nothing about the “consequences” that

Norcross allegedly threatened. *See* (Pa53–54). Nonetheless, the State demands a “State-favorable inference[]” that this exchange supports its newfound preferred theories of liability—namely, that Norcross impliedly threatened “governmental action, reputational damage, *and* economic harm.” (Pb41). The State demands many similar inferences throughout its brief. *See, e.g.*, (Pb38–42).

Those demands have no basis in law. It is true, to a point, that courts must draw “rational inferences” from the allegations “in the light most favorable to the State.” *State v. Saavedra*, 222 N.J. 39, 56–57 (2015); *see* (Pa152) (acknowledging that requirement). But New Jersey law also requires the “essential facts constituting the crime [to] be directly stated in the indictment,” not “supplied by inference or implication.” *De Vita*, 6 N.J. Super. at 347; *see also Newell*, 152 N.J. Super. at 466–68. It follows that courts may not draw inferences that supply the “essential facts” of an extortion charge—and that the State may not demand those inferences in the first instance.

De Vita illustrates the well-settled rule. The indictment in that case alleged that the defendant sought to obstruct justice by “solicit[ing]” another person. 6 N.J. Super. at 346. As this Court explained, whether that indictment “charge[d] [the defendant] with commission of a crime depend[ed] on what it allege[ed] he solicited [the victim] to do.” *Id.* But the indictment in *De Vita* did

not answer that crucial question. And although the State *represented* that the defendant solicited the victim “to testify falsely,” the Court declined to draw that “inference” from the indictment’s “uncertain” language. *Id.* at 346–47. Instead, the Court held that because “[f]alsity” was an “essential” element of the charged offense, the indictment was defective for failing to “aver” the element “expressly.” *Id.* The indictment was thus “dismissed.” *Id.* at 347.

The principle that a court may not infer the “essential” facts or elements of a charged offense has a long history in New Jersey law, beginning in the Founding era. *See State v. Gibbons*, 4 N.J.L. 40, 54 (1818) (Rossell, J.) (“[T]he fact must be positively alleged, and not by inference.”); *Bleichner*, 11 N.J. Super. at 547 (“Every constituent element of the crime charged must be set forth in the indictment and not left to intendment.”). Modern cases express the same principle by refusing to “amend” the substantive provisions of an indictment. *See Dorn*, 233 N.J. at 94 (“An error relating to the substance or ‘essence’ of an offense cannot be amended by operation of [a court] rule.”); *Newell*, 152 N.J. Super. at 467 (“[A]n indictment is not amendable by the court to charge an offense not found by the grand jury ... or to supply substantive omissions.”).

That same principle controls here. As discussed above, the critical question in this case is whether the Indictment charges an unlawful threat. *See supra* 22–24. The nature of a threat, in turn, depends in large part on the harm

that is threatened—whether it is economic harm (as in a “hard bargaining” case), the publication of a secret (as in a blackmail case), or physical injury (as in many mob cases). And because the nature of the threatened consequence is an “essential” element of an extortion charge, it must be alleged “expressly.” *De Vita*, 6 N.J. Super. at 346–47. The State may not simply demand inferences from the word “consequences” or the Indictment’s other open-ended allegations.

Nor can the State fault the trial court for taking the Indictment at face value. The State cherry-picks statements from the trial court that it says failed to draw state-favorable inferences. (Pb38–44). But many of those statements simply recognized obvious points of law. *See, e.g.*, (Pb40) (faulting the trial court for noting that “representatives of the City” were “entitled to speak up” if they believed Dranoff was obstructing important development efforts); (Pb44 n.11) (faulting the trial court for noting Mayor Redd’s “right to join forces with coalitions which she believes have the best chance of prevailing”).

The State also faults the trial court for several statements that reflect the Indictment’s failure to allege a crime. *See, e.g.*, (Pa161) (asking about Norcross’s alleged threats to Dranoff, “How is this to be interpreted?”); (Pa162) (similarly asking about a threat, “Does it mean anything at all?”); (Pa163) (noting that an alleged statement “can be perceived as a ‘threat,’” but “to do what?”); (Pa171) (noting there was “never even a line drawn between the alleged

threat and what Philip Norcross would actually do about non-compliance”). On each point, the trial court was *correct* to identify the “uncertainty of the Indictment.” *De Vita*, 6 N.J. Super. at 347. Far from showing that the trial court misunderstood the standard of review, as the State claims, (Pb38–45), the above statements reinforce the State’s failure to charge the essential facts of a crime.

Like the trial court, this Court should insist that the *Indictment itself* allege the essential facts of the charged crimes. That sensible approach, compelled by *De Vita*, forecloses the State’s attempt to recast the Indictment away from its obvious focus (lawful economic coercion) and toward the State’s new theories of liability (threats of reputational harm and government coercion).

ii. The State Lacks a Viable Theory of Reputational Harm.

The State repeatedly asserts that Defendants furthered the charged conspiracies through threats of reputational harm. (Pb3, 41, 47–48, 55–57, 64, 67). But the State cannot point to a single allegation in its Indictment to support that theory. In particular, the Indictment does not allege that *any* Defendant threatened *any* person with *any* harm to his or her reputation. Moreover, the State comes nowhere close to alleging a reputational threat that was *unlawful*. Even if George Norcross had threatened to share his opinion that Dranoff is a lousy developer, that would not be extortion. The State’s repeated gestures to reputational harm are thus no basis for prolonging this prosecution.

A. The State presents the Indictment as alleging four threats of reputational harm. *See* (Pb67). But in each instance, the relevant allegations describe conduct that was not a threat, was not a threat to *reputation*, or was not a threat made by a Defendant in service of a charged offense.

First, the State says that Philip Norcross threatened reputational harm to induce the CEO of CFP to partner with “Investor 1.” (Pb57–58). But Philip Norcross is not alleged to have threatened the CEO with *anything*. *See supra* 36. At most, Norcross “told” the CEO to use that investor, in his capacity as a key stakeholder in developing the Camden Waterfront. (Pa28). The CEO’s reputation never came up—let alone underlay a threat. *See* (Pa21–33).

Second, the State says that an unindicted co-conspirator threatened the CEO with reputational harm in December 2017. (Pb11–12, 57–58). According to the Indictment, the co-conspirator warned the CEO that if he did not resign from his position, “‘they’ would just make something up about him, which would lead to him being terminated for cause.” (Pa70). But even assuming that this was a threat, it was not made by any Defendant. There is no allegation that any Defendant directed, participated, or even knew about the alleged threat. And because the alleged threat occurred after Defendants had acquired the rights to build the Triad1828 Center, 11 Cooper, and the L3 Complex, it fell outside the scope of every charged offense.

Third, the State points to the alleged statement from George Norcross: “[Dranoff]’s gonna come under some very serious accusations from the City of Camden which are gonna basically suggest that he’s not a reputable person and he’s done nothing but try to impede the progress of the city.” (Pa57). The State presents this as an allegation that Norcross threatened Dranoff with those “accusations.” (Pb56). But the Indictment alleges no such thing. There is no allegation that Norcross ever actually threatened Dranoff with any accusations to coerce a better deal, or that Dranoff could have fairly inferred any such threat from anything Norcross said or did, or that Dranoff was even *aware* of a potential threat of accusations. Similarly, there is no allegation that Norcross and his associates planned or agreed to levy such a threat. And absent the allegation of any facts showing an actual threat of reputational harm, the Indictment lacks the “essential facts” of an extortion charge. *See De Vita*, 6 N.J. Super. at 347; *Bennett*, 194 N.J. Super. at 236; *supra* 32.

Fourth, the State asserts that the hard bargaining between George Norcross and Dranoff somehow involved an *implicit* threat of reputational harm. (Pb41). But the Indictment describes Norcross’s statement—“I’ll make sure you never do business in this town again”—as a threat to Dranoff’s “financial interests,” not his reputation. (Pa47). The statement did not threaten to “[e]xpose” some personal “secret” about Dranoff. N.J.S.A. 2C:13-5(a)(3).

Indeed, the Indictment does not allege that Dranoff inferred, from anything Norcross ever said or did, that this statement impliedly threatened blackmail. Nor can the State inject a reputational threat into Norcross's statement by "inference or implication." *De Vita*, 6 N.J. Super. at 347. And the same goes for Norcross's only other alleged threat: a vague pledge that "consequences" would follow Dranoff blowing up the deal. (Pa53–54). That statement fails to allege extortion on any conceivable theory of the crime. *See supra* 32.

For those reasons, this Court should reject the State's representation that the Indictment charges threats of "reputational damage," in addition to threats of "economic harm." (Pb41). The Indictment simply does not do so.

B. The State's theory of reputational harm also fails for an independent reason: *Even if* the Indictment alleged some threat of reputational harm, the State has failed to allege a threat that is also *unlawful*.

The core problem for the State is that threats of reputational harm are both ubiquitous and, in many cases, perfectly legal. The criminal law does not reach threats to leave bad reviews for hotels, restaurants, or vendors that provide poor services. A business does not commit extortion by threatening to sue a supplier, even when the business knows that a complaint will harm the supplier's reputation. And the First Amendment protects the right to coerce action by "threats of vilification or social ostracism," including threats to publicize the

names of people who do not support a political or social cause. *NAACP v. Claibourne Hardware Co.*, 458 U.S. 886, 926 (1982) (internal quotation marks omitted); *see also id.* at 903–04 (describing such a threat).

In keeping with those general principles, New Jersey law places important limits on the prosecution of reputational threats. To start, the plain text of the criminal coercion statute is limited to blackmail—that is, threats to “[e]xpose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute.” N.J.S.A. 2C:13-5(a)(3) (emphasis added). A similar limitation exists in the extortion statute, which singles out threats to publicize “any secret or any asserted fact, whether true or false.” N.J.S.A. 2C:20-5(c). Neither of those provisions reaches threats to share matters of *opinion*—for example, an opinion that a businessman botched an important development deal.

In addition, the 1971 Commentary prevents prosecution for threats of reputational harm that arise in “coercive economic bargaining.” 1971 Commentary at 228. As discussed, the Commentary makes clear that the New Jersey extortion statutes do not reach threats “to sue,” “to cease doing business,” or to engage in similar acts of “‘economic coercion’ as an incident to free bargaining.” *Id.* at 227–28; *see also Roth*, 289 N.J. Super. at 160–62. Those acts of economic coercion, in turn, often threaten the reputations of affected

businesses and businessmen. For example, a threat to sue a business is also a threat to publicize that the business did something wrong. Similarly, a threat by a respected developer to break ties with a lesser-known developer may have the practical effect of threatening the latter's standing in his industry. For those reasons, the Commentary's protection for "free bargaining" would mean little if prosecutors could simply repackage routine and lawful threats of economic harm as indirect threats of reputational harm. 1971 Commentary at 227–28. Thus, just as New Jersey law protects threats of economic harm in the context of "free bargaining," it likewise protects threats of reputational harm that accompany lawful "economic coercion." *Id.*

Given those principles, assume *arguendo* that the Indictment did track some of the State's representations. Assume, for example, that George Norcross did threaten to share his view that Dranoff was botching the Waterfront's development, and to recommend that other developers avoid Dranoff in the future. That threat would fall outside of the New Jersey extortion statutes because it would concern a matter of opinion, rather than a "secret" or "asserted fact." N.J.S.A. 2C:13-5(a)(3), 2C:20-5(c). The threat would also be protected economic coercion because it would be intertwined with a threat to harm Dranoff's "financial interests" (Pa47) through resolving to "cease doing business" with him, 1971 Commentary at 227–28; *see Roth*, 289 N.J. Super. at

161.² Finally, the threat would resemble the threats of social ostracism that the First Amendment squarely protects. *See Claibourne*, 458 U.S. at 926.

For all those reasons, even if the Indictment did allege the essential facts showing that Norcross threatened Dranoff’s reputation as part of a business negotiation (which it does not), the Indictment would still fail to allege an *unlawful* reputational threat. The State’s theory of reputational harm thus fails.

iii. The State Lacks a Viable Theory of Government Retribution.

The State’s theory that Defendants threatened government retribution is also a dead end. According to the Opening Brief, Defendants went far beyond “hard bargaining” when they threatened to “use their control over government to deprive their victims of a ‘level playing field.’” (Pb64) (quoting *Collins*, 78 F.3d at 1030). But the Indictment does not actually allege a single fact showing that Defendants ever threatened anyone that the government would do anything adverse to their interests. And even if it did, simply threatening to use political influence to *ask* the government to take some action would not be unlawful.

² The State resists this conclusion by arguing that the Commentary’s protection for hard bargaining is limited to prosecutions under N.J.S.A. 2C:20-5(g), at the exclusion of prosecutions under 2C:20-5(c). (Pb59–60). But that limitation appears nowhere in the Commentary itself, which carves out “accepted economic bargaining” from all subsections of 2C:20-5. *See* 1971 Commentary at 227–28. Nor did this Court adopt such a limitation in *Roth*, which endorsed that portion of the Commentary without reservation. *See* 289 N.J. Super. at 160–61 (quoting the Commentary to hold that “certain commercial or economic menaces have been excluded from the purview of” “N.J.S.A. 2C:20–5”).

A. As discussed above, the only explicit “threats” in the entire Indictment were those allegedly made by George Norcross to Dranoff: *first*, the alleged threat that Dranoff would “never do business in this town again,” (Pa47); and *second*, the alleged threat of “consequences,” (Pa53–54). But the Indictment does not include any essential facts showing that Norcross was threatening government action. None of the alleged threats mentions the City of Camden, any government official, or any use of government authority to harm Dranoff’s interests. Nor does the Indictment allege that Norcross intended to threaten government action, or that Dranoff believed Norcross to be threatening government action. Instead, the State asks this Court to *infer* that Norcross’s otherwise lawful statements carried an implicit threat of government action—solely because Norcross is politically influential in Camden. *See, e.g.*, (Pb56). But that runs afoul of the rule that the Indictment itself must allege the essential facts of a crime; the government cannot rely on inference and speculation to supply those essential facts—or to alter the fundamental legal theory on which it has rested this prosecution. *See De Vita*, 6 N.J. Super. at 347.

In any event, even if the Indictment did allege facts showing that Defendants threatened to ask the government to take actions favorable to them, that would be protected under *Noerr-Pennington*. The State has no good answer to the principle that the First Amendment protects the right to petition the

government, including for “selfish” or “improper” private motives. *Oasis Therapeutic Life Centers, Inc. v. Wade*, 457 N.J. Super. 218, 232 (App. Div. 2018); *see supra* 33–34. Although the State contends that the *Noerr-Pennington* doctrine does not apply in criminal cases, *see* (Pb79–80), that makes no sense and is unsupported by any authority. To state the obvious, acts protected by the Constitution cannot be criminally punished any more than they can be civilly sanctioned. Regardless of the context, penalizing petitioning activity would “chill the exercise of that right.” *McAlonan v. Tracy*, 2011 WL 6125, at *13 (N.J. Super. Ct. App. Div. Mar. 16, 2010) (GNa50). That is why federal and state courts alike have long applied *Noerr-Pennington* in criminal cases. *See United States v. Hylton*, 710 F.2d 1106, 1107–08 (5th Cir. 1983) (absolving defendant of “criminal sanction” where its “actions represented an exercise of the right to petition for a redress of grievances”); *Curry v. State*, 811 So. 2d 736, 743 (Fla. Dist. Ct. App. 2002) (relying in part on *Noerr* to invalidate conviction for aggravated stalking); *Australia/E. U.S.A. Shipping Conf. v. United States*, 1981 WL 2212, at *17 (D.D.C. Dec. 23, 1981) (GNa69) (“[Imposing] civil or criminal liability based upon *Noerr* activity would be such a powerful deterrent to the exercise of the right to petition the government that it is not permitted at all.”).

Nor is there any allegation that Defendants’ conduct went beyond the constitutionally protected bounds of petitioning. The State is correct that *Noerr-*

Pennington does not immunize “the use of improper means, such as bribery, to obtain the desired governmental action.” *Monarch Entm’t Bureau, Inc. v. N.J. Highway Auth.*, 715 F. Supp. 1290, 1303 (D.N.J. 1989); *cf. Omni Outdoor Advert.*, 499 U.S. at 378–79 (similar). But the Indictment alleges no bribes, kickbacks, or unlawful contacts with public officials. Instead, its thrust is that Defendants collaborated with Camden officials and requested official action for a *selfish reason*—to boost their private leverage vis-à-vis Dranoff. Even if that were true, the whole point of *Noerr-Pennington* is that the State cannot penalize petitioning based on self-interested motives.

The State also attempts to take the case outside of *Noerr-Pennington* by stating that Defendants are not charged “with having *asked* the government to take actions,” but instead with “having *controlled* the government.” (Pb82) (emphasis in original). But the State cites no authority for that dichotomy, and it is utterly incoherent. Short of bribery or blackmail, the only way a private citizen can cause the government to act is to *ask* it to act. George Norcross did not directly wield any governmental power; he was not a government official. Instead, he allegedly exercised “influence and control” solely through endorsing candidates and other (lawful) political means. (Pa7, 82–85). That entails *asking* the government to act, which is classic petitioning activity.

The State’s real argument is that Norcross’s petitioning was more successful than most—hence the State’s repeated use of the word “control.” *See* (Pb30, 39–42, 53 n.16, 57, 62–65). But there is no “well-connected” exception to the First Amendment, as the Supreme Court recently underscored in *Percoco*. *See* 598 U.S. at 330; *supra* 34. Nor would it matter if Camden officials were in cahoots with Norcross, as the Supreme Court has held there is no exception to *Noerr-Pennington* when “government officials conspire with a private party,” leading to state action “infected by selfishly motivated agreement with private interests.” *Omni Outdoor Advert.*, 499 U.S. at 382–83. That sums up the State’s theory here. And the Supreme Court has squarely rejected it. *See id.*

B. Once the State’s resistance to *Noerr-Pennington* is off the table, its government-retaliation theory collapses. The State points to N.J.S.A. 2C:13-5(a)(4) and 2C:20-5(d), which prohibit “unlawful[]” threats to “[t]ake or withhold action as an official, or cause an official to take or withhold action.” The State says those statutes prohibit any threat to petition the Government. But consistent with *Noerr-Pennington*, they reach only (i) threats by public officials to take official acts; and (ii) threats to “cause” a public official to act through blackmail, bribery, or other unlawful means. *See State v. Carter*, 247 N.J. 488, 520 (2021) (applying constitutional avoidance). The laws do not reach protected petitioning, *i.e.*, merely *asking* the government to take some action.

Similarly, the State cannot fit this case within the mold of *Collins*, which held that the spouse of a public official committed extortion by demanding a payoff for access to a government program. *See* 78 F.3d at 1030. The evil in *Collins* was that the defendant sought to extort a personal benefit by threatening to use her spouse’s official power to revoke the victims’ “opportunity to compete for government contracts on a level playing field, an opportunity to which they were legally entitled.” *Id.* The Indictment alleges nothing of the kind here; there is no alleged threat to withhold Dranoff’s access to the Camden government, much less any allegation that anyone threatened Dranoff with adverse official action unless he conferred some private benefit on them. And of course, there is no “right to a level playing field” in business dealings between “private parties,” absent a statute that creates one, *Brokerage Concepts*, 140 F.3d at 526. That is enough to dispense with the State’s *Collins* argument.

Finally, the State cannot salvage its government-retaliation theory by pointing to lawful petitioning activities that have no connection to any threat. The State perplexingly asserts that Defendants “threat[ened]” Dranoff with “eminent-domain power.” (Pb56). But the State does not and cannot point to any paragraph in the Indictment for that assertion. The eminent-domain allegations instead describe discussions over whether to file a lawsuit—not any threat to do so. *See supra* 38–39. And although the State tries to portray a

possible lawsuit as improper “governmental leverage,” (Pb61), the State does not point to any allegation that Defendants threatened to exercise such leverage. So even putting aside that threatening to ask the government to use its eminent domain power would be lawful, *supra* 40, the State cannot even show that much.

In sum, the Indictment does not allege any threat of government action, the State cannot infer such a threat from Defendants’ political influence, and the *Noerr-Pennington* doctrine prevents the State from prosecuting Defendants for lawful petitioning activity. The State’s effort to recast the Indictment as involving threats of government action accordingly fails.

* * *

At bottom, the Indictment charges threats to inflict economic harm within business negotiations between private parties—in other words, lawful hard bargaining. The State may no longer like that theory, having lost on it below. But the Indictment does not allege any essential facts that could support an alternative, valid theory. This Court should thus affirm the decision below.

POINT II: THE TRIAL COURT CORRECTLY DISMISSED THE INDICTMENT AS TIME-BARRED.

This Court should affirm the decision below for the additional reason that the trial court correctly held the Indictment to be time-barred. In New Jersey, a statute of limitations “is tantamount to an absolute bar to the prosecution of the offense.” *State v. Short*, 131 N.J. 47, 55 (1993). Here, the Indictment is facially

defective because it fails to charge that any crime occurred within the relevant statute of limitations. *See State v. Coven*, 405 N.J. Super. 266, 277 (App. Div. 2009) (affirming dismissal in same circumstances); Brief of John J. O'Donnell (July 23, 2025) (making additional arguments that the Indictment is time-barred).

To start, the Indictment's cornerstone offenses of extortion and coercion are obviously time-barred. Those offenses are subject to a five-year limitations period, meaning they can be charged only if they occurred within five years of the June 2024 Indictment. (Pa201); *see also* N.J.S.A. 2C:1-6(b)(1). Yet all the Indictment's alleged "threats"—including those in connection with the Triad 1828 Centre, 11 Cooper, and the L-3 Complex—occurred between 2014 and 2017. (Pa28, 47, 53–54, 70). The alleged threats thus occurred far outside the limitations period, which explains why the State has not charged the threats as substantive crimes.

To circumvent that obvious time bar, the State has attempted to prosecute the threats as predicate acts of several "conspiracy" counts (Counts 1–4). But for that gambit to succeed, the State must have alleged conspiracies that themselves extend into the limitations period. Whether a conspiracy continues beyond the commission of a predicate act is a "mixed question of law and fact." *State v. Herbert*, 92 N.J.L. 341, 354 (Sup. Ct. 1918). And the legal component of the question asks, among other things, which kinds of actions are *legally*

sufficient to extend a conspiracy. *See, e.g., United States v. Doherty*, 867 F.2d 47, 61–62 (1st Cir. 1989) (Breyer, J.) (holding that a “lengthy” series of “noncriminal” payments cannot itself extend a conspiracy). Here, since Defendants have not challenged the Indictment’s factual allegations, the only issue is whether those allegations charge a continuing conspiracy as a matter of law. *See Coven*, 405 N.J. Super. at 276–77 (similarly addressing whether allegations were legally sufficient to charge a continuing conspiracy).

The State offers three theories for why its alleged conspiracies fall within the five-year limitations period. But as the trial court held, each theory falls flat.

First, the Indictment cannot extend the charged conspiracies by alleging that some Defendants’ companies received Grow NJ tax credits in the last five years. *See* (Pa33, 64–66, 68–69); (Pb86–92). Defendants’ companies obtained those tax credits via lawful applications to a state agency. (Pa13–15). And when an “anticipated economic benefit continues, in a regular and ordinary course, well beyond the period when the unique threats to society posed by a conspiracy are present,” those continued payments are nothing more than “the *result* of a completed conspiracy.” *United States v. Grimm*, 738 F.3d 498, 503 (2d Cir. 2013) (cleaned up). They do not extend the conspiracy itself, which “generally terminates when the crime or crimes which are its object are committed.” *State v. Reid*, 456 N.J. Super. 44, 64 (App. Div. 2018) (cleaned up).

The settled rule is simple: When the object of a conspiracy is to obtain specific money or property—like proceeds from a fraud—the conspiracy is not completed until that payoff is consummated. *See United States v. Girard*, 744 F.2d 1170, 1173 (5th Cir. 1984). But the mere receipt of a “lengthy” series of “noncriminal” payments cannot continue a conspiracy after “the dangers of concerted activity and group association for criminal purposes” have passed. *Doherty*, 867 F.2d at 61–62 (Breyer, J.). Here, the immediate object of each alleged conspiracy was to obtain a property right with some connection to a development project. The fact that Defendants then used those property rights for lawful purposes—such as building an office tower, creating jobs, and applying for tax credits—does not extend the alleged conspiracies throughout the lengthy period in which those tax credits are available. *See* (Pa66) (alleging that the businesses may receive the credits through 2030).³

The State’s contrary position on this issue implies that “no conspiracy would end until every conspirator no longer retained any economic benefit [from

³ The State protests that these decisions are inapposite because they arose in the context of federal conspiracy charges (which require overt acts within the limitations period), rather than New Jersey RICO charges (which do not). (Pb90 & n.27, 94 n.28). That is a distinction without a difference, as the State must still allege that *the conspiracy continued* into the limitations period, as a matter of New Jersey law. *See State v. Cagno*, 211 N.J. 488, 509–10 (2012) (acknowledging that a New Jersey RICO conspiracy continues only “until the accomplishment or abandonment of the objectives of the conspiracy”). And when assessing whether the Indictment’s allegations clear that bar, controlling precedent permits “turn[ing] to federal cases that have considered similar limitations challenges.” *Id.* at 508.

the conspiracy] no matter how residual.” *United States v. Kang*, 715 F. Supp. 2d 657, 679–80 (D.S.C. 2010). For example, the State’s position implies that a conspiracy to obtain a storefront property would continue indefinitely, so long as one conspirator rented out the property (generating rental income) or operated a business from the location (generating sales revenues). That is not the law. *See id.* After all, obtaining property is almost never an end in itself: The purpose is always to *use* it in some way. But allowing those follow-on uses to extend the statute of limitations would make every financial crime a perpetual offense, thereby defeating the very purpose of a statute of limitations. *See Krulewitch v. United States*, 336 U.S. 440, 456 (1949) (Jackson, J., concurring).

The State’s authorities on this issue are not to the contrary. The State’s lead cases say only that when the object of a conspiracy is to obtain specific money or property, the conspiracy is not completed until that immediate payoff is completed. *See, e.g., United States v. Salmonese*, 352 F.3d 608, 614–15 (2d Cir. 2003) (conspiracy extended until sale of stripped warrants); *Girard*, 744 F.2d at 1173 (conspiracy ran until defendant received “balance due under the contract” secured by bid-rigging). Indeed, one of those cases specifically distinguished between the “payoff” that extended a conspiracy (there, a purchase of property) and the downstream benefits of that payoff that would not extend the conspiracy (such as a potential “resale” of that property). *United States v.*

Mennuti, 679 F.2d 1032, 1035 (2d Cir. 1982). This Court should draw a similar distinction here, holding that the charged conspiracies ended with obtaining the rights to build the Triad 1828 Center, 11 Cooper, and the L3 Complex.

The State's reliance on the tax credits fails for the additional reason that receiving them did not violate New Jersey's financial facilitation statute (Counts 5–10). Criminal facilitation requires the possession or use of property “derived from” some other crime. N.J.S.A. 2C:21-25(a), (c). Property is “derived from” a crime if it “represents proceeds” of that crime. N.J.S.A. 2C:21-25(d). And in criminal statutes, the word “proceeds” generally refers to the amount generated *from the crime*, measured in either “profits” or “gross receipts.” *United States v. Santos*, 553 U.S. 507, 511–12 (2008) (plurality opinion).

That definition does not apply here because the tax credits at issue are provided *by the State* to incentivize actions it deems socially beneficial. *See supra* 11–12. There is no allegation that Defendants obtained the tax credits through fraudulent means. The State is *still providing* those credits. (Pa205). And even on the State's theory of the case, the connection between those credits and any criminal activity is highly attenuated. For example, the Indictment alleges (i) that Defendants extorted Dranoff into surrendering his easement; (ii) that this permitted building the Triad Center; (iii) that some of Defendants' companies leased space in the Triad Center, then applied for corresponding tax

credits; and (iv) that the State then awarded those credits pursuant to New Jersey law. (Pa61–66). Under any sensible definition, then, “[t]he tax credits in this case are not proceeds of a crime.” (Pa204). And for that reason as well, the receipt of the tax credits did not extend the charged conspiracies.

Second, and similarly, the Indictment cannot extend the charged conspiracies by alleging acts of concealment—namely (i) making “statements to members of the media,” (Pa36–37); and (ii) filing a pre-trial motion, *see* (Pa62–63). *See* (Pb92–93). Controlling precedent prevents the State from “‘extend[ing] the life of a conspiracy indefinitely’ by inferring a conspiracy to conceal ‘from mere overt acts of concealment.’” *State v. Twiggs*, 233 N.J. 513, 543 (N.J. 2018) (citation omitted); *see also United States v. Bornman*, 559 F.3d 150, 153 (3d Cir. 2009) (prosecutors “cannot extend the limitations period by insisting that there was an implicit agreement to conceal the conspiracy”). And although acts of concealment may extend a conspiracy when there is an “original agreement among the conspirators to continue to act in concert in order to cover up . . . the crime,” the Indictment alleges nothing of the kind here. *Twiggs*, 233 N.J. at 544. Indeed, because the Indictment never alleges an “original agreement” (*id.*) to *talk to reporters*, the trial court was correct to reject the press statements as a foothold for this prosecution. (Pa208).

Nor can the Indictment extend a conspiracy by alleging the routine practice of law. The Indictment complains that Tambussi “filed a pre-trial motion” (in a lawsuit brought by Dranoff) to preclude reference to the Norcross brothers at trial. (Pa62–63). But it is impossible to see why this matters. Statements made in judicial proceedings are “absolutely privileged and wholly immune from liability.” *Ruberton v. Gabage*, 280 N.J. Super. 125, 132 (App. Div. 1995).⁴ To treat them as a hook for sweeping conspiracy liability would be an impediment to the administration of justice. *Cf. Williams v. Kenney*, 379 N.J. Super. 118, 133–34 (App. Div. 2005). More fundamentally, making a motion in court on the public record is the antithesis of concealment. And in any event, Tambussi’s motion had nothing to do with any offense alleged in the Indictment: None of the supposed conspirators was a party to the litigation; the motion did not even arguably advance any criminal objective; and the State never bothers to address the motion’s merits. The motion, therefore, is completely irrelevant.

⁴ The State asserts that this immunity applies only in civil cases, *see* (Pb78–79), but applying a lesser immunity in criminal cases would make no sense. As this Court recognized in *Ruberon*, the “absolute[]” immunity for litigation statements is based on “the need for unfettered expression critical to advancing the underlying government interest at stake” in judicial proceedings—a consideration that applies with equal force in civil and criminal cases. 280 N.J. Super. at 132. And although the State suggests that the immunity for litigation statements is reserved for “unique context[s],” (Pb79), its cited authority shows the opposite. *See LoBiondo v. Schwartz*, 199 N.J. 62, 103, 107–17 (2009) (identifying narrow circumstances in which an advice-of-counsel defense to a malicious prosecution claim can expose an attorney to limited civil liability, while emphasizing that “there remain relatively few grounds on which a nonclient may sue an attorney”).

Third, the Indictment alleges that the conspiracy existed in part to “retaliate[e]” and “intimidate” those adverse to the alleged conspirators. (Pa82–85); *see* (Pb94). But the timeline does not work. The State’s only allegations of retaliation concern the termination of Dranoff’s redevelopment right for Radio Lofts and the blocking of a regulatory approval relating to the Victor Lofts. (Pb94); (Pa74–75). But those events occurred in April 2018—over a year outside the limitations period. (Pa75). The only event that allegedly occurred within that period was *Dranoff’s* decision to sue the City. (Pa75). And because that was not an act by any Defendant, or in furtherance of the charged conspiracies, it could not extend the conspiracies.

For those reasons, the State cannot show that its charged conspiracies continued into the limitations period. And as the trial court held, every other count with a five-year limitations period is thus time-barred “[f]or the same reasons.” (Pa209). After all, the financial facilitation charges (Counts 5–10) do not state offenses on their own terms. *See supra* 71–72. And the corporate misconduct charges (Counts 11–12) are premised on the commission of some other offense. *See Harris*, 373 N.J. Super. at 266. If every other offense in this case is time-barred, then the corporate misconduct charges are too.

That leaves only official misconduct (Count 13), which has a seven-year limitations period. N.J.S.A. 2C:1-6(b)(3). To fall within that period, any official

misconduct must have occurred after June 2017. Yet the only allegations about Mayor Redd are from years earlier: Her alleged advice to CFP to work with Philip Norcross dates back to 2013 and 2014 (Pa22, 30), and her alleged refusal to return Dranoff's phone call took place in 2016 (Pa49–50).

The Indictment cannot surmount that hurdle by alleging that Mayor Redd accepted a job on a university's board of governors in December 2017. (Pa69). The offense of official misconduct occurs when the official “commits an act” or “refrains from performing a duty” for certain illicit purposes. N.J.S.A. 2C:30-2. Accepting a job does not meet that description. Nor does it matter that official misconduct can sometimes be a continuing offense; even then, an indictment is only timely if “the last constituent act” of the crime occurred within the relevant period. *State v. Diorio*, 216 N.J. 598, 619 (N.J. 2014). Moreover, although the State suggested that the job on the university board “was a reward for faithful service and fidelity to the Enterprise,” (Pa210), the Indictment does not allege a bribe or a *quid pro quo*. There is thus no basis for connecting the new job to a charged offense. And for that reason, the official misconduct charge—like every other charge in this Indictment—is facially time-barred.

Against all this, the State falls back on arguing that the duration of a conspiracy is a pure question of fact, insisting that it is sufficient for the Indictment to assert in conclusory fashion that the supposed conspiracy

continued “[f]rom at least approximately 2012 to the present.” (Pb83–84) (quoting Pa1–2). But this Court has long treated the duration of conspiracies as a “mixed question of law and fact.” *Herbert*, 92 N.J.L. at 354. The legal component of the inquiry asks what kinds of actions can suffice to extend a conspiracy. *See, e.g., Twigg*s, 233 N.J. at 532; *Reid*, 456 N.J. Super. at 64; *Doherty*, 867 F.2d at 61; *Grimm*, 738 F.3d at 502 (properly assessing whether conspiracies continued as a matter of law). And it is a question of law whether the facts alleged in the Indictment show that any conspiracy continued into the relevant period. As one court put it, the indictment must “alleg[e] facts in the time period close to the commencement of the limitations period” that suffice to “support an inference that the conspiracy continued into the limitations period.” *United States v. Coia*, 719 F.2d 1120, 1124–25 (11th Cir. 1983). Here, by contrast, the State has done exactly the opposite: It has alleged supposed crimes that occurred well outside the statute of limitations, as well as an array of plainly lawful conduct that is legally insufficient to continue the supposed conspiracies.

In sum, the Indictment not only fails to allege a crime, but also runs headlong into an insurmountable time-bar. In stretching not only the meaning of the extortion statutes, but also basic statute-of-limitations principles, the Indictment is doubly defective as a matter of law.

CONCLUSION

This Court should affirm the dismissal of the Indictment.

Dated: July 23, 2025

Respectfully submitted,

s/ Anthony J. Dick

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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:
February 26, 2025 Order of the Superior
Court of New Jersey, Law Division –
Criminal, Mercer County
Docket No. MER-24-001988

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

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Date of Submission: July 23, 2025

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In addition to the arguments made in the other Defendants-Respondents' briefs, in which he joins, Defendant-Respondent Philip A. Norcross ("Philip Norcross") respectfully submits this brief in opposition to the State's appeal.

PRELIMINARY STATEMENT

In a desperate attempt to revive this properly dismissed case, the State contends that the trial court (a) undertook a review of the Indictment that does not exist in criminal practice; (b) drew inferences against the State and failed to accept the truth of its allegations; (c) misinterpreted the extortion statute on which this entire case turns; and (d) erred in concluding that Philip Norcross was not part of a criminal enterprise, but rather was a lawyer engaged in lawyering and constitutionally protected political activity.

The State is wrong on all counts. As a threshold and absolutely critical matter, a court must always ask whether the allegations in an indictment state a crime, and must dismiss that indictment if they do not. That is precisely what the court did here. To call its review unprecedented is nonsense.

But the State does so for a reason. This case turns on a simple question: Is it extortion for an actor with a link to a commercial transaction to make the kind of threats alleged in the Indictment? This Court answered that question nearly thirty years ago in *State v. Roth*. It is not. But because, as the trial court found, that answer dooms the Indictment, the State deems the question improper.

It takes the trial court to task for asking it, then recasts what the trial court did as a sufficiency-of-the-evidence review.

But the court assessed the sufficiency of the allegations, not the evidence. It assumed there was ample evidence to support the Indictment's allegations, obviating the need to review it, and focused instead on the seminal question of whether they stated a crime. The State facilitated that analysis by spreading its legal theory—its reason for contending the threats it alleged were unlawful—across a 111-page charging document. The State reads the trial court's statement that the expansive nature of the Indictment "opened the door" to its analysis to suggest a "speaking indictment exception" that permits courts to ask if such a pleading states a crime. But asking that question is not the exception, it is the rule. The court's point was that this Indictment left no doubt as to the State's theory of prosecution, thus facilitating the court's legal assessment of its claims.

Once one accepts a court's power to assume the truth of an indictment's allegations (and therefore the sufficiency of the evidence to support them) and to dismiss that indictment if it does not state a crime, the rest of the State's arguments quickly fall away. The trial court did not make findings of fact or draw inferences favorable to the defense. It simply analyzed the allegations and found them wanting as a matter of law. As a result, the Indictment is invalid—and would be even if its charges were timely, which they plainly are not.

As to the State's core contention, the trial court did not misread the theft-by-extortion statute in concluding that the threats alleged in the Indictment were "hard bargaining" rather than "extortion." That contention proceeds from a fundamental misunderstanding of the relationship between those terms. Hard bargaining and extortion are not points along the same continuum, with hard bargaining at some point morphing into extortion. They are different in kind. One need look no further than the theft-by-extortion statute, its legislative history, the work of the 1971 Criminal Law Revision Commission, and this Court's decision in *Roth* to conclude that threats of economic harm made by one with a commercial nexus to a transaction are not unlawful. They are hard bargaining, not extortion, by definition. It really is that simple.

Finally, the suggestion that Philip Norcross was not acting appropriately as a lawyer when he lobbied the legislature and provided input to Camden city officials, but instead was part of a RICO enterprise, falls of its own weight. So too the Indictment's allegation and the State's argument that urging the selection of a particular investor was a threat. It was not a threat by any definition.

This is, and always has been, a search for a crime where none exists. This case turns on a simple truth: threats of the kind alleged in the Indictment, even when made in harsh terms, are not extortion. For these reasons, amplified below and in the other Respondents' briefs, the order on appeal should be affirmed.

PROCEDURAL HISTORY

On June 18, 2024, the grand jury returned the Indictment against the Defendants. (Pa1.)

On September 24, 2024, Defendants filed an omnibus motion to dismiss. Each Defendant thereafter filed a separate motion to dismiss, with Philip Norcross filing his individual motion on October 1, 2024. On January 22, 2025, the trial court held oral argument on the Defendants' motions. (5T.)

On February 26, 2025, the trial court issued the order and opinion that is the subject of the State's appeal. (Pa112.)

STATEMENT OF FACTS

Philip Norcross joins in the Statement of Facts set forth in George Norcross's appellate brief. The following statement focuses only on the specific allegations, charges, and proceedings as they relate to Philip Norcross.

A. The Indictment's Allegations Against Philip Norcross.

1. Philip Norcross's Alleged Role In Helping Pass Legislation And His Involvement In Efforts To Redevelop Camden.

Philip Norcross is an attorney and the brother of George Norcross. (Pa7(¶10); Pa20(¶43).) From 2010 until the date of the Indictment, he served as Chair of the Board at the Cooper Foundation, which supports the charitable purposes, programs and services of Cooper Health and its affiliates. (Pa7(¶10).)

The allegations against Philip Norcross involve his efforts to further his brother's interests through the type of advocacy lawyers engage in every day, much of which is clearly protected by the constitution: (i) encouraging the New Jersey Legislature to include language in the Economic Opportunity Act ("EOA") that would facilitate the desperately needed redevelopment of the Camden waterfront; (ii) urging Cooper's Ferry Partnership ("CFP") to partner with a particular investor to facilitate that redevelopment; (iii) participating in negotiations with a sophisticated developer, Carl Dranoff ("Dranoff"), and his team of lawyers to obtain property rights Dranoff owned that he was using to impede the redevelopment; and (iv) giving City of Camden (the "City") officials and the Camden Redevelopment Agency ("CRA") suggestions on legal strategy to address Dranoff's efforts to stymie Camden's redevelopment.

Passage Of The EOA. The EOA was enacted in September 2013 to incentivize investment in economically depressed areas by awarding tax credits for qualifying projects in such areas. (Pa14(¶¶28-29).) The Indictment alleges that Philip Norcross participated in meetings and discussions involving the draft legislation and encouraged the Legislature, by communicating with the then-Senate President, to include language in the statute that would advance the vision and interests of his client and brother, George Norcross. (Pa15-19(¶¶32-40).) The Indictment alleges that in a meeting with a group of individuals

shortly after passage of the EOA, Philip Norcross commented that he worked as a general matter to implement his brother's agenda in Camden as it pertained to urban redevelopment, education and public safety. (Pa20(¶43).) The Indictment does not allege that he was paid for doing so or that his conduct in that regard violated any lobbying rule or regulation.

L3 Complex. The L3 Complex is a building CFP planned to purchase by partnering with an investor of its choice. (Pa21(¶47); Pa24(¶57).) George Norcross had an interest in that building; he believed it was suitable for the offices of Cooper Health, which he chaired. (Pa1(¶1); Pa5(¶7); Pa27-28(¶68).) The Indictment alleges that Camden Mayor Dana Redd's chief of staff directed CFP's CEO to meet regularly with Philip Norcross and her to ensure that its projects were approved by George and Philip Norcross. (Pa22(¶¶49-50).) Ignoring its acknowledgement of Philip Norcross's successful years-long tenure as Chair of the charitable Cooper Foundation, (Pa7(¶10); Pa79(¶208)), and his role in providing legal advice to Cooper on the L3 transaction, the Indictment casts him as an interloper in that transaction, stating: "Although he held no role at CFP or in Camden City government, Philip Norcross sought updates . . . on the status of CFP's agreement to purchase the L3 Complex." (Pa23(¶52).) As a result of these meetings, the Indictment goes on to allege, Philip Norcross learned of CFP's agreement to purchase the L3 Complex and sought updates

from CFP about the intended acquisition. (*Id.*) The Indictment further alleges that, during the L3 transaction, Mayor Redd and her chief of staff responded to concerns raised by CFP's CEO by telling him that he had to deal with Philip Norcross. (Pa30(¶77).)

The Indictment then alleges that, during a meeting with CFP officials, Philip Norcross stated that CFP should not be involved in redevelopment projects and named several entities with which CFP should partner. (Pa25(¶59).) The CEO of Cooper Health allegedly told CFP officials to meet with Philip Norcross because George Norcross was angry about CFP's involvement in the L3 transaction. (*Id.*) Philip Norcross then insisted that CFP partner with a specific investor who had expressed interest in the deal and that CFP could enter into a non-disclosure agreement with that investor. (Pa25(¶¶60-61).) As a result, CFP entered into a non-disclosure agreement with the investor even though CFP was not otherwise interested in working with him. (Pa26(¶63).)

According to the Indictment, on or about April 21, 2014, CFP reached an agreement in principle to conduct a joint venture with a different entity to complete the purchase of the L3 Complex. (Pa26-27(¶65).) Philip Norcross was allegedly “torqued” after learning of this development. (Pa28 (¶69).) On April 25, 2014, the Indictment alleges, Philip Norcross and the Mayor's chief of

staff held a meeting with CFP’s CEO during which Phil Norcross told the CEO that CFP was not allowed to use the entity it chose and should instead use the investor Philip Norcross had identified. (Pa28(¶70).) The CEO allegedly “understood” this instruction to be an implicit “threat”—based not on anything Philip Norcross said or anything the CEO believed about Philip Norcross, but on “what [the CEO] knew about” George Norcross and his conduct in the past. (Pa28(¶71); *see also* Pa23(¶¶53-54).)

The Indictment also describes peripheral acts Philip Norcross took regarding the L3 Complex deal and Cooper Health’s related application for tax credits. Cooper Health had previously forwarded information to Philip Norcross about leasing space in the L3 Complex; his acts consisted of suggesting how Cooper Health could secure tax credits and noting that CFP would have to pay \$1.5 million to cover costs relating to windows in the L3 Complex. (Pa26(¶64); Pa30(¶¶75-76).) They also included telling CFP’s CEO that (a) a particular individual would serve as co-chair of CFP, a message that had also been conveyed by Mayor Redd, who was then serving as CFP’s other co-chair; and (b) having this individual as co-chair would help CFP mend fences with George Norcross. (Pa31(¶78).) After that individual became co-chair, he responded to complaints raised by CFP’s CEO about the L3 transaction by telling the CEO

that he had to deal with Philip Norcross and pushing the CEO to close the deal. (Pa31(¶79).)

Triad1828 Centre and 11 Cooper. The second real-estate transaction at issue concerns the redevelopment of Triad1828 Centre and 11 Cooper. The Indictment alleges that George Norcross wanted to build Triad1828 Centre to serve as the headquarters of his company, Conner, Strong & Buckelew, and that of The Michaels Group and NFI, companies run by Defendants John O'Donnell and Sidney Brown, respectively. (Pa37-38(¶¶93-94).) The Indictment also alleges that George Norcross wanted to build a residential development on the parcel where 11 Cooper was eventually built. (*Id.*) In order to do so, he had to secure two of Dranoff's property rights, a view easement that would have limited the height and hence the value of Triad1828 Centre and a right of first refusal for residential redevelopment that included the 11 Cooper site. (Pa38-39(¶94).)

The Indictment alleges that Philip Norcross was involved in efforts to obtain or extinguish these property rights Dranoff owned in several ways. First, the Indictment alleges that Philip Norcross attended a meeting with representatives of the Economic Development Authority and others to "plan the Waterfront," and received information from CFP about plans and agreements related to the Waterfront District. (Pa42-43(¶¶101-02).)

The Indictment also alleges that Philip Norcross was involved in negotiations relating to the development of Triad1828 Centre and 11 Cooper. Specifically, it alleges that he represented Camden Partners Tower, a group that included George Norcross and others, in negotiations with master developer Liberty Property Trust (“LPT”). (Pa44(¶107).) Those negotiations, the Indictment charges, included discussions with George Norcross and Dranoff regarding Camden Waterfront redevelopment opportunities and Dranoff’s view easement for the Victor Lofts. (Pa45(¶110); Pa47(¶¶116-17); Pa53(¶136).) The Indictment alleges that during two calls in which Philip Norcross participated, George Norcross stated that (a) Dranoff would never do business in Camden again if he stymied or “f**ked up” George Norcross’s redevelopment plans; and (b) “there would be consequences” for Dranoff if he did not reach an agreement to release his view easement and transfer his right of first refusal on residential redevelopment, along with related rights. (Pa47(¶117); Pa53(¶136).)

The Indictment also alleges that Philip Norcross was involved in a plan to have the CRA, a governmental entity created by the Camden City Council (Pa10(¶20)), condemn Dranoff’s view easement through court action. (Pa50-60(¶¶127-50).) In participating in that plan, the Indictment alleges, Philip Norcross sent a memo to attorney William Tambussi analyzing whether the CRA could condemn Dranoff’s view easement; Tambussi responded by stating that

there was a good likelihood the court would declare that the CRA had the right to do so. (Pa52(¶¶132-33).) The Indictment also alleges that Philip Norcross participated in conversations regarding the approval of the planned condemnation action after a proposed deal with Dranoff fell through. (Pa54-Pa60(¶¶138-140, 142, 148, 150).) The Indictment does not allege that the planned condemnation action was communicated or intended to be communicated to Dranoff or that it was ever acted upon; it acknowledges that the parties reached a seven-figure settlement. (Pa60(¶151).)

Finally, the Indictment alleges that Philip Norcross instructed Mayor Redd not to meet with Dranoff during their negotiations over the Camden Waterfront and that, thereafter, the Mayor stopped returning Dranoff's calls. (Pa50(¶125).) The Indictment further alleges that prior to that, Dranoff's "calls to city officials, including . . . Redd, were typically returned." (Pa49-50(¶124).)

Radio Lofts. The last real-estate transaction described in the Indictment relates to the Radio Lofts, a property over which Dranoff had a redevelopment option. (Pa41(¶98(d)).) At the time Dranoff held that option, he also sought to sell six of his company's properties, including the Victor Lofts, to a real estate investment trust. (Pa73(¶183).) In order to complete that sale, Dranoff needed to transfer a PILOT (payment in lieu of taxes) agreement to the trust, which required the approval of the Camden City Council. (*Id.*)

The Indictment alleges that Philip Norcross was involved in efforts to cause Dranoff to forfeit his redevelopment rights relating to the Radio Lofts, efforts that were facilitated by Philip Norcross's participation in weekly stakeholder meetings that involved various city officials, including Mayor Redd, the Mayor's chief of staff, and representatives of the City Attorney's office. (Pa73(¶184).) During one such meeting in March 2018, the Indictment alleges, Philip Norcross said, in substance and in part, that approval for the PILOT agreement transfer should be "slowed down by the City in order to create a 'legal strategy' to deal with [Dranoff's] Camden interests"—in particular, to cause him to forfeit his company's option to redevelop the Radio Lofts. (Pa74(¶186).) The Indictment does not allege that these efforts relating to the Radio Lofts were communicated or intended to be communicated to Dranoff.

The Indictment alleges that, as a result of Philip Norcross's efforts, the CRA terminated Dranoff's Radio Lofts redevelopment option and the City refused to approve transfer of his PILOT agreement. (Pa74-75(¶¶187-91).) Dranoff thereafter filed a lawsuit against the CRA and the City relating to its failure to approve that transfer, precipitating a countersuit by the City against him. (Pa75(¶192); Pa76(¶195).) In response to Dranoff's lawsuit, Philip Norcross gave another lawyer, Respondent William Tambussi, talking points to the effect that Dranoff was responsible for the failure to redevelop the Radio

Lofts and that the City would not be intimidated by his litigation tactics; those talking points were then repeated by City officials. (Pa75-76(¶¶193-94).)

In 2023, Dranoff settled his lawsuit and the City's countersuit on terms that required him to (i) release his Radio Lofts redevelopment option and sell a parking lot to the City for \$1; and (ii) pay the City approximately \$3.3 million over a period of time. (Pa76(¶195).)

2. The Charges Against Philip Norcross.

Based on the allegations summarized above, the Indictment charged Philip Norcross in thirteen counts with racketeering involving criminal coercion, criminal threats, theft by extortion, financial facilitation of criminal activity, and official misconduct on theories of co-conspirator and accomplice liability. Count One charged an overarching RICO conspiracy to commit those crimes. (Pa81-86(¶¶212-16).) Counts Two through Four charged conspiracies to commit theft by extortion and criminal coercion as they relate to the properties described above. (Pa87-98(¶¶217-22).) Counts Five through Ten alleged the improper possession of tax credits, which the Indictment alleged were derived from criminal activity. (Pa99-104(¶¶223-34).) Counts Eleven and Twelve alleged misconduct by a corporate official. (Pa105-08(¶¶235-38).) Count Thirteen alleged official misconduct by Mayor Redd, for which Philip Norcross and others were allegedly liable as accomplices. (Pa109-10(¶¶239-40).)

B. Defendants' Motion To Dismiss And The Opinion And Order Challenged On Appeal.

On September 24, 2024, Defendants filed an omnibus motion to dismiss the Indictment, followed by individual motions filed by each Defendant. These motions were limited to the four corners of the Indictment,¹ with each “accepting the Indictment’s factual allegations as true and assuming that each of those allegations was supported by evidence before the grand jury.” (Pa214.) Within those parameters, Defendants argued that dismissal was appropriate because the allegations did “not amount to a crime as a matter of law.” (*Id.*) When presented with these motions, the court acknowledged that “[t]he motion promised [by Defendants] was the motion filed.”² (Pa124.)

In their motions, Defendants demonstrated that the State’s charges reduced to just two allegedly unlawful threats: (i) the “threat” to CFP’s CEO that he should use George Norcross’s chosen developer for the L3 Complex deal; and (ii) the threat to Dranoff that he would be “f**ed up” or would suffer

¹ The single exception consisted of a motion filed by Defendant William Tambussi, which attacked the State’s grand-jury presentation. Defendants requested and the Court agreed to litigate that motion on a separate track from the motions addressed to the Indictment’s facial sufficiency. (Pa214 n.1.)

² This record belies the State’s assertions that Defendants’ briefs “did not argue that the terms of the Indictment precluded guilt” or that they “urged the judge to treat the Indictment as comprising all the evidence” on which the grand jury relied. (Pb14-15 (emphasis in original).)

“consequences” if he imperiled George Norcross’s planned redevelopment of Triad1828 Centre and 11 Cooper. (*See, e.g.*, 9/24/24 Memorandum of Law in Support of Defendants’ Motion to Dismiss [Trans ID: CRM20241061449], at 15-19.) Defendants principally argued that the Indictment had to be dismissed because these threats were beyond the scope of the charged extortion and coercion statutes as a matter of law. (*Id.* at 15-22.) They further argued that the Indictment’s charges were untimely. (*Id.* at 37-43.) Philip Norcross’s motion adopted these arguments and stressed that the charges against him were particularly inappropriate given that they were based on routine actions by a transactional lawyer, much of which included constitutionally protected petitioning conduct. (*See* 10/1/24 Memorandum of Law in Support of Philip Norcross’ Motion to Dismiss [CRM20241095193], at 14-31.)

In responding to these motions, the State made clear that its entire case reduced to whether these two threats were criminal. The State abandoned any claim that the Defendants issued or conspired to issue any distinct threats relating to the Radio Lofts property; rather, the State argued that the Radio Lofts saga demonstrated George Norcross’s ability to “follow[] through” on his threats. (State 11/22/24 Opposition Brief [Trans ID: CRM20241315038], at 65.) The State additionally clarified that its official-misconduct charge depended on

the extortion and coercion statutes, (*see id.* at 69), thus reducing all its theories to whether those threats were unlawful under those statutes.

At oral argument on Defendants’ dismissal motions, the State again confirmed that its charges reduced to whether the threats identified in the Indictment were “unlawful.” (5T232-12-14 (“[T]he one place where maybe we all agree is that this does, in some sense, hinge on whether [the threats at issue] are unlawful.”); *see also* 5T38-7-10 (“[E]veryone agrees the most central question in the case as a whole is whether these defendants, in fact, conspired to engage in extortion or coercive behavior.”).) Judge Warshaw then zeroed in on the very question at the heart of this case:

THE COURT: What if the alleged threats weren’t unlawful threats?

MR. GRILLO: Well—

THE COURT: Then what happens?

MR. GRILLO: Your Honor, I think it certain—it certainly impacts the strength of the State’s indictment. . . .

(T5232-18-24.)

On February 26, 2025, Judge Warshaw rendered the Order and 96-page Opinion on appeal. (Pa112-211.) In the Opinion, Judge Warshaw expressly accepted the Indictment’s allegations as true, refrained from making any findings of fact or credibility determinations, and gave the State the benefit of every reasonable inference. (Pa125; Pa173; Pa179-80; Pa184; Pa199.) Judge

Warshaw then followed settled New Jersey law to explain that the Indictment had to be dismissed if it alleged conduct that was not proscribed by the charged statutes. (Pa152-53; Pa173.)

Applying these principles, Judge Warshaw held that the Indictment was facially deficient because the threats on which it was based do not “constitute extortion or criminal coercion as a matter of law.” (Pa153.)³ The Court explained that New Jersey’s extortion and coercion statutes do not criminalize an actor’s use of economic threats when there existed an economic or commercial nexus between the actor who uttered the economic threats and the underlying transaction. (Pa159-60.) The Court emphasized that, because fear of economic loss is a driving force in the economy, a free-market system depends on an individual’s ability to threaten economic harm in the context of a business transaction without fear of criminal exposure. (Pa160-61.)

Analyzing the Indictment’s allegations against this statutory construction, Judge Warshaw held that George Norcross’s alleged threat to Dranoff did not amount to extortion or coercion as a matter of law because the Indictment

³ See also Pa155 (“The validity of every count in this thirteen-count indictment depends upon the existence of unlawful threats.”); Pa156 (“Defendants correctly assert that the threat offenses are the common denominator of every count and that if these threats are not crimes, it follows that no count in the indictment can be sustained as a matter of law.”); Pa189 (“The court has concluded that the alleged extortionate and coercive threats were not threats under the law.”).

situated those threats amidst his negotiations with Dranoff for Camden's waterfront redevelopment. (Pa161-62.) Those allegations therefore made clear that George Norcross had an economic or commercial nexus to the "underlying negotiation." (Pa163; *see also* Pa172 ("The Norcross Enterprise clearly had the same right to try to negotiate a presence on the Camden Waterfront as Developer-1 did.").)

The Court reached a similar conclusion with respect to the "threat" consisting of Philip Norcross's instruction to CFP's CEO that he use George Norcross's chosen investor for the L3 deal. (Pa170.) The court reasoned that, even if this directive amounted to a "threat," it was lawful hard bargaining, as CFP's CEO had no pre-existing entitlement to his job or funding for CFP and George Norcross had an interest in securing the property for Cooper Health. (Pa171-72; *see also* Pa189 (noting that Philip Norcross, as a member of Cooper Health's board, "clearly had personal and professional interest in the Camden waterfront.").)

Judge Warshaw further held that without any identified crimes there could also be no criminal RICO enterprise. (Pa174-200.) In this discussion, Judge Warshaw found it "important" to emphasize that Philip Norcross had a right "to do what he was doing." (Pa189.) The court explained that any threats attributed to Philip Norcross were within the scope of his "lawyering and constitutionally

protected political activity,” and consisted of “the type of economic threats that are deemed routine and accepted in a free market system.” (Pa191.) The court elaborated that Philip Norcross “had the right to engage in efforts to influence government action,” and that those efforts were “immune from criminal liability and intrinsic to the constitutional right to petition.” (Pa191-92.)

Finally, Judge Warshaw dismissed the Indictment on the additional ground that its charges were time-barred. (Pa200-10.) This appeal followed.

ARGUMENT

Where, as here, a court dismisses an indictment based on its application of law to undisputed facts, its decision is reviewed *de novo*. See *State v. Derry*, 250 N.J. 611, 626 (2022); *State v. Twiggs*, 233 N.J. 513, 532 (2018); *State v. S.B.*, 230 N.J. 62, 67 (2017); *State v. Bernardi*, 456 N.J. Super. 176, 186 (App. Div. 2018). Under this standard, the court’s judgment should be affirmed.

I. THE COURT APPLIED THE CORRECT STANDARD WHEN DISMISSING THE INDICTMENT.

A. A Court Properly Dismisses An Indictment When The Conduct Alleged Falls Beyond The Scope Of The Charged Statutes.

Judge Warshaw dismissed the Indictment, as courts in this State and throughout the country do every day, by interpreting the charged statutes and holding that the Indictment failed to identify any crime within those statutes as properly construed. Despite that straightforward analysis, the State devotes more than one fourth of its 100-page brief to attacking what it claims is an

“unprecedented” form of review, claiming that “not a single case”—State or federal—has ever dismissed an indictment in these circumstances. (Pb20-45.) That is simply not so.

The law in this State has been clear for more than a century: an indictment is “fatally defective” when its allegations fail to identify a crime. *State v. Riggs*, 91 N.J.L. 456, 460 (1918). In *Riggs*, the Supreme Court found such a fatal defect when an indictment charged directors of a railroad company with obstructing roadways and sidewalks by doing that which they were “authorized to do.” *Id.* at 460-61. The Court explained that, “as the defendants could not be convicted of creating or maintaining a nuisance if all the facts stated in the indictment were proven,” the indictment had to be quashed. *Id.* at 461.

Courts in this State have followed these basic principles ever since. Citing *Riggs*, the court in *State v. Shipley*, 10 N.J. Super. 245 (App. Div. 1950), stated that a motion to dismiss is properly granted when the “indictment on its face appears incapable of supporting a judgment of conviction.” *Id.* at 250. Decades of cases have likewise acknowledged that a motion to dismiss can challenge the adequacy of an indictment “on its face.” *State v. Bennett*, 194 N.J. Super. 231, 234 (App. Div. 1984). *See also State v. Borg*, 9 N.J. Misc. 59, 60 (1931) (granting motion to quash an indictment that was “obviously insufficient upon its face”); *State v. De Vita*, 6 N.J. Super. 344, 346 (App. Div. 1950)

(“Whether the indictment charges [the defendant] with commission of a crime [obstruction of justice] depends on what it alleges he solicited [a witness] to do.”); *State v. Mason*, 355 N.J. Super. 296, 299 (App. Div. 2002) (“[W]here the indictment is factually unsupported either on its face or in the grand jury proceedings, the dismissal is appropriate.”). Indeed, contradicting its position, the State concedes that a motion to dismiss is properly granted when an “indictment on its face appears incapable of supporting a judgment of conviction.” (Pbr23 (quoting *Shipley*, 10 N.J. Super. at 250 and citing *Riggs*, 91 N.J.L. at 458).)

Consistent with this settled law, this Court has affirmed orders dismissing indictments that, like the Indictment here, alleged conduct that was not proscribed by the charged statutes. In *State v. Thompson*, 402 N.J. Super. 177 (App. Div. 2008), for example, the trial court dismissed the majority of the counts in an indictment based upon their legal insufficiency without “reach[ing] defendants’ arguments that the evidence presented to the grand jury was factually insufficient.” *Id.* at 182. In affirming dismissal of most of the charges, this Court explained why the counts charged in the indictment alleged conduct that was not within the scope of the charged official-misconduct statutes. *Id.* at 190-204. Similarly, in *State v. Perry*, 439 N.J. Super. 514 (App. Div. 2015), this Court affirmed or directed dismissal of indictments that improperly charged

defendants with driving with a suspended license beyond the sentenced terms of suspension. *See id.* at 522-32.

Federal courts take the same approach when confronted with a motion to dismiss an indictment. The Supreme Court’s decision in *United States v. Enmons*, 410 U.S. 396 (1973), is exemplary. In that case, the court affirmed dismissal of a Hobbs Act indictment because the facts alleged—using force to achieve legitimate union objectives—did not constitute extortion under that statute. *Id.* at 398, 412. Legions of others have made clear that an indictment is properly challenged and should be dismissed when ““the specific facts alleged . . . fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation.”” *United States v. McGeehan*, 584 F.3d 560, 565 (3d Cir. 2009) (quoting *United States v. Panarella*, 277 F.3d 678, 685 (3d Cir. 2002)).⁴ These include decisions cited by the State. *See United States v. Pope*,

⁴ *See also, e.g., United States v. Dion*, 37 F.4th 31, 33-34 (1st Cir. 2022) (“Typically, when . . . a motion seeks to dismiss an indictment, its resolution will turn on pure questions of law regarding the sufficiency of the indictment’s allegations.”); *United States v. Brewbaker*, 87 F.4th 563, 572 (4th Cir. 2023) (explaining that an indictment “fail[s] to state an offense,” and is properly dismissed, if “the allegations therein, even if true, would not state an offense.” (cleaned up)); *United States v. Landham*, 251 F.3d 1072, 1080 (6th Cir. 2001) (“If the indictment is legally deficient, the proper result is dismissal of the indictment.”); *United States v. Harder*, 168 F. Supp. 3d 732, 737 (E.D. Pa. 2016) (explaining that in deciding a motion to dismiss an indictment, the court “must accept factual allegations and disregard legal conclusions to determine whether the alleged facts constitute a crime”); *United States v. Huynh*, No. 4-CR-14-275, 2016 U.S. Dist. LEXIS 177619, at *5 (M.D. Pa. Dec. 22, 2016) (“In deciding a

613 F.3d 1255, 1260 (10th Cir. 2010) (explaining that a “court may always ask whether the allegations in the indictment, if true, are sufficient to establish a violation of the charged offence and dismiss the indictment if its allegations fail that standard.” (cleaned up)); *United States v. Phillips*, 690 F. Supp. 3d 268, 277 (S.D.N.Y. 2023) (“[A] federal indictment can be challenged on the ground that it fails to allege a crime within the terms of the applicable statute.” (quoting *United States v. Aleynikov*, 676 F.3d 71, 75-76 (2d Cir. 2012))).

Against this overwhelming weight of authority, the State misreads one federal district court case, *United States v. Sittenfeld*, 522 F. Supp. 3d 353 (S.D. Ohio 2021), to suggest that a different standard prevails. (Pbr24.) It does not. *Sittenfeld* specifically cited *Enmons*, 410 U.S. 396, to explain that a court properly dismisses an indictment when it describes conduct that falls outside the scope of the charged statute. *See Sittenfeld*, 522 F. Supp. 3d at 366. *Sittenfeld* further explained that, “[i]f the government alleges facts showing that, as a

motion to dismiss, [the court] must accept factual allegations [in the indictment as true] and disregard legal conclusions to determine whether the alleged facts constitute a crime.”); *United States v. Ferriero*, No. 13-cr-0592, 2015 U.S. Dist. LEXIS 5311, at *13 (D.N.J. Jan. 15, 2015) (stating that a district court must find that “a charging document fails to state an offense if the specific facts alleged in the charging document fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation.” (quoting *Panarella*, 277 F.3d at 685))).

In accordance with R. 1:36-3, the unpublished opinions cited in this footnote and throughout this brief are included in Philip Norcross’s appendix. Philip Norcross is not aware of any contrary opinions.

matter of law, the charged crime did *not* occur, then the indictment is invalid.” *Id.* (emphasis in original). That is precisely the situation here; the State has “pled itself out of court,” *id.* at 367, by affirmatively alleging that Defendants had an economic nexus to the underlying transactions at issue.

Sittenfeld went on to state the uncontroversial proposition that a motion to dismiss is not the proper juncture to determine if the prosecution will have “enough evidence to support a conviction.” 522 F. Supp. 3d at 367. That type of motion is akin to a sufficiency-of-the-evidence motion that Defendants expressly chose *not* to file. Rather, Defendants assumed for purposes of their motions that the State had sufficient evidence to prove each and every one of its allegations. As no amount of evidence could prove a crime that does not exist, the Indictment was properly dismissed for facial insufficiency, not evidentiary insufficiency.

Bereft of any law to support its position, the State resorts to policy arguments: that Judge Warshaw’s approach prevented him from reviewing “substantive materials” presented to the grand jury and would impermissibly “short-circuit” prosecutions. (Pb30, Pb33-35.) These arguments are not well made. Judge Warshaw did not have to review any grand-jury materials because he assumed the truth of the State’s allegations. Nor could the State salvage the Indictment based on material evidence before the grand jury that was not

encompassed in the Indictment’s allegations (for example, a threat of physical violence). That is because an indictment must include “all the essential facts of the crime.” *Dorn*, 233 N.J. at 93 (cleaned up). The State therefore cannot avoid dismissal by claiming “that the evidence before the grand jury was sufficient to support an indictment on some other theory.” *State v. Lisa*, 391 N.J. Super. 556, 581 (App. Div. 2007), *aff’d*, 194 N.J. 409 (2008).

Nor would Judge Warshaw’s application of the settled dismissal standards jeopardize meritorious prosecutions. Where the State has a viable theory of criminal liability, it must plead it in the indictment. If it fails to do so, a court should grant dismissal “at the indictment stage, rather than waiting until trial and, if there were a conviction, an eventual appeal.” *Lisa*, 391 N.J. Super. at 580 n.3. It is hardly “untenable” to incentivize the State to bring charges supported by the law. (Pb35.) That is the bare minimum New Jersey law has required of the State for more than 100 years.

Finally, the State suggests that affirming the judgment below would disrespect the grand jury’s role. (Pbr21-22.) But it is the function of the court—not the grand jury—to determine what the law is, which is precisely the role it fulfills when it dismisses an indictment that fails to allege a crime. *See State v. Brady*, 452 N.J. Super. 143, 166 (App. Div. 2017) (holding it improper to allow the grand jury to determine a legal issue); *Brewbaker*, 87 F.4th at 579 (“[T]he

district court, and not the grand jury, must decide questions of law.”). Indeed, any presumption that a grand jury has returned a valid indictment disappears if the jury was misinformed about the law. *See State v. Bell*, 241 N.J. 552, 561 (2020) (“[W]here a prosecutor’s instructions to the grand jury were misleading or an incorrect statement of law, the indictment fails.” (cleaned up)). Defendants’ motions were directed at the erroneous interpretation of the law reflected in the Indictment, not the evidence presented to the grand jury.

Stated simply, Judge Warshaw engaged in the same facial-sufficiency analysis courts undertake every day. Because the Indictment was based on a legally invalid theory, it was properly dismissed.

B. Judge Warshaw Correctly Applied The Governing Dismissal Standard.

Given its inability to legitimately contest the governing standard, the State pivots to arguing that Judge Warshaw misapplied it by fashioning a different test for “speaking indictments,” making findings of fact, reviewing evidence beyond the scope of the Indictment, or failing to draw inferences in the State’s favor. An honest assessment of Judge Warshaw’s decision refutes those claims.

The State seizes upon Judge Warshaw’s reference to a “speaking indictment” to argue that he fashioned a new standard when granting dismissal. (Pb20; Pb21; Pb31-32.) To the contrary, the court analyzed whether the allegations in the Indictment identified a crime within the scope of the charged

statutes, just as a court would review any other indictment. By describing the Indictment as a “speaking indictment,” Judge Warshaw explained that the State’s inclusion of additional details served the same function as providing a bill of particulars. (Pa151-52.) In doing so, Judge Warshaw observed that the State had explained its theory of criminality—here, that it is unlawful to issue economic threats to counterparties or participants in a commercial transaction. Because the State committed to a theory that is invalid as a matter of law, it was entirely appropriate for the court to dismiss the Indictment. *See State v. Keogh*, 481 N.J. Super. 67, 83-84 (App. Div. 2025) (affirming dismissal of charge in an indictment where the prosecution’s “theory” of criminal endangerment did “not satisfy the statutory elements”); *Lisa*, 391 N.J. Super. at 580-81 (affirming dismissal of indictment when a prosecutor “placed before the grand jury his [erroneous] theory as to defendant’s duty”).

The State’s characterization of Judge Warshaw’s opinion as an exercise in fact-finding or weighing the sufficiency of the evidence is also refuted by the record. Judge Warshaw prefaced his opinion by observing that Defendants’ motions made no reference to the grand-jury record and instead “assume[d] that every factual allegation in the Indictment is true and was adequately supported before the grand jury.” (Pa152.)⁵ Judge Warshaw further made clear that he did

⁵ *See also* Pa124 (explaining that Defendants promised to raise arguments within

not “engag[e] in any fact finding,” did not make “even one credibility determination,” and gave the State “the benefit of every positive inference” raised by the Indictment’s allegations. (Pa125; Pa184.)

Within these parameters, Judge Warshaw correctly explained that an indictment should be dismissed if, after determining the conduct proscribed by the applicable statutes, the facts alleged do not constitute a crime as properly defined. (Pa152-53 (citing, *inter alia*, *Perry*, 439 N.J. Super. 514; and *State v. Riley*, 412 N.J. Super. 162, 169 (Law Div. 2009).) Applying that rubric to the Indictment, Judge Warshaw analyzed the scope of the extortion and coercion statutes—and in particular, the scope of the “unlawful threats” on which the State conceded the Indictment turns. (Pa155-60.) With the scope of those threats properly defined, the court concluded that the Indictment’s “factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa173.)⁶ Judge Warshaw’s analysis thus bears no resemblance to instances,

the four corners of the Indictment and that the “motion promised was the motion filed”); Pa184 (accepting “every fact alleged in the indictment as true”); Pa192 (explaining that “every factual assertion [was] assumed to be true”); Pa199 (“All facts alleged in the indictment are presumed true for purposes of this motion.”).

⁶ *See also* Pa162-63 (analyzing whether the alleged threat to Dranoff was criminal as a matter of law); Pa170 (same with respect to the alleged threat made to CFP’s CEO); Pa172 (concluding that the threats did not violate the Hobbs Act); Pa190 (reiterating that the threat relating to the L3 Complex did not amount to a “threat” as a matter of law); Pa191 (concluding that the alleged threats made to Dranoff were the “type of economic threats that are deemed

cited by the State (*see* Pb29), in which defendants used a dismissal motion to “test the sufficiency of the evidence behind an indictment’s allegations,” *United States v. Guerrier*, 669 F.3d 1, 4 (1st Cir. 2011), or asked the court “to make a factual finding,” *United States v. Sampson*, 898 F.3d 270, 281-82 (2d Cir. 2018).

None of the passages the State takes out of context indicates otherwise.⁷ The State focuses in particular on Judge Warshaw’s depiction of George Norcross’s interactions with Dranoff as a “steel cage brawl” and the court’s rhetorical questions asking how the alleged threats to Dranoff and CFP’s CEO should be interpreted. (Pb28, Pb39-42.) But in those passages, the court was not making any findings about the parties’ intent. Rather, it was explaining why the allegations themselves demonstrated that the economic threats at issue were lawful—that is, because it situated them within the context of a business transaction in which George Norcross had an economic interest and the alleged victims had no right to be free from the alleged economic harm that was

routine and accepted in a free market system.”).

⁷ The State similarly takes specific words out of context. The State notes in particular Judge Warshaw’s reference to whether the allegations were supported by the “evidence.” (Pb44.) But the court’s decision makes clear that it did not use that word literally, given its express confinement of its analysis to the four corners of the Indictment. Rather, the court used the term as shorthand to reject inferences that were not reasonable or allegations that were conclusory. *See State v. Saavedra*, 433 N.J. Super. 501, 519 (App. Div. 2013) (explaining that the State is only entitled to “reasonable inferences” on a motion to dismiss an indictment); *Riggs*, 91 N.J.L. at 459 (rejecting conclusory allegations).

threatened. (Pa163 (“There undoubtedly was an ‘economic or commercial nexus’ between Norcross and the underlying negotiation.”).) Indeed, Judge Warshaw made clear that dismissal was appropriate because “the alleged extortionate and coercive threats were not threats under the law,” (Pa189), not because Defendants lacked the requisite intent.

The State advances a similar acontextual reading in arguing that Judge Warshaw adopted a “defense-favorable gloss” when he analyzed the Indictment’s allegation that Dranoff would come under ““very serious accusations”” from the City. (Pbr40-41 (quoting Pa163).) The State argues that the court made a factual finding that the threat did not emanate from George Norcross when the evidence presented before the grand jury showed that it did. (Pbr40.) But here Judge Warshaw was simply quoting the Indictment, which alleged that the ““accusations”” would come ““from the City of Camden.”” (Pa163 (quoting Pa57(¶142))).) Moreover, Judge Warshaw did not base his decision on any finding as to whether the threat came from George Norcross. Rather, he concluded that the allegation did not represent a “threat of any kind,” given the absence of any allegation that the prospect of such accusations was communicated or intended to be communicated to Dranoff. (Pa163-64.) He had by then also determined that any threat issued by George Norcross to Dranoff

was lawful because there “was an ‘economic or commercial nexus’ between Norcross and the underlying negotiation.” (Pa163.)

Finally, the State argues that Judge Warshaw erred in “failing to identify the Indictment’s factual allegations as such,” arguing that he was required to accept the Indictment’s allegations that its charges were timely. (Pb44-45 (citing Pa202).) But here the State blurs the distinction between legal conclusions—which are not entitled to an assumption of truth—and factual allegations, which are. *See Riggs*, 91 N.J.L. at 459 (holding that “[t]he words ‘unlawfully and injuriously,’ used in the indictment, do not have any force because they are merely conclusions to be drawn from the facts stated”); *De Vita*, 6 N.J. Super. at 346 (explaining that inclusion of the word “unlawfully” did “not aid the indictment, for it is merely a conclusion of law.”); *see also Harder*, 168 F. Supp. 3d at 737 (explaining that a court must “disregard legal conclusions to determine whether the alleged facts constitute a crime.”). Judge Warshaw correctly rejected the Indictment’s conclusory assertion that its allegations were timely for the reasons set forth in George Norcross’s and John O’Donnell’s briefs.

C. The State’s Remaining Arguments Attacking Judge Warshaw’s Application Of The Dismissal Standard Are Unavailing.

The law governing dismissal of an indictment is clear: When an indictment is based on allegations that are beyond the scope of the charged

statutes, it is proper for a court to dismiss it. The State’s remaining arguments try to obscure this reality by creating new terms and engaging in meaningless wordplay.

The State acknowledges, as it must, that dismissal is appropriate when an indictment’s viability hinges on a question of “statutory interpretation” or a statute’s constitutionality. (Pbr25.) Judge Warshaw performed precisely this interpretive exercise when he interpreted the “threat” element of the extortion and coercion statutes and concluded that the Indictment alleged conduct that were not threats as a matter of law. That interpretation was also informed by constitutional considerations, because Defendants argued—and the court agreed—that the statutes could not be construed to abridge Defendants’ “constitutionally protected political activity.” (Pa191.)

In light of this, the State adds meaningless modifiers to these principles, contending that dismissal based on a question of statutory interpretation is only appropriate if that question is “pure” or “entirely” resolves the case. (Pa25, Pa29, Pa36, Pa37.) But there is no test that defines whether a question of statutory interpretation is appropriate based on its “purity.” Courts dismiss indictments when they allege facts beyond the scope of a statutory element, regardless of how broad or discrete the element at issue. *See, e.g., Enmons*, 410 U.S. at 400-01, 410-12 (analyzing whether threat to use legitimate labor

objectives was wrongful); *Mason*, 355 N.J. Super. at 300 (analyzing the “public servants” element of an official-misconduct charge).

Indeed, the State concedes the meaninglessness of its “purity” test by characterizing the court’s decision in *Riley*, 412 N.J. Super. 162, as an exercise in “pure statutory interpretation.” (Pb36.) Yet the *Riley* court performed the same type of analysis as Judge Warshaw: It interpreted the meaning of a statutory element (unauthorized computer access) and held that the facts “as alleged by the State” did not “do not fall within the statute invoked.” *Id.* at 167, 169; *see also id.* at 169-91 (dismissing charges after interpreting this statutory element). The State concedes the same point when it cites *Perry*, 439 N.J. Super. 514, (*see* Pbr37), which addressed the discrete issue of whether a statute proscribed driving without a license beyond a sentenced term of suspension. *See id.* at 519, 532. Stated simply, courts draw no distinctions between questions of statutory interpretations that are “pure” and those that are not. They simply analyze an indictment’s allegations to determine whether they state crimes within the scope of the charged statutes as properly defined.

The State similarly argues that an indictment cannot be dismissed unless it fails an “impossibility test,” (Pb32), but this is another neologism. There are no degrees of or tests for “impossibility.” Courts dismiss indictments that charge crimes based on allegations that describe lawful conduct.

The State goes on to argue that Judge Warshaw's decision did not fit within any "established exception." (Pbr28.) But there are no "established exceptions," only established standards. And those standards require a court to dismiss an indictment when its allegations do not identify a crime.

The State engages in more wordplay by using the terms "evidence" and "facts" interchangeably. (*See, e.g.*, Pbr27 (referring to the "sufficiency of the facts"); Pbr25 (referring to the "sufficiency of the evidence").) But the two mean different things. While evidence goes to whether the State can prove a fact, an allegation sets forth the facts the State believes it can prove. Judge Warshaw dismissed the Indictment based on the nature of the Indictment's allegations, not the sufficiency of the evidence that supported them.

The State coins another phrase when it argues that Judge Warshaw performed a "sufficiency-of-the-evidence-included-in-the-indictment" test. (Pbr29.) No such test exists, and Judge Warshaw did not engage in a sufficiency-of-the-evidence review. Defendants limited their motions to the four corners of the Indictment and did not rely on a single page of grand jury materials. Judge Warshaw likewise confined his analysis to the Indictment's allegations. He applied the whether-the-allegations-in-the-Indictment-stated-a-crime test, which courts in this State and throughout the country have applied for decades.

In sum, the Court should reject the State’s efforts to muddy the standards that govern dismissal motions, which Judge Warshaw properly applied.

II. THE TRIAL COURT PROPERLY HELD THAT THE THREATS UPON WHICH THE INDICTMENT IS BASED ARE BEYOND THE SCOPE OF THE EXTORTION AND COERCION STATUTES AS A MATTER OF LAW.

A. The State Pleaded Itself Out Of Court By Alleging That Defendants Had An Economic Nexus To The Underlying Transactions.

The State argues that Judge Warshaw’s judgment should be reversed because he misinterpreted and misapplied this State’s extortion and coercion statutes⁸ to dismiss the Indictment. (Pb46.) In doing so, it concedes, as it did in its brief and oral argument below, that the Indictment’s validity turns on

⁸ The State limits its arguments to these statutes while subordinating its reliance on the Hobbs Act, which it argues supports reversal based on the “same basic arguments.” (Pb46n.13.) Because those arguments fail with respect to the extortion and coercion statutes, they likewise fail with respect to the Hobbs Act. Moreover, as George Norcross demonstrated in his appellate brief, the Hobbs Act excludes economic threats from its scope when the putative victim had no pre-existing right (such as a right secured by statute) to be free of the threatened harm. As the Indictment fails to allege that any of the purported victims had such a right—for example, that Dranoff had a right by statute or regulation to continue doing business in Camden or be afforded the same level of access to government officials as George Norcross—the State’s reliance on the Hobbs Act fails for this additional reason. *See Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 526 (3d Cir. 1998) (explaining that fear of economic harm amounts to lawful “hard bargaining” under the Hobbs Act where the defendant did not have a “legal entitlement” to be free of the allegedly instilled fear, such as a right conferred by statute).

whether it alleged threats that were criminal.⁹ Because the State is wrong on both the interpretation and application of this State’s extortion and coercion statutes to the Indictment’s allegations, the judgment below should be affirmed.

As George Norcross’s appellate brief shows, the drafters of the extortion and coercion statutes intended to exclude the use of economic threats when there exists an “economic or commercial nexus . . . between the actor who utters these ‘protected’ threats and the underlying transaction.” *State v. Roth*, 289 N.J. Super. 152, 161 (App. Div. 1996); *see also* II Final Report of the New Jersey Criminal Law Revision Comm’n, Commentary 189 (1971) (“1971 Commentary”) (“The threats here outlawed parallel those found in the Theft by Extortion provision.”); *State v. Monti*, 260 N.J. Super. 179, 185 (App. Div. 1992) (explaining that the coercion statute excludes a “multitude of benign threats, express or implied, designed to coerce people to behave or refrain from behaving in certain ways”). Federal cases similarly recognize the “self-evident”

⁹ That concession likewise forecloses the State’s arguments with respect to the existence of a criminal RICO enterprise and official misconduct. (Pbr68-78.) That is because, as shown further below, absent predicate crimes, there cannot be an enterprise with a criminal objective. *See State v. Ball*, 141 N.J. 142, 162 (1995) (explaining that an “enterprise” is an association organized to achieve “criminal purposes”). Moreover, as the State conceded below, its official-misconduct theory was premised on Mayor Redd’s alleged role in facilitating the extortion and coercion conspiracies, as further explained in George Norcross’s appellate brief.

proposition in Hobbs Act cases that “a defendant cannot be found guilty of wrongfully obtaining property through the use of a legitimate economic threat if he has a claim of right to the property.” *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989).

That limitation was based on the drafters’ recognition that “certain commercial or economic menaces,” such as threats to “breach a contract” or “refuse to do business,” had to be excluded from the extortion statute’s purview to ensure that it did not criminalize “a significant portion of ‘accepted economic bargaining.’” *Roth*, 289 N.J. Super. at 161 (quoting 1971 Commentary, at 227-28; emphasis in original). *Roth* further underscored this point when it observed that the extortion statute was specifically amended in 1979 to limit all of the proscribed threats to those that were “unlawful[.]” *Id.* at 158 n.4. The Legislature did so to ensure that the statute would not be interpreted “too expansively to cover situations in which people are acting in ways tolerated in commercial and personal life.” *Id.* (cleaned up). Indeed, the Committee Statements accompanying the 1979 legislation explained that the word “unlawfully” was added to the extortion statute to “avoid the possibility of prosecution of individuals who make ‘lawful’ demands.” Assembly Judiciary, Law, Public Safety and Defense Committee Statement to Assembly No. 3279 (June 28, 1979); *see also* Senate Judiciary Committee Statement to

Senate No. 3203 (June 18, 1979) (explaining that the word “unlawfully” was added to the statute to “avoid prosecution of individuals who make legitimate demands.”).

Here, as demonstrated in George Norcross’s appellate brief, Judge Warshaw properly recognized that the State pleaded itself out of court by alleging that George Norcross had an interest in the underlying transactions. (See Pa161-63; Pa170; Pa172.) Indeed, the Indictment affirmatively alleges that George Norcross and other Defendants had an interest in using the Triad1828 Centre for their business and using 11 Cooper for related residential buildings. (Pa38(¶¶93-94)); that George Norcross had previously petitioned the Economic Development Authority to discuss “how to properly plan the Waterfront,” (Pa42(¶100)); that George Norcross and other Defendants had publicly committed themselves to developing the Camden Waterfront, (Pa44(¶106)); that these individuals retained Philip Norcross to represent them in negotiations with LPT to construct the Triad1828 Centre and 11 Cooper, (Pa44(¶107); Pa46(¶115)); and that George Norcross and other Defendants had extensive negotiations with Dranoff to achieve those development plans, which Dranoff agreed to resolve through an economic settlement that netted him approximately \$2 million, (Pa45-49(¶112-21); Pa53-54(¶¶136-37); Pa61-62(¶¶152-54)).

With respect to the L3 Complex transaction, the trial court correctly held that the Indictment fails at the threshold because it does not even allege a threat. As George Norcross’s appellate brief demonstrates, that Philip Norcross “told” CFP’s CEO to use a certain investor did not entail a threat of any kind. (Pa28(¶70).) But even giving the State the benefit of the patently *unreasonable* inference that this statement somehow threatened CFP’s CEO, the Indictment pleads that George Norcross had an interest in that building because he believed it was a suitable property for the offices of Cooper Health, which he chaired. (Pa1(¶1); Pa5(¶7).) Through these allegations, the State has pleaded itself out of court by conceding a clear commercial nexus between the alleged economic threats and these deals.

Given this nexus, the State argues that the economic threat allegedly issued to Dranoff is criminal because it implicated Dranoff’s Radio Lofts property and Victor PILOT transfer, which the State contends were “unrelated” to the Triad1828 Centre/11 Cooper property sites. (Pb56.) But that argument takes an impermissibly restrictive view of what constitutes a valid economic nexus. *Roth* explained that economic threats are allowed when there is “an economic or commercial nexus between the actor who utters these ‘protected’ threats and the *underlying transaction*.” *Roth*, 289 N.J. Super. at 161 (emphasis added). The 1971 Commentary likewise makes clear that an economic threat

need not relate to a specific deal or property to be protected; rather, the exception more broadly encompasses threats to refuse “to do business or to cease doing business” altogether. *Id.* (quoting 1971 Commentary, at 227-28).

This interpretation only makes sense, as commercial actors often have numerous commercial dealings with their counterparties and may have good reasons to discontinue doing business with them altogether. For example, if a business finds a repeat client dishonest or unwilling to pay its bill in a particular transaction, it has a valid reason to threaten to discontinue doing business with that party. To criminalize such threats based on whether they related solely to the specific transaction at issue would impermissibly “embrace a large portion of accepted economic bargaining.” *Roth*, 289 N.J. Super. at 161 (quoting 1971 Commentary, at 227). As the Indictment affirmatively pleads that George Norcross had an interest in the underlying transactions, his alleged use of economic threats was entirely lawful hard bargaining.

B. The State Cannot Salvage The Indictment By Relying On Implicit Threats That George Norcross Would Use His Political Influence To Harm Dranoff Or CFP’s CEO.

Because the Indictment clearly alleges that Defendants had an economic nexus to the two underlying transactions at issue, the State focuses on a different theory on appeal—that the wrongful conduct alleged consists of any implicit threat to leverage George Norcross’s political influence to disadvantage Dranoff

or CFP’s CEO. Here, the State focuses specifically on section N.J.S.A. 2C:13-5(a)(4) and N.J.S.A. 2C:20-5(d), both of which refer to threats to “[t]ake or withhold action as an official, or cause an official to take or withhold action.” (Pb52-53.) But as a threshold matter, the word “unlawfully” modifies all of the statutes’ provisions.¹⁰ It therefore excludes the use of economic threats, whether wielded through the political process or otherwise, where the maker has an economic interest in the underlying transaction. The State’s reliance on Model Penal Code § 223.4 and the accompanying commentary is thus misplaced because that section does not limit its reach to “unlawful” threats. (Pb53-54, Pb56.) The State’s discussion of the 1971 Commentary on this point, (Pb53), is also incomplete; that commentary did not account for the 1979 restriction of the extortion statute to “unlawful” instances of the conduct it describes.

The State’s interpretation should also be rejected for an additional reason. Under the First Amendment to the United States Constitution and the State Constitution’s cognate, citizens have a right to petition the government to redress their grievances. *See* U.S. Const. amend. I; New Jersey Const. art. I,

¹⁰ The same is true with respect to the State’s reliance on section (a)(3) of N.J.S.A. 2C:13-5 and (c) of N.J.S.A. 2C:20-5, (*see* Pb52-53), which refer to threats to coerce action or obtain property by exposing “secrets.” The State’s reliance on those sections is improper for the same reasons its economic-harm theory fails, and for the additional reasons detailed in George Norcross’s appellate brief.

§ 18. Pursuant to an interpretation of this right by the United States Supreme Court known as the “*Noerr-Pennington* doctrine,” citizens are immune from petitioning all branches of government at the federal, State, and local levels—including when such petitioning conduct is designed to harm or “challenge competitors”—unless their petitioning conduct is a “sham.” *Main Street at Woolwich, LLC v. Ammons Supermarket, Inc.*, 451 N.J. Super. 135, 144-45 (App. Div. 2017). *See also E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 139-40, 144 (1961); *LoBiondo v. Schwartz*, 199 N.J. 62, 86 (2009); *Boone v. Redevelopment Agency of San Jose*, 841 F.2d 886, 894-95 (9th Cir. 1988).

This doctrine has been specifically applied to protect efforts by developers to petition local officials to adopt redevelopment plans or issue permits in a manner that favors them while harming their competitors. *See Boone*, 841 F.2d at 893-97; *EDF Renewable Dev., Inc. v. Tritec Real Estate Co.*, 147 F. Supp. 3d 63, 69-71 (E.D.N.Y. 2015). These decisions make clear that the State is constitutionally forbidden from criminalizing actions based on a defendant’s successful “‘mastery of the local political process.’” *EDF*, 147 F. Supp. 3d at 70 (quoting *Alfred Weissman Real Estate, Inc. v. Big V Supermarkets, Inc.*, 707 N.Y.S.2d 647, 655 (App. Div. 2000)). They further demonstrate that “[t]he redevelopment process, by its very nature, allows for ex parte deliberations

between decision makers and advocates of a particular view.” *Boone*, 841 F.2d at 895. Indeed, “cultivating close ties with government officials is the essence of lobbying,” and “certainly falls within the ambit of the *Noerr-Pennington* doctrine.” *Id.* at 894. The State cannot alter this reality or override these constitutional protections based on its utopian vision of developers competing for opportunities on a “level playing field.”¹¹ (Pb3, Pb30, Pb54-55, Pb57, Pb64, Pb65.)

Notwithstanding the *Noerr-Pennington* doctrine, the State asks this Court to interpret N.J.S.A. 2C:13-5(a)(4) and N.J.S.A. 2C:20-5(d) to criminalize the use of the political process to cause a person or entity to refrain from certain actions or give up certain property rights, no matter how meritorious the request. (Pb53-54.) Under the State’s view, environmental groups or other organizations could be prosecuted for demanding that companies refuse to build gas pipelines¹²

¹¹ As George Norcross demonstrated in his appellate brief, the State repeatedly quotes this phrase from *United States v. Collins*, 78 F.3d 1021 (6th Cir. 1996), out of context. *Collins* used the phrase to refer to the ability of government contractors to bid on contracts according to procedures “to which they were legally entitled.” *Id.* at 1030. *Collins* does not stand for the absurd proposition that every citizen must be afforded the same level of access to government officials. Here, unlike in *Collins*, the State identifies no statute or regulation that promised Dranoff or CFP’s CEO the level of access and influence that George Norcross allegedly exerted. And none exists.

¹² See, e.g., Richard Cowen, nj.com, *The battle to stop gas pipeline in N.J. Highlands is over*, July 7, 2025, available at <https://www.nj.com/passaic-county/2025/07/the-battle-to-stop-gas-pipeline-in-nj-highlands-appears-to-be->

or transmission towers¹³ by threatening political or court action. This impermissibly expansive interpretation has prompted the New Jersey branches of the NAACP, the AFL-CIO, and the New Jersey Building Trades and Construction Counsel to file an amicus brief urging this Court to reject the State's construction, which they correctly assert would chill their "constitutionally protected lobbying activities" and thereby harm their ability "to advocate in the political arena, bargain for fair working conditions, and redevelop blighted communities." (NAACPbr2-3.)

Ignoring these concerns, the State argues that the coercion and extortion statutes cannot be bounded by the *Noerr-Pennington* doctrine because that doctrine cannot immunize acts that violate the criminal laws. (Pb80.) The State has the analysis backwards. Statutes must conform to constitutional requirements, not the other way around. For this reason, this Court is required to avoid interpreting a statute in a way that "raises serious constitutional issues." *State v. Carter*, 247 N.J. 488, 520 (2021); *see also State v. Pomianek*, 221 N.J. 66, 90-91 (2015) (explaining that the doctrine of constitutional avoidance assumes that the Legislature "would want us to construe the statute in a way that

over.html.

¹³Bill Wichert, nj.com, *Environmental groups take legal action in attempt to stop power-line project*, May 5, 2011, available at https://www.nj.com/news/2011/05/environmental_groups_take_lega.html.

conforms to the Constitution”). The *Noerr-Pennington* doctrine implicates the same canon of constitutional avoidance, as it is “applicable to any statutory interpretation that could implicate the rights protected by the Petition Clause.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 931 (9th Cir. 2006).

Both the coercion and the extortion statutes expressly modify their subdivisions to require that any act that is not inherently illegal also be “unlawful[.]” N.J.S.A. 2C:13-5; N.J.S.A. 2C:20-5. *Roth* explained that this word was added to the extortion statute to ensure that it is not interpreted to criminalize conduct that is “tolerated in commercial and personal life.” 289 N.J. Super. at 158 n.4 (cleaned up). As constitutionally protected petitioning activities are not only “tolerated” but commended, it is plainly reasonable—and in fact necessary—to construe the extortion and coercion statutes co-extensively with the *Noerr-Pennington* doctrine to avoid a constitutional conflict. *See Sosa*, 437 F.3d at 939-40.

With the scope of the official-action provision of the coercion and extortion statutes thus properly construed, the State’s reliance on this section to salvage the Indictment must be rejected. That is because *Noerr-Pennington* immunity is only denied “if the conduct at issue ‘is a mere sham.’” *Fraser v. Bovino*, 317 N.J. Super. 23, 37 (App. Div. 1998) (quoting *Prof’l Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60-61 (1993)).

To constitute a “sham,” petitioning conduct (a) “‘must be objectively baseless in the sense that no reasonable [petitioner] ... could conclude that the [petition] is reasonably calculated to elicit a favorable outcome;’” and (b) “‘must ‘conceal ‘an attempt to interfere directly with ... business relationships.’”” *Tris Pharma v. UCB Mfg.*, No. A-580813T3, 2016 N.J. Super. Unpub. LEXIS 1982, at *11 (App. Div. Aug. 29, 2016) (quoting *Prof’l Real Estate Inv’rs*, 508 U.S. at 60-61 (quoting *Noerr*, 365 U.S. at 144)). The State does not allege that Defendants’ implicit threats to petition local officials met this definition of a sham, and with good reason. The Indictment expressly acknowledges that Defendants persuaded Camden officials in 2018 to slow down approval of the PILOT transfer and terminate Dranoff’s redevelopment rights to the Radio Lofts site. (Pa74-75(¶¶186-192).)¹⁴ Indeed, the Indictment alleges that Dranoff lost his lawsuit with the City and CRA over these issues, giving up his Radio Lofts

¹⁴ The Indictment similarly alleges that an analysis of a potential condemnation action by the CRA in 2016 to extinguish Dranoff’s view easement for the Victor Lofts demonstrated that a court would likely declare the CRA to have that condemnation right. (Pa52(¶133).) The Indictment does not allege that this action was ever communicated or intended to be communicated to Dranoff; it therefore does not even qualify as a threat. But even if it did, it would be subject to two layers of constitutional protection—the first for the right to petition City officials to file the court action, and the second for the right to file the court action itself. See *Zemenco, Inc. v. Devs. Diversified Realty Corp.*, No. 03-175, 2005 U.S. Dist. LEXIS 23011, at *31 (W.D. Pa. Oct. 7, 2005) (“[A] party’s efforts to induce or facilitate a municipal body’s condemnation of property are protected by the *Noerr-Pennington* doctrine”), *aff’d*, 205 F. App’x 82 (3d Cir. 2006).

redevelopment options and relinquishing a parking lot to the City for \$1 while further agreeing “to pay approximately \$3.3 million to the City over a period of time.” (Pa76(¶195).) That is dispositive, because a successful petitioning effort “self-proves its reasonableness and ‘certainly cannot be characterized as a sham.’” *United States Futures Exch., L.L.C. v. Bd. of Trade*, 953 F.3d 955, 963 (7th Cir. 2020) (quoting *Allied Tube & Conduit Corp. v. Indian Head*, 486 U.S. 492, 502 (1988)); *see also EDF*, 147 F. Supp. 3d at 70 (holding the “sham” exception inapplicable because the complaint alleged that defendant successfully persuaded local officials not to issue a building permit to a rival developer).

The State raises a distinction between “having asked” a government official to take action and “having controlled the government,” arguing that it pleaded the latter. (Pbr82 (emphasis in original).) That distinction is yet another of the State’s inventions, with no support in the law. Nor does it make any sense, as private citizens can only secure government action by asking government officials to do something. That the voices of some are more powerful or persuasive than others does not convert them into actors that “control” the government. If that were so, citizens would lose their constitutional petitioning rights depending on how successful or influential they were. That is obviously not the law.

For these reasons, the State's efforts to define the alleged threats as unlawful based on George Norcross's implicit threat to use his political influence to harm Dranoff or CFP's CEO should be rejected.

III. THE COURT'S DISMISSAL OF THE CHARGES AGAINST PHILIP NORCROSS WAS ESPECIALLY APPROPRIATE BECAUSE THEY ARE BASED ON THE ROUTINE PRACTICE OF LAW.

The trial court's express finding that the allegations against Philip Norcross would criminalize his routine "lawyering" activities underscores the correctness of its dismissal of the Indictment. (Pa191.)

The State argues that Philip Norcross's conduct as a lawyer is irrelevant and inaccurate, since the Indictment "has little to say about Philip Norcross engaging in actual lawyering at all." (Pb82.) The State is wrong on both counts. As the *amicus* brief of the New Jersey branch of the American College of Trial Lawyers (the "ACTL") explains, Philip Norcross engaged in precisely the type of lobbying, legal research, advice-giving, and negotiations that are "routine" for lawyers. (ACTLbr12-13.) To label that conduct as racketeering "strikes at the heart of the rule of law," which is particularly problematic here because the State's theory infringes a lawyer's constitutional right to advocate for his clients by petitioning the Legislature and local officials. (*Id.*)

Philip Norcross's role is also highly relevant because the Legislature excepted from the scope of the extortion and coercion statutes "situations in

which people are acting in ways tolerated in commercial and personal life.” *Roth*, 289 N.J. Super. at 158 n.4 (cleaned up). As Philip Norcross’s actions advocating for his clients are not only tolerated but “applauded,” (ACTLbr8), they cannot form the basis for extortion or coercion charges as a matter of law.

IV. THE INDICTMENT WAS PROPERLY DISMISSED FOR THE ADDITIONAL REASONS THAT NONE OF THE ALLEGED RICO PREDICATES WAS A CRIME AND ALL OF THE CHARGES ARE FACIALLY TIME-BARRED.

Judge Warshaw dismissed the Indictment on the additional grounds that (i) none of the Defendants were members of any RICO “enterprise,” (Pa174-200); and (ii) the charges were all facially time-barred, (Pa200-10).

As the briefs filed by Philip Norcross’s co-Respondents demonstrate, both of these holdings are correct. Without a “criminal purpose” to orient an alleged RICO enterprise, no such enterprise can exist. *Ball*, 141 N.J. at 162 (explaining that an organization exists without an ascertainable structure when it “divide[s] and assemble[s] its labors in order to accomplish its criminal purposes”). As the threat objectives on which the RICO conspiracy depended were not criminal as to any Defendant, the enterprise element also necessarily failed. (*See* Pa179-200 (explaining the absence of any “criminal” activity attributable to alleged enterprise members as a matter of law).)

Philip Norcross also joins with particular emphasis in the arguments advanced in the appellate briefs filed by George Norcross and John O’Donnell

demonstrating that the charges are facially-time barred. These briefs correctly demonstrate that to have any meaningful function, the applicable statutes of limitation must serve as an “absolute bar” to prosecution here. *Twiggs*, 233 N.J. at 534 (cleaned up). The State cannot evade that bar by relying on the lawful receipt of tax credits well after the alleged conspiracy concluded. *See United States v. Grimm*, 738 F.3d 498, 503 (2d Cir. 2013); *United States v. Doherty*, 867 F.2d 47, 61-62 (1st Cir. 1989).

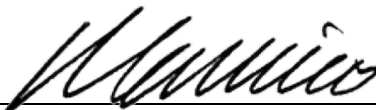
CONCLUSION

For the reasons set forth above and in the other Respondents’ briefs, the trial court’s judgment should be affirmed in all respects.

Dated: July 23, 2025

Respectfully submitted,

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STATE OF NEW JERSEY,

Appellant,

v.

GEORGE E. NORCROSS, III,
PHILIP A. NORCROSS,
WILLIAM A. 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
Docket No. MER-24-001988

Sat Below:

Hon. Peter E. Warshaw, Jr., P.J. Cr.

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PRELIMINARY STATEMENT

The brief filed by defendant George Norcross overwhelmingly establishes that the trial court correctly dismissed the Indictment on its face for two independent reasons: (1) its allegations of “fact” fail to state legally viable offenses under the statutes charged; and (2) the legally defective offenses charged are also time-barred. Defendant John J. O’Donnell respectfully submits this brief to join in those entirely correct arguments, to highlight why the Indictment’s few allegations of fact against him fail to allege any crime, and to explain in detail why the statute of limitations (“SOL”) bars all charges on their face.

O’Donnell is charged in just one of the three sub-conspiracies alleged in the RICO conspiracy, *i.e.*, that concerning the Triad1828 and 11 Cooper parcels (the “T/C Sub-Conspiracy”) and “Developer-1” (Carl Dranoff). O’Donnell was the CEO of The Michaels Organization (“TMO”), which owned a small interest in the group that developed the Triad parcel; he also owned a small interest in the group that developed the Cooper parcel. The T/C Sub-Conspiracy alleges that he conspired to extort Dranoff to sell rights affecting those parcels to the groups by (1) Norcross threatening Dranoff with harm if he did not sell, and (2) the groups’ attorneys (defendants Phil Norcross and William Tambussi) petitioning the City of Camden (“Camden”) to sue Dranoff to declare his view easement right condemnable. All charges against O’Donnell depend on the viability of those two extortion theories.

But as the trial court found and Norcross's brief confirms, the facts alleged in the Indictment fail to sustain either theory. The "threats" theory quotes a few conversations in which Norcross used harsh, occasionally profane, language with Dranoff that reflects nothing beyond hardnosed – but perfectly legal – bargaining between two sophisticated businessmen. The "petitioning" theory quotes other conversations among the defendants in which the two attorneys recommended petitioning Camden to pursue the proposed declaratory judgment lawsuit, which was never filed or even mentioned to Dranoff. Those limited allegations of fact fail to constitute extortion (or criminal coercion) as a matter of New Jersey law.

Moreover, those quoted conversations establish that O'Donnell played an entirely passive, bystander-like role in the T/C Sub-Conspiracy. He is not alleged to have ever spoken to, much less threatened, Dranoff, or even to have known beforehand that Norcross might threaten him; instead, he merely listened to Norcross recount his few discussions with Dranoff after they occurred. Nor is he alleged to have ever communicated with Camden; instead, he simply endorsed (in one passing remark) the attorneys' advice that they petition Camden to pursue the never-filed, never-threatened lawsuit. No alleged facts even hint that O'Donnell conspired to do anything criminal; indeed, the State's brief's lone substantive reference to him claims only that he "participated in plotting" to petition Camden, "supplied financial capital" from TMO to the groups, and helped TMO collect "tax credits." That's it.

Beyond its utter failure to allege any actionable facts against O'Donnell, the T/C Sub-Conspiracy is facially time-barred, having ended when Dranoff sold his rights affecting the parcels in October 2016, almost 8 years before the Indictment's filing in June 2024. To resuscitate that and the other stale charges against O'Donnell, the Indictment relies primarily on tax credits the State later issued for those parcels, but it explicitly concedes that (1) uncharged entities, not the defendants, sought and received those credits; (2) the applications for the credits – which the State approved and continues to this day to annually audit, certify and issue – involved no concerted (much less criminal) activity by those entities (let alone the defendants); and (3) the entities first sought such credits in 2016 and remain eligible to receive more credits through 2030, such that the SOL (under the State's theory) would not run until 2035.

Longstanding federal appellate precedent rejects that absurd theory by holding that, even where a conspiracy's fruits are continuing, the conspiracy itself cannot continue without further concerted acts absent here – especially where, as here, those fruits are lawful, unilateral, and prolonged. Moreover, the continuing tax credits themselves are not criminal because they did not derive from the rights' acquisition, much like a tax refund does not derive from a job's acquisition. And the Indictment's few alleged acts of “concealment” and “intimidation and retaliation” – which are facially innocuous, unrelated to O'Donnell, and irrelevant to the T/C Sub-Conspiracy – cannot extend the time-barred charges against him.

STATEMENT OF PROCEDURAL HISTORY AND FACTS¹

A. The Indictment's allegations of fact concerning the T/C Sub-Conspiracy.

The Indictment filed June 13, 2024, named O'Donnell in the following 8 of its 13 counts: Count One (RICO conspiracy), Count Three (T/C Sub-Conspiracy), Counts Five, Six, Nine, and Ten (financial facilitation), Count Twelve (corporate official misconduct), and Count Thirteen (official misconduct). However, the only allegations of fact against O'Donnell concern the T/C Sub-Conspiracy,² and the State conceded below that all charges against him derive from, and depend upon, the two alleged extortion theories charged in that sub-conspiracy. As he did below, O'Donnell assumes the accuracy of all alleged facts, which are detailed below.

1. Background information

Until the Indictment forced him to resign, O'Donnell was the CEO of TMO, a residential development company, and a minority member in minority LLC members of larger LLCs that purchased and developed the Triad and Cooper parcels. (Pa8-9 ¶14.) In September 2015, a press release announced that Liberty Property

¹ We have combined the Statement of Procedural History and the Statement of Facts into a single Statement to facilitate the Court's review and to avoid repetition because the trial court dismissed the Indictment on its face.

² O'Donnell is not charged (or even mentioned) in the other two sub-conspiracies concerning the L3 complex (Count Two) and the Radio Lofts building (Count Four), and the RICO conspiracy and other charges against him merely incorporate the fact allegations concerning the T/C Sub-Conspiracy.

Trust (“LPT”) – a nationwide, publicly traded real estate investment trust – had purchased the rights to redevelop Camden waterfront properties and named George Norcross, defendant Sidney Brown, and O’Donnell as local leaders committed to investing in LPT’s planned redevelopment. (Pa9 ¶17, Pa44 ¶106.) Those individuals were also part of the Camden Partners Tower group (“CPT”) that negotiated with LPT to develop the Triad and Cooper parcels. (Pa44 ¶107.)

The redevelopment plan devised by those three individuals and LPT followed decades of “significant economic decline as various companies closed their production operations in” Camden and was supported by “city officials [who] focused revitalization efforts on abandoned industrial sites on the Camden Waterfront.” (Pa11 ¶22.) Those individuals caused their businesses to invest substantial time, capital, and resources to purchase the waterfront properties; to redevelop them with “office space, a hotel, retail and a residential component”; and, after redeveloping them, to move their headquarters and employees from the suburbs to the inner city. (Pa44 ¶106.)

2. LPT’s negotiations with Dranoff in late 2015 and early 2016

Between late 2015 and early 2016, LPT’s CEO negotiated with Dranoff, who had long held the redevelopment rights to several waterfront properties but had allowed those blighted properties to fall into further disrepair. (Pa45 ¶111.) LPT’s CEO wanted his group to work with Dranoff to jumpstart his redevelopment rights

and to release his view easement, which the Triad and Cooper developments might violate by blocking his properties' view of the Philadelphia skyline. (Pa46 ¶112.)

At one point, LPT's CEO allegedly told Dranoff he would have to partner with TMO (a nationwide residential developer managing over 76,000 units and \$12 billion in assets), but the Indictment does not suggest that O'Donnell was involved in LPT's push to involve TMO. (*Id.*) Although Dranoff allegedly had reservations about partnering with TMO, he not only continued to negotiate with LPT but also applied for tax credits, under the New Jersey Economic Redevelopment & Growth Program ("ERG"), as a joint venture with TMO. (Pa46 ¶¶112-13.) Indeed, Camden's Mayor, defendant Dana L. Redd, submitted a letter to the New Jersey Economic Development Authority ("EDA") supporting Dranoff's tax credit application. (Pa46 ¶113.)

The negotiations between LPT and Dranoff ultimately broke down, allegedly because Dranoff was uncomfortable with the level of control TMO wanted in the project. (Pa46 ¶114.) However, the Indictment does not allege that TMO's desired level of control was unwarranted, or that LPT's request for that control was improper.

Moreover, the Indictment does not allege that O'Donnell had any involvement in those initial negotiations between LPT and Dranoff. Rather, he, George Norcross, and Brown discussed the negotiations with LPT's CEO only and without any written agreement with LPT, allegedly because Norcross knew that such an agreement might

jeopardize their businesses' later efforts to obtain tax credits by relocating to Camden. (Pa46 ¶115.) But the Indictment admits that Dranoff himself had already applied for such tax credits on behalf of his joint venture with TMO. (Pa46 ¶113.)

3. George Norcross's and LPT's negotiations with Dranoff in 2016.

Later in 2016, LPT's CEO, now with George Norcross's involvement, resumed negotiating with Dranoff about releasing his view easement right. (Pa47 ¶116.) During a telephone conversation in the summer of 2016, Norcross allegedly "threaten[ed]" Dranoff that he "would never work in this town again" unless he agreed to relinquish that right. (Pa47 ¶117.)

On August 22, 2016, Norcross privately told LPT's CEO that he was "irritated" by Dranoff's "crap" because Norcross was committed to the redevelopment project and his abandoning it would be "bad" for Camden and "humiliating" for him. (Pa48-49 ¶121a.) However, Norcross acknowledged that abandoning the project "wouldn't be a big deal" to O'Donnell's employer, TMO, or to Brown's employer, NFI. (Id.)

The Indictment does not allege that O'Donnell had an involvement in the negotiations between LPT, Norcross, and Dranoff during the summer of 2016 or any prior knowledge of any "threat" made by Norcross to Dranoff. Even afterwards, moreover, O'Donnell is not alleged to have learned of Norcross's "threat" to

Dranoff. Rather, O'Donnell was told only that Norcross, like many others, "detest[ed]" dealing with Dranoff. (Id.)³

4. The attorneys' legal strategy to petition Camden to file the declaratory judgment lawsuit.

In mid-October 2016, all defendants except Mayor Redd privately discussed petitioning the Camden Redevelopment Agency ("CRA") to file a declaratory judgment lawsuit against Dranoff designed to pressure him to close the deal with LPT, TMO, and CP. (Pa50 ¶¶126-127.) The two attorneys, Phil Norcross and Tambussi, as well as other unidentified lawyers at their law firms, devised a strategy to petition the CRA (a client of Tambussi's firm) to file a lawsuit to declare that Dranoff's view easement right was subject to condemnation. (Pa50-51 ¶¶128-129.) On October 19, 2016, Phil Norcross sent Tambussi a memo prepared by Norcross's colleagues as to whether the CRA could condemn that right, (Pa52 ¶132), and Tambussi replied that a court would likely declare the right condemnable but that expediting the condemnation process would be harder. (Pa52 ¶¶133.)

On October 20, 2016, a colleague of Tambussi pitched the CRA's executive director to have the CRA file such a lawsuit the next day and told him that Phil Norcross would brief Mayor Redd, who would then speak with the CRA's board

³ The Indictment admits that this and other conversations among the defendants were intercepted and recorded, but it neglects to state that federal law enforcement authorities did so but chose not to pursue any charges against any defendant.

chairman. (Pa52-53 ¶134.) Tambussi's law firm allegedly spent 86 hours of unbilled time over 7 days preparing a complaint for the CRA, (Pa53 ¶135), but the Indictment does not allege any facts suggesting why that amount of time, or the law firm's decision not to bill the CRA for that time, bears any relevance.

Nor does the Indictment allege that Phil Norcross's or Tambussi's discussions with the CRA regarding the possible lawsuit involved any bribe, gratuity, or other illegal benefit to the CRA, Mayor Redd, or any other Camden official. Similarly, there is no allegation that defendants' internal discussions about the two attorneys' petitioning activities ever considered offering any such benefit. Nor is there any allegation that any defendant ever contemplated threatening Dranoff with the prospect of such a lawsuit by the CRA. Finally, there is no allegation that O'Donnell said anything during these private conversations or did anything regarding the two attorneys' efforts to petition the CRA to pursue the lawsuit.

5. George and Phil Norcross's October 20, 2016, telephone conversation with Dranoff and his attorney results in a deal.

On October 20, 2016, George and Phil Norcross reached a deal with Dranoff and his attorney after allegedly telling them there would be undefined, unspecified "consequences" if an agreement was not reached. (Pa53 ¶136.) However, they are not alleged to have identified any such "consequences" or to have mentioned the possible declaratory judgment lawsuit to Dranoff or his attorney.

Moreover, as with George Norcross's prior conversations with Dranoff, O'Donnell is not alleged to have had any prior knowledge of, or involvement in, that conversation, much less any supposed threat of "consequences." Nor is O'Donnell alleged to have learned of that "threat" after its occurrence.

6. The deal falls apart on October 21, 2016.

The next day, October 21, 2016, George Norcross allegedly told an unnamed friend that Dranoff – after trying to "shake us down" – had finally agreed to the deal. (Pa53-54 ¶137.) That same day, an LPT counsel emailed Phil Norcross and others a draft agreement between LPT, TMO, CPT, and Dranoff memorializing that agreement, by which Dranoff would release his view easement right; TMO would reimburse him up to \$550,000 for costs incurred; LPT would pay him \$750,000 to act as a consultant on the project and \$1 million for various property rights, including \$18 million in tax credits he had obtained; LPT, TMO, and CPT would fully support his request to change the Radio Lofts building's zoning from residential to commercial; and CPT would assist his future applications to NJDEP and other agencies regarding Radio Lofts. (Pa54-55 ¶¶138a-f.)

Later that same day, the agreement fell apart for reasons unstated in the Indictment but, in truth, because Dranoff reneged. As a result, George Norcross told Phil Norcross to have Tambussi petition the CRA to file the declaratory judgment lawsuit against Dranoff. (Pa55-56 ¶139.) Still later that day, however, George told

Phil about further conversations between George, Dranoff, and LPT's counsel, and Phil told George they should defer petitioning the CRA. (Pa56 ¶140.)

That same day, George allegedly told O'Donnell that he (George) wanted the CRA to file the lawsuit the following week and that he would tell LPT that Dranoff would likely "get[] nothing" from their group for the view easement right if the CRA prevailed in the lawsuit. (Pa56 ¶141.) Other than that conversation, the Indictment does not allege that O'Donnell had any prior knowledge of, or involvement in, the events of October 21, 2016.

7. O'Donnell allegedly endorses the two attorneys' recommended petitioning of Camden on October 22, 2016.

On October 22, 2016, George Norcross allegedly told NFI's president and all other defendants except Mayor Redd that he did not want to help Dranoff and instead wanted the CRA to pursue the declaratory judgment lawsuit. (Pa57 ¶142.) He also told the group that LPT did not need to be involved in the "potential action," which he said would persuade Dranoff to reverse course and again accept the deal he had accepted two days earlier. (Pa57 ¶143.)

Tambussi then explained the legal strategy, advising the group that, should the CRA pursue and prevail on that lawsuit, the view easement's value⁴ would be

⁴ The view easement's value was already diminishing as its expiration date approached. By enabling the Triad parcel's redevelopment to proceed, moreover, that easement's release would enhance the value of Dranoff's other rights.

reduced, in the ordinary legal course, to “virtually nothing,” and Dranoff would be “in a drastically different negotiating position.” (Pa58 ¶145.) After Phil Norcross agreed with Tambussi’s explanation, O’Donnell said that he, too, “agreed on both ends” with the two attorneys’ advice to bring Dranoff to the table by petitioning the CRA to file the lawsuit. (Pa58 ¶146.) Brown then asked whether “the goal here” was “to try and put some pressure on” Dranoff to sign the agreement, and George Norcross replied, “Of course. Either that or condemn it, so we can move expeditiously” (*Id.*)

This exchange represents the first, and only, occasion on which O’Donnell allegedly endorsed anything said or done by another defendant in advance, and even then, he endorsed only the two attorneys’ legal advice that they petition the CRA to file the declaratory judgment lawsuit against Dranoff. Nothing in what the two attorneys conveyed to O’Donnell suggested there might be anything improper, much less illegal, with their recommended petitioning, which was not only legal but constitutionally protected. Nor was there any suggestion about “threatening” Dranoff with such a lawsuit – which, again, was never even mentioned to him.

8. The potential lawsuit is aborted on October 22, 2016.

Later that same day, October 22, 2016, Phil Norcross emailed LPT’s counsel – but not Dranoff or his counsel – that the CRA was “seriously considering” filing the declaratory judgment lawsuit and asked LPT “to cooperate with CRA in that

legal proceeding,” adding that CPT would apply for the tax credits immediately after the lawsuit was filed. (Pa60 ¶150.) The Indictment does not allege that O’Donnell was copied on, or knew of, this innocuous email.

Regardless, LPT declined to provide the requested information, instead opting to offer to pay Dranoff an additional \$200,000 (out of LPT’s end) to resolve the matter. (Pa60 ¶151.)

9. Dranoff accepts LPT’s increased offer on October 24, 2016, without knowing about the never-filed, never-threatened lawsuit.

On October 24, 2016, Dranoff accepted that increased offer by LPT and agreed – for \$2.5 million – to release his view easement right and to sell his residential right of first refusal, residential redevelopment rights and property, and tax credits on the Triad and Cooper parcels. (Pa61 ¶152.) Even though no further “threats” were allegedly conveyed to Dranoff with that enhanced offer, the Indictment alleges that he did not want to sell because he believed his rights were worth even more, but he nevertheless accepted the increased offer because he feared George Norcross would cause him unspecified “financial and reputational harm.” (Pa61-62 ¶153.) In sum, Dranoff received \$1.95M (plus \$550,000 in reimbursed costs) to sell his rights affecting the Triad and Cooper parcels. (Pa62 ¶154.)

The Indictment explicitly concedes that the CRA’s proposed declaratory judgment lawsuit “did not ultimately occur” because Dranoff accepted LPT’s increased offer. (Pa60 ¶151.) Additionally, notwithstanding Dranoff’s alleged fear,

the Indictment does not allege that the prospect of that never-filed lawsuit was ever conveyed to him, let alone “threatened” against him.

10. The uncharged entities’ unilateral, legal applications for tax credits for the Triad and Cooper parcels continuing through 2030.

On October 24, 2016 – the same day that Dranoff accepted the enhanced deal proposed by LPT – CSB, NFI, and TMO filed tax credit applications with the EDA for the proposed Triad project, to which those entities would relocate their businesses and employees from outside of Camden. (Pa63-64 ¶158.) On March 24, 2017, the State awarded tax credits to those three uncharged entities. (Pa64 ¶159.)

Between January 2017 and December 2019, Camden Partners Tower Equities (“CPTE”) – comprised of many LLCs, in some of which George Norcross and Brown were members and O’Donnell was a minority member of a minority member – developed the Triad project, after which CPTE leased space to CSB, NFI, and TMO. (Pa64 ¶160.) Between 2021 and 2023, CSB, NFI, and TMO applied for, and received from the State, additional tax credits. (Pa64-66 ¶¶161-164.)

Similarly, between January 2017 and December 2019, the Cooper parcel – which is owned by CP Residential GSGZ, LLC, which is comprised of LLCs in some of which George Norcross, Brown, and O’Donnell are members – was developed. (Pa67 ¶169.) Between 2021 and 2023, CP Residential applied for, and received from the State, additional tax credits. (Pa68-69 ¶172.)

Finally, as to the Triad parcel, the Indictment explicitly alleges that CSB, NFI, and TMO are eligible for additional tax credits through 2030, *i.e.*, 6 years after the Indictment was filed in 2024 and 14 years after Dranoff sold his rights affecting the Triad and Cooper parcels in 2016. (Pa66 ¶¶165-166.) Indeed, the State conceded below, and the trial court found, that the State has continued to approve and issue tax credits to the uncharged entities even since the Indictment’s filing in June 2024.

B. The trial court’s rulings dismissing all charges against O’Donnell.

In the Dismissal Order and Statement of Reasons filed February 27, 2025, the trial court made four rulings pertinent to O’Donnell, which we detail below.

1. The Indictment’s allegations of fact fail to sustain the “threats” theory on which all charges rely.

First, the trial court found that “[t]he indictment must be dismissed because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153.) The court began by finding that “[t]he validity of every count in this thirteen-count indictment depends upon the existence of unlawful threats” because “the threat offenses are the common denominator of every count and that if these threats are not crimes, it follows that no count in the indictment can be sustained as a matter of law.” (Pa155-156.) The court then exhaustively detailed “the alleged threats made by George Norcross to” Dranoff underlying the T/C Sub-Conspiracy, (Pa160-164), as well as the “threats” underlying the other two sub-conspiracies;

analyzed them under both New Jersey and federal precedent; and concluded that they fail to reflect extortion or criminal coercion as a matter of law:

[T]here was no illegal exploitation of [Dranoff's] fear of potential economic harm. The [defendants] clearly had the same right to try to negotiate a presence on the Camden Waterfront as [Dranoff] did. The means it used were negotiations and hard bargaining, which cannot be considered wrongful under the facts alleged. It is also not wrongful to allow your adversaries to fear your reputation for using political power.

* * *

The court has a clear duty to act when an indictment's factual allegations do not amount to crimes as a matter of law. The parties seem to agree that that the Indictment is premised on the alleged threats. But the threats are not extortion or coercion as a matter of law. The derivative offenses in the indictment all rest on the threat-based offenses so they too must be dismissed. (Pa172-74.)

2. The Indictment's allegations of fact fail to sustain the "petitioning" theory on which all charges rely.

As to the "petitioning" theory of the T/C Sub-Conspiracy, the trial court addressed the allegations of fact against the two attorneys (Tambussi and Phil Norcross) separately but reached the same conclusion as to both, *i.e.*, they did nothing illegal. As to their petitioning the CRA to pursue the declaratory judgment action against Dranoff, the court found that those allegations do not suggest any "improper agreement 'to cause the CRA to bring court action against [Dranoff]'" or that "the CRA was a hostage" to their efforts. Instead, the court concluded that their alleged petitioning activities were not only lawful but constitutionally protected:

These lawyers had the right to bring or threaten to bring legal action. They certainly had the right to discuss and strategize legal actions even if those discussions involved finding a way to invoke the law to deliver a body blow to an adversary. And clearly they had the right to engage in efforts to influence government action. Such action is immune from criminal liability and intrinsic to the constitutional right to petition. (Pa191-192.)

3. The Indictment’s allegations of fact fail to suggest any criminality by O’Donnell.

As to O’Donnell specifically, the trial court examined the sparse allegations of fact against him and Brown collectively, (Pa179-184), and concluded that those allegations establish that they “simply [did] nothing criminal”:

The court returns to its earlier question: what did Brown and O’Donnell do? The answer, giving the State the benefit of every positive inference and accepting every fact alleged in the indictment as true, is simply nothing criminal. Two sophisticated businessmen backed the right horse when it came to selecting an investment partner. This partner [George Norcross] may have been motivated by many things but for Brown and O’Donnell, this was about getting the buildings built and making money and that is all they did. There is no evidence that they were part of any “enterprise.” There is no evidence they intended to plan, join, or assist Mayor Redd in committing official misconduct. (Pa184-185.)

4. The Indictment’s charges are facially time-barred.

Finally, the trial court found that “[t]he Indictment against all defendants must be dismissed because the charges are facially time-barred.” (Pa200.) Addressing the issue through the prism of the RICO conspiracy charge, the court began by rejecting the State’s reliance on the Indictment’s “alleged time frame and the alleged purposes of the enterprise” because “[t]hey are allegations, assertions and,

ultimately, conclusions,” but “not facts.” (Pa202.) The court then recognized that all alleged predicates of extortion and criminal coercion – in each of the three sub-conspiracies charged – were completed long before the SOL cutoff of June 13, 2019, *i.e.*, five years before the Indictment’s filing. (Pa202-203.)

The court next rejected the post-conspiracy allegations which, according to the State, extend the charges into the SOL period, *i.e.*, the tax credits and the acts of “intimidation and retaliation” and “concealment.” As to the tax credits, the court recognized that the Indictment explicitly concedes that those credits were lawfully sought by uncharged entities and approved by the State, which not only issued them but continued to do so even after the Indictment issued:

The Indictment never alleges that any business sought or received tax credits for which it was not eligible. There is no allegation of fraud in the application process. Indeed, the submitted applications were approved by the State of New Jersey and the credits were paid and apparently will continue to be paid. One must think that the State would have the ability to deny payments if it, for any reason, concluded that there was a crime actively being committed. (Pa205.)

The court then concluded that the uncharged entities’ continued receipt of such lawful, approved tax credits cannot extend the RICO conspiracy under federal appellate precedent holding “that a conspiracy for economic gain does not continue until the accomplishment of the conspiracy’s economic objectives if those economic objectives are achieved through the receipt of serial payments that are ‘lengthy, indefinite, ordinary...noncriminal and unilateral,’” elaborating as follows:

The tax credits here were received by uncharged entities associated with defendants George Norcross, Brown and O'Donnell. While that may not have great legal significance, it tends to show a separation between the allegedly extortionate acts and the receipt of legitimate tax credits approved by the State. To receive the tax credits, the businesses must apply and make the appropriate showings of compliance. Ind. ¶ 29. This is a ministerial act. The court is not persuaded by the State's argument that the serial payments are not indefinite because the tax credits are only available until 2030. The on-going payment of these earned tax credits does not operate to extend the limitations period. (Pa205-206.)

As to "intimidation and retaliation" and "concealment," the court recognized that the only such alleged acts concerned Dranoff's failed lawsuit against Camden regarding the Radio Lofts building – in which lawsuit no defendant was a party and Tambussi represented Camden, to which Dranoff paid several million dollars in settlement – and a handful of media statements regarding the L3 complex. As to the former, the court found that "[Dranoff's] decision as to when to sue and when to settle, on unfavorable terms, cannot be said to extend the statute of limitations period." (Pa207.) As to the latter, the court found that "[t]here is no nexus, even inferential, between these statements and an effort to keep the conspiracy active after the accomplishment of its core objectives." (Pa208-209.)

The court thus held that the RICO conspiracy charge was facially time-barred and applied that holding to all charges subject to the same 5-year SOL, since all such charges were entirely derivative of the time-barred extortion and criminal coercion acts. (Pa209.) The court also held that the official misconduct charge, which is

subject to a 7-year SOL, was also time-barred because no fact allegations suggest that Mayor Redd did anything illegal after June 13, 2017. (Pa209-210.) Accordingly, the court concluded that “[t]he Indictment must be dismissed because, even if all alleged facts are accepted as true, all charges are time-barred.” (Pa210.)

ARGUMENT

POINT ONE

THE TRIAL COURT CORRECTLY DISMISSED ALL CHARGES AGAINST O’DONNELL BECAUSE THE INDICTMENT’S FEW ALLEGATIONS OF FACT AGAINST HIM FAIL TO SUSTAIN THOSE CHARGES.

After finding (and the State conceding) that all charges against all defendants derive from, and depend on, the extortion and criminal coercion predicates alleged in the three sub-conspiracies that make up the overarching RICO conspiracy, the trial court dismissed the Indictment in its entirety “because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153.) George Norcross’s brief establishes that ruling’s propriety, and we join in his arguments.

Because O’Donnell is charged in just one of those three sub-conspiracies (the T/C Sub-Conspiracy), all charges against him derive from, and depend on, the extortion and criminal theories alleged in that sub-conspiracy only. We amplify below why the Indictment’s few allegations of fact against O’Donnell fail to sustain those two alleged theories and the charges against him.

A. The State’s proposed “facial impossibility” standard for facial challenges to indictments lacking facts essential to the charges is unsupported and unconstitutional.

The New Jersey Constitution “guarantees the right to indictment by a grand jury.” *State v. Francis*, 191 N.J. 571, 585 (2007) (citing N.J. Const. art. 1, ¶ 8). To effectuate that constitutional right, courts must ensure that “an indictment alleges all the essential facts of the crime.” *State v. New Jersey Trade Waste Ass’n*, 96 N.J. 8, 19 (1984). Indeed, the “essential facts constituting the crime must be directly stated in the indictment” and cannot be “supplied by inference or implication.” *State v. DeVita*, 6 N.J. Super. 344, 347 (App. Div. 1950). Accordingly, “if the facts alleged do not constitute such an offense within the terms and meaning of the law or laws on which the accusation is based, or if the facts alleged may all be true and yet constitute no offense, the indictment is insufficient” and must be dismissed. *State v. Bleichner*, 11 N.J. Super. 542, 547 (App. Div. 1951).

Given that constitutional mandate, this Court has routinely upheld facial dismissals of indictments where the facts alleged do not constitute the crimes charged. *See, e.g., State v. Brady*, 452 N.J. Super. 143, 165 (App. Div.) (affirming dismissal of official misconduct charge where alleged facts established that defendant did not have duty she allegedly violated), *app. den.*, 231 N.J. 525 (2017); *State v. Perry*, 439 N.J. Super. 514, 532 (App. Div.) (affirming dismissals of indictments charging driving-while-suspended offenses where alleged facts

established that “[n]one of these offenses occurred during the relevant court-imposed period of suspension”), *certif. den.*, 222 N.J. 306 (2015); *State v. Thompson*, 402 N.J. Super. 177, 204 (App. Div. 2008) (affirming dismissal of official misconduct charges where alleged facts established mere “unreasonable appearance of impropriety”).

Despite that longstanding precedent, the State focuses its appeal on attacking the procedural propriety of the trial court’s facial dismissal ruling due to the legal insufficiency of the Indictment’s allegations of fact, arguing that the court was obligated to review the underlying grand jury presentation and search for additional, unpled “facts” that might support the charges. (Sab21-30.) To do so, the State is forced to manufacture out of whole cloth a “facial impossibility” standard that would, if adopted, reverse that precedent and limit such facial dismissals to indictments in which the “facts alleged ... disprove the possibility of a crime.” (Sab23-24 [emphasis in original].)

Not surprisingly, no authority supports the State’s counter-intuitive position, which would effectively eradicate defendants’ constitutional right to indictments that explicitly state the “essential facts” of the crimes charged. The State cites just one New Jersey decision that predates *Bleichner* and that merely notes that courts cannot “question the facts stated in the indictment,” which must be “taken as true” – just as the defendants and the trial court did below. *State v. Shipley*, 10 N.J. Super. 245, 250 (App. Div. 1950). And the State simply ignores this Court’s recognition that “where

the indictment is factually unsupported either on its face or in the grand jury proceedings, the dismissal is appropriate.” *State v. Mason*, 355 N.J. Super. 296, 299 (App. Div. 2002) (affirming dismissal of official misconduct charge because indictment’s alleged facts did not establish that defendants were public officials) (emphasis supplied) (citing *State v. Moscato*, 253 N.J. Super. 253, 260 (App. Div.) (affirming dismissal of indictment because its alleged facts did not establish that defendants required a tariff), *certif. denied*, 130 N.J. 6 (1992)).

The State instead purports to rely on a few federal trial court decisions, but federal law is no different. Indeed, even the State’s primary federal decision acknowledged that indictments must be dismissed where their “factual allegations” fail to sustain the crimes charged “as a matter of law.” *United States v. Sittenfeld*, 522 F. Supp. 3d 353, 366 (S.D. Ohio 2021). That is boilerplate federal law. *See United States v. Brewbaker*, 87 F.4th 563, 572 (4th Cir. 2023) (because “district courts have as much of a responsibility to police criminal indictments as they do civil complaints,” they must dismiss indictments where ““the allegations therein, even if true, would not state an offense”” because “whether the allegations fail to state an offense is a legal question”) (citations omitted); *United States v. McGeehan*, 584 F.3d 560, 565 (3d Cir. 2009) (“The sufficiency of an indictment may be challenged ... on the ground that ‘the specific facts alleged ... fall beyond the scope of the relevant

criminal statute, as a matter of statutory interpretation.”) (quoting *United States v. Panarella*, 277 F.3d 678, 685 (3d Cir. 2002)).

Unable to rebut those New Jersey and federal decisions, the State shifts to policy arguments, claiming that the trial court’s facial dismissal punished it for using a “speaking indictment” and “would produce untenable incentives” for prosecutors “to provide less notice, or else to pursue 1,000-page speaking indictments[.]” (Sab35 [emphasis in original].) But the parade of horrors the State floats is a red herring. Whether an indictment is long or short, speaking or barebones, the test governing its legal sufficiency remains constant: does it allege facts “essential” to sustaining the crimes charged? That is the test the trial court applied to the Indictment – as even the State admits – and without penalizing the State for its “speaking” nature.

Indeed, the trial court not only assumed the truth of all the Indictment’s allegations of fact but acknowledged that the Indictment was “not a full proffer of the State’s case and that it was, at least in part, intended to serve as a bill of particulars.” (Pa152.) And yet, despite its 111 pages and extensive quotations of recorded conversations, the Indictment failed to allege any facts “essential” to the extortion and criminal coercion theories on which the legal viability of every charge depends. That failure compels dismissal.

In sum, the State’s “facial impossibility” standard is not only entirely unsupported but contradicted by decades of New Jersey and federal caselaw

requiring trial courts to dismiss indictments on their face where their allegations of fact fail to sustain the charges. The State's misguided attempt to require defendants to "disprove the possibility of a crime" would violate their constitutional right to an indictment in which the "essential facts" constituting the crime are "directly stated," not "supplied by inference or implication." *DeVita*, 6 N.J. Super. at 347.

Put simply, it is the State's duty to allege in an indictment facts "essential" to the crimes charged, not the defendants' (or the trial court's) duty to rummage through thousands of pages of grand jury transcripts and exhibits to disprove the existence of any such unpled "facts." Where (as here) an indictment's allegations of fact "do not constitute [] an offense within the terms and meaning of the law or laws on which [it] is based," *Bleichner*, 11 N.J. Super. at 547, its facial dismissal is not only proper but constitutionally mandated.

B. The Indictment's allegations of fact fail to sustain the T/C Sub-Conspiracy charge and all derivative charges against O'Donnell.

The lone sub-conspiracy charged against O'Donnell is the T/C Sub-Conspiracy, which alleges that he conspired to extort and/or criminally coerce Dranoff to sell his rights affecting the Triad and Cooper parcels by (1) George Norcross threatening him with harm if he did not sell, and (2) the groups' attorneys (Phil Norcross and Tambussi) petitioning Camden to sue him to declare his view easement right condemnable. All other charges against O'Donnell derive from the

T/C Sub-Conspiracy and its alleged facts. (*See* note 1.) For several reasons, the Indictment’s sparse allegations of fact as to O’Donnell fail to sustain those charges.

1. The allegations of fact fail to sustain the “threats” theory of the T/C Sub-Conspiracy.

To support the “threats” theory of the T/C Sub-Conspiracy, the Indictment quotes a few conversations between George Norcross and Dranoff in which Norcross allegedly used harsh, occasionally profane, language that reflects nothing beyond hardnosed – but perfectly legal – bargaining between sophisticated businessmen.

As detailed in Norcross’s brief, our Criminal Code specifically excludes threats “to refuse to do business or to cease doing business,” “to breach a contract,” and “to sue” as examples of “coercive economic bargaining” for which criminal “penalties would be quite inappropriate” because “a private property economy must tolerate considerable ‘economic coercion’ as an incident to free bargaining.” II *Final Report of the New Jersey Criminal Law Revision Comm’n, Commentary* 227 (1971) (“1971 Commentary”). This Court has thus held that threats having an “economic or commercial nexus” are “excluded from the [Code’s] purview” as “accepted economic bargaining.” *State v. Roth*, 289 N.J. Super. 152, 161-62 (App. Div. 1996).

The federal courts, too, have repeatedly held that “exploitation of an alleged victim’s fear” in a business negotiation between private parties is “‘hard bargaining’ rather than extortion.” *Viacom Int’l Inc. v. Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), *aff’d*, 946 F.2d 998 (2d Cir. 1991); *Brokerage Concepts, Inc. v. U.S.*

Healthcare, Inc., 140 F.3d 494, 526 (3d Cir. 1998) (“this case provides an example of hard bargaining rather than extortion” because there is no “right to a level playing field” in business dealings between “private parties”). And the distinction “between legitimate use of economic fear – hard bargaining – and wrongful use of such fear – extortion” – is a question of law for the trial court to resolve. *United Bhd. of Carp. & Joiners of Am. v. Bldg. & Constr. Trades Dep’t*, 770 F.3d 834, 838 (9th Cir. 2014).

The State’s brief acknowledges that Norcross’s alleged “threats” against Dranoff reflect mere “hard bargaining” on their face but claims that those legal threats became extortionate simply because Norcross’s political power and control over the Camden municipal government – as perceived by Dranoff – “threatened to deny [Dranoff] a level playing field in order to obtain his property.” (Sab65.) In other words, the State all but concedes that, but for Dranoff’s claimed perception of Norcross’s alleged influence over Camden, Norcross’s “threats” would fail to state a viable crime of extortion or criminal coercion.

The legal defects undermining the State’s theory of criminality are as fundamental as they are numerous. Put simply, citizens have a First Amendment right to petition and influence governmental institutions, and their success in doing so – and others’ perception of their resulting power and control – cannot magically transform legal bargaining into criminal extortion. The State’s brief cannot cite any support for its ill-conceived theory that “coercive economic bargaining” for which

criminal “penalties would be quite inappropriate,” *1971 Commentary, supra*, somehow becomes criminal whenever the alleged victim claims (after the fact) that he feared the defendant’s perceived influence with government entities. Such a theory would perversely risk criminalizing every negotiation involving a renowned person whose perceived influence resulted from constitutionally protected activities.

Here, the trial court correctly held that the Indictment’s allegations of fact regarding the “threats” theory of the T/C Sub-Conspiracy are legally defective. Norcross’s alleged threats, even when assumed true, do not reflect “illegal exploitation of [Dranoff’s] fear of potential economic harm” because his group “clearly had the same right to try to negotiate a presence on the Camden Waterfront as [Dranoff] did. The means [Norcross] used were negotiations and hard bargaining, which cannot be considered wrongful under the facts alleged.” (Pa172.)

Indeed, “the facts alleged” in the Indictment reveal that the “negotiations and hard bargaining” with Dranoff by LPT and (later) Norcross spanned over a year, involved sophisticated businessmen represented by counsel, and resulted in a consensual transaction that was heavily documented and publicized and in which the alleged victim (Dranoff) received \$2.5 million. Put simply, those “facts” do not, and cannot, reflect extortion or criminal coercion as a matter of law. Context matters, and the fact context alleged in the Indictment fatally undermines the “threats” theory.

In sum, the few snippets of allegedly threatening language that George Norcross directed at Dranoff – as quoted in the T/C Sub-Conspiracy and assumed true on this appeal – fail to constitute extortion or criminal coercion as a matter of law. For that reason alone, the trial court correctly concluded that all charges against O'Donnell are facially and legally defective.

2. The allegations of fact fail to sustain the ‘petitioning’ theory of the T/C Sub-Conspiracy.

To support the “petitioning” theory of the T/C Sub-Conspiracy, the Indictment quotes other conversations among the defendants in which the two attorneys (Phil Norcross and Tambussi) recommended petitioning Camden to pursue the proposed lawsuit against Dranoff seeking to declare his view easement right condemnable. The Indictment explicitly concedes that no such lawsuit was ever filed or even mentioned to Dranoff, who ultimately agreed to relinquish that right without ever knowing that any such lawsuit was ever contemplated.

As detailed in George Norcross’s brief, those two attorneys’ alleged efforts to persuade Camden to advance that never-filed, never-threatened lawsuit did not involve any impropriety and reflect, at most, mere “solicitation of governmental action,” which is not only legal but constitutionally protected, even if its “sole purpose” was “to destroy ... competitors.” *E.R.R. Conf. v. Noerr Motors*, 365 U.S. 127, 139 (1961). Indeed, “New Jersey recognizes” that “those who petition the

government for redress are afforded immunity for their action.” *See Structure Bldg. Corp. v. Abella*, 377 N.J. Super. 467, 471 (App. Div. 2005).

The State’s brief acknowledges that the defendants had a First Amendment right to petition Camden to pursue the declaratory judgment lawsuit but claims that the attorneys’ petitioning became criminal simply because they allegedly “agreed to cause” Camden to file the lawsuit, claiming that such an “agreement to help wield a public entity to advance [their] private, illicit purposes is what crossed the line.” (Sab80-81 [emphasis supplied].) But agreeing “to help wield” a public entity to act, and “causing” that entity to act, are two different things. The State’s purported distinction between a constitutionally protected agreement to petition and a criminally proscribed agreement to “cause” collapses under its own weight. The law does not, and cannot, prescribe any point at which an individual’s perceived ability to “cause” government action transforms First Amendment-protected petitioning activities into crimes. The State cites no support for any such distinction.

Moreover, even if such a line between constitutionally protected petitioning and criminal “causing” could be drawn in theory, no notice of any such nonexistent line was ever provided to these defendants. Indeed, the proposed petitioning activities alleged here were devised, recommended, and performed by two attorneys of extraordinary experience and expertise. A layperson like O’Donnell had every

reason to accept, and no reason to question, the legal advice and petitioning strategy that Phil Norcross and Tambussi devised and advocated.

And even if such a line between petitioning and “causing” existed, the Indictment’s allegations of suggest, at most, that the defendants agreed to petition, not to cause, Camden to pursue the declaratory judgment lawsuit. No alleged facts support the Indictment’s conclusory allegation that they “agreed to cause” Camden to file that never-filed, never-threatened lawsuit, or that they even had the power to do so. The Indictment is devoid of any facts suggesting that the defendants believed they had the power to dictate – let alone that they agreed to employ any such power and to conclusively dictate – any course of action to Camden.

The trial court correctly recognized that fundamental failing in assessing the allegations of facts against the two attorneys. After noting that the Indictment fails to allege any facts suggesting there was any “improper agreement ‘to cause the CRA to bring court action against [Dranoff]’” or that Camden “was a hostage” to the attorneys’ petitioning, (Pa187), the court concluded that such petitioning was not only lawful but constitutionally protected:

These lawyers had the right to bring or threaten to bring legal action. They certainly had the right to discuss and strategize legal actions even if those discussions involved finding a way to invoke the law to deliver a body blow to an adversary. And clearly they had the right to engage in efforts to influence government action. Such action is immune from criminal liability and intrinsic to the constitutional right to petition. (Pa191-192.)

In sum, the State's mischaracterization of the defendants' agreement to petition Camden as an agreement to "cause" Camden to pursue the never-filed, never-threatened lawsuit is both factually and legally illusory. The internal discussions among the defendants in which the two attorneys recommended petitioning Camden to pursue that lawsuit (as recorded by federal law enforcement authorities who chose not to pursue any charges) fail to constitute extortion or criminal coercion as a matter of law. For that further reason, the trial court correctly concluded that all charges against O'Donnell are facially and legally defective.

3. The few allegations of fact against O'Donnell fail to suggest that he suspected, much less knew, that the conduct alleged against other defendants might be improper, let alone conspiratorial.

Because the facts alleged in the Indictment fail to sustain either the "threats" theory or the "petitioning" theory of the T/C Sub-Conspiracy, the lone sub-conspiracy charge and all derivative charges against O'Donnell must fail. But even had those allegations of fact suggested a viable criminal act against someone (which it does not), the Indictment did not allege any facts against O'Donnell suggesting that he conspired to commit any such crime. As the trial court succinctly asked and answered: "[W]hat did ... O'Donnell do? The answer, giving the State the benefit of every positive inference and accepting every fact alleged in the indictment as true, is simply nothing criminal." (Pa184.)

Like any other conspiracy charge, the T/C Sub-Conspiracy must allege facts suggesting that O'Donnell agreed with one or more of the other defendants that (1) they would commit, or that he would aid in the planning or commission of, at least one criminal predicate; and (2) he had the purpose of promoting or facilitating that predicate. *See Model Criminal Jury Charge for Conspiracy*, N.J.S.A. 2C:5-2. But the Indictment cannot allege any such facts against him, just naked conclusions. For all its length, and for all the recorded communications it quotes, the Indictment fails to allege any facts suggesting that O'Donnell suspected (or had any reason to suspect) that anything the other defendants told him could possibly be perceived as wrong, let alone that he knew they were proposing any crime and agreed with them to commit it, with the purpose of promoting or facilitating it.

As to the “threats” theory, O'Donnell is not alleged to have ever spoken to, much less threatened, Dranoff, or even to have known beforehand that Norcross might threaten him. Instead, he merely listened to Norcross recount his few discussions with Dranoff after they occurred, and without allegedly hearing about (much less endorsing) any threats. Thus, even were the Indictment's allegations of threats by Norcross against Dranoff sufficient to suggest that Norcross extorted or criminally coerced Dranoff – which they are not – no alleged facts suggest that O'Donnell conspired with him (or anyone else) to do so.

As to the “petitioning” theory, O’Donnell is not alleged to have ever communicated with Camden. Instead, he simply endorsed the two attorneys’ advice that they petition Camden to pursue the lawsuit to declare Dranoff’s view easement condemnable. Indeed, he allegedly did so in a single passing remark by which he “agreed on both ends” after the attorneys detailed their recommended petitioning and objective. (Pa58 ¶146.) Thus, even were the Indictment’s allegations of fact regarding the never-filed, never-threatened declaratory judgment lawsuit sufficient to suggest that the attorneys crossed some nonexistent line between constitutionally protected petitioning and criminality – which they do not – no alleged facts suggest that O’Donnell conspired with them (or anyone else) to do so.

Put simply, no allegations of fact suggest that O’Donnell conspired to do anything criminal. Indeed, the State’s 100-page brief effectively concedes as much. Its lone substantive reference to O’Donnell claims only that he “participated in plotting” to petition Camden, “supplied financial capital” from TMO to the groups, and later helped TMO collect “tax credits” on the parcels. (Sab72.) That’s it. Accepting your attorneys’ legal advice is not “plotting,” and agreeing to your attorneys’ petitioning the government to file a lawsuit, causing your employer to supply capital to its investor group, and helping your employer collect legal tax credits is not improper, much less illegal. The State’s brief cannot identify any alleged conduct by O’Donnell which remotely sustains the charges against him.

Rather than attempt to sustain the Indictment's razor-thin allegations of fact against O'Donnell, the State accuses the trial court of drawing "defense-favorable inferences" from them. (Sab43.) But the State cites no such inferences. As to the "threats" theory, the State attacks the court's finding that O'Donnell "backed the right horse [*i.e.*, George Norcross] when it came to selecting an investment partner" and cared "about getting the buildings built and making money and that is all they did." (*Id.*) And as to the "petitioning" theory, the State challenges the court's finding that O'Donnell was "'simply listening to experienced counsel discuss a legal strategy which could ultimately make them money' and that this was 'their sole apparent purpose for being involved in any of this.'" (*Id.* [quoting Pa184-185].)

Neither of those findings drew any "defense-favorable inferences." As previously detailed, the Indictment's allegations of fact suggest, at most, that O'Donnell listened to George Norcross recount his few conversations with Dranoff after the fact and agreed with the two attorneys' legal advice and strategy that they petition Camden to pursue the never-filed, never-threatened lawsuit. Those limited allegations plainly bespeak what the trial court found, *i.e.*, that he simply "backed the right horse" and "listen[ed] to experienced counsel" so that he could "get[] the buildings built and mak[e] money" for his employer, TMO. Those findings did not involve any inferences, "defense-favorable" or otherwise.

The Indictment's barebones, virtually nonexistent allegations of fact against O'Donnell reveal that he was, at most, a passive bystander to – not a co-conspirator in – the negotiating conduct of, and attorney advice from, respected professionals that was perfectly legal and on which he had every reason to rely, and no reason to question, as a layperson. Such silent acquiescence in and deference to facially innocuous conduct is woefully inadequate to state conspiratorial culpability. *See Model Criminal Jury Charge for Conspiracy*, N.J.S.A. 2C:5-2, at 2-3 (“Mere association ... with an alleged co-conspirator is not enough to establish a defendant's guilt of conspiracy. ... Nor would it be sufficient for the State to prove only that the defendant met with others, or that they discussed names and interests in common.”).

In sum, the Indictment fails to allege any facts suggesting that O'Donnell suspected (or had any reason to suspect) that anything the other defendants told him could possibly be perceived as wrong, let alone that he knew they were proposing any crime and agreed with them to commit it, with the purpose of promoting or facilitating it. The internal conversations among the defendants (again, as recorded by federal law enforcement authorities who chose not to pursue any charges) fail to suggest that O'Donnell conspired to extort or criminally coerce Dranoff as a matter of law. For that additional reason, the trial court correctly concluded that all charges against O'Donnell are facially and legally defective.

4. The financial facilitation, corporate misconduct, and official misconduct charges are independently defective.

The financial facilitation, corporate misconduct, and official misconduct charges against O'Donnell – all of which derive from, and depend on the viability of, the T/C Sub-Conspiracy charge – would fail even had that latter charge stated a viable conspiracy offense against him (which it does not). Although the trial court had no cause to consider those charges' independent viability, their legal deficiency further confirms their facial dismissal.

As the State's brief concedes, the financial facilitation and corporate misconduct charges against O'Donnell depend on the allegation that the uncharged entities' "receipt and sale of [the] tax credits is unlawful because the credits, as charged, 'derived from' defendants' conspiratorial and extortionate activity" alleged in the T/C Sub-Conspiracy. (Sab92 [quoting N.J.S.A. 2C:21-25] [emphasis in original].) Because that alleged "conspiratorial and extortionate activity" was, in truth, facially legal, those derivative charges against him are legally defective.

But even had the T/C Sub-Conspiracy stated a viable charge against O'Donnell, the financial facilitation and corporate misconduct charges would still fail because the tax credits did not "derive from" that sub-conspiracy as a matter of law. The State's "argument" to the contrary consists entirely of a single, conclusory sentence which cites no authority beyond the statutory definition of "derived from,"

i.e., “obtained directly or indirectly from, maintained by or realized through” the underlying criminal activity. (Sab92 [citing N.J.S.A. 2C:21-24].)⁵

However, the State’s simplistic conclusion ignores the further statutory definition that “property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity.” N.J.S.A. 2C:21-25(d) (emphasis supplied). The State also ignores the U.S. Supreme Court’s conclusion that the term “proceeds” (as used in the federal money laundering statute) is limited to “profits” generated from the crime, not ancillary “receipts” related to the crime. *United States v. Santos*, 553 U.S. 507, 511-512 (2008) (affirming dismissal of money laundering charges based on payments by the operator of an illegal lottery to runners, winners, and collectors because the payments involved receipts, not profits, from the lottery).

⁵ Notably, the State abandons any reliance on *State v. Lawson*, 2019 WL 4732762 (App. Div. Sept. 27, 2019), which it cited below for upholding a financial facilitation conviction based on payments that “indirectly derived” from a fraudulently obtained home-improvement-contractor license. In truth, the defendant in *Lawson* pled guilty to both financial facilitation and theft and admitted not only that he secured the license fraudulently but also that he stole his clients’ subsequent payments because he “performed only some work on some jobs and no work on others,” then used the stolen funds on “the unauthorized payment of personal expenses.” *Id.* at *2. In sustaining the defendant’s guilty plea to the financial facilitation charge, the court found that the defendant’s admitted theft of his clients’ funds, not his fraudulently obtained license, “was sufficient to support the money-laundering element” because “he admitted he knew he obtained the funds through criminal activity.” *Id.* Contrary to the State’s now abandoned contention, *Lawson* did not find that those stolen funds “indirectly derived” from the fraudulently obtained license.

And, perhaps most significantly, the State ignores the fact that the Indictment affirmatively and explicitly alleges that (1) uncharged entities, not the defendants, sought and received the tax credits; (2) the applications – which the State vetted, approved, and continues to this day to annually audit, certify and issue –involved no concerted (much less criminal) activity by those entities (let alone the defendants); and (3) the entities first sought such credits in 2016 and remain eligible to receive more credits through 2030. Indeed, the State conceded below, and the trial court found, that the State has continued to approve and issue tax credits to the uncharged entities even after the Indictment was filed. As the court noted: “One must think that the State would have the ability to deny payments if it, for any reason, concluded that there was a crime actively being committed.” (Pa205.) Instead, the State concedes it is continuing to issue tax credits it now claims to be “unlawful.” (Sab92.)

It is self-evident that the Indictment fails to allege any “facts” suggesting that the tax credits “derived from” any of the conspiracies charged. Although the State’s brief refers to the tax credits as “criminal proceeds,” (Sab97), they clearly are not. The “proceeds” of the conspiracies charged were the purchased rights related to the waterfront parcels later developed, constructed, and leased. The tax credits that followed were not “criminal proceeds” of those allegedly extortionate purchases, just like tax refunds are not “criminal proceeds” of fraudulently obtained jobs.

Moreover, the tax credits were sought and received by uncharged entities; were approved and issued by the State; are still being approved and issued by the State even after the Indictment's filing; and will continue for at least another five years. As such, the tax credits – as alleged in the Indictment – are far too attenuated from the conspiracies charged to have “derived from” those charges, just like tax refunds approved and issued by the State are too attenuated from fraudulently obtained jobs to have “derived from” such jobs' acquisition.

As to the T/C Sub-Conspiracy specifically, it concluded when Dranoff sold his rights affecting the Triad and Cooper parcels in October 2016. Thereafter, the uncharged entities had to develop those properties, lease space in the buildings, relocate their workforces to those buildings, apply for the tax credits, and obtain the State's approvals before the tax credits issued. Because such credits did not, and could not, “derive from” the T/C Sub-Conspiracy as a matter of law, the financial facilitation and corporate misconduct charges against O'Donnell are legally defective, even independent of the defects undermining that sub-conspiracy charge.

Finally, as to the official misconduct charge, the Indictment is utterly devoid of any fact allegations suggesting that O'Donnell had any interaction whatsoever with Mayor Redd or, for that matter, with anyone else in Camden's government. Nor does the Indictment allege any facts suggesting that he or anyone else did anything, or ever contemplated doing anything, that would corrupt her or her office.

In sum, the financial facilitation, corporate misconduct, and official misconduct charges – all of which derive from the defective conspiracies charged – are themselves independently defective. Even had the T/C Sub-Conspiracy stated a viable charge (which it did not), those derivative charges would fail.

POINT TWO

THE TRIAL COURT CORRECTLY DISMISSED ALL CHARGES AGAINST O'DONNELL BECAUSE THEY ARE FACIALLY TIME-BARRED.

Even though the trial court's SOL ruling was one of just two bases for dismissing the Indictment against all defendants in its entirety,⁶ the State's brief buries its response to that ruling in the fourth of four subpoints to the third of three points. (Sab83-100.) By minimizing its SOL argument, the State reveals its inability to rebut the court's conclusion that the charges are facially time-barred, limiting its argument to misplaced reliance on the Indictment's unsupported legal conclusions and *inapposite* caselaw. As established below, the State's efforts to resuscitate these facially time-barred charges fail miserably.

A. The Indictment affirmatively and explicitly alleges facts establishing that the conspiracy charges are facially time-barred.

"Our law recognizes a criminal defendant's right 'to a prompt prosecution,' stemming from the potential prejudice likely to result 'when the basic facts have

⁶ The trial court's ruling that the Indictment failed to allege a RICO enterprise – while entirely correct – undermined the RICO conspiracy charge only.

become obscured by time.”” *State v. Twiggs*, 233 N.J. 513, 533 (2018) (quoting *State v. Diorio*, 216 N.J. 598, 612 (2014)). “Criminal statutes of limitations operate to protect defendants from that prejudice” resulting from “overly stale prosecutions” by “specifying a limit beyond which there is an irrebuttable presumption that a defendant’s right to a fair trial would be prejudiced.” *Id.* at 534 (citations and internal quotation marks omitted). Because “[c]ourts are bound by the statute of limitations and ‘cannot unilaterally nullify [its] protection,’” the SOL “serves as ‘an absolute bar to the prosecution of the offense’” when “the State does not file against an individual within the relevant statutory timeframe” *Id.* (quoting *State v. Short*, 131 N.J. 47, 55 (1993). *See also Diorio*, 216 N.J. at 617 (“The statute of limitations for a criminal offense is an absolute bar to prosecution.”).

All charges in the Indictment are subject to a limitations period of 5 years except for the official misconduct charge, which is subject to a 7-year SOL. N.J.S.A. 2C:1-6(b)(1), (3). “Therefore, if the charges are not filed within five years from the day after the offense is committed, any prosecution is barred.” *Diorio, supra*. To be timely, therefore, those charges must have been committed after June 13, 2019, *i.e.*, 5 years before the Indictment was filed on June 13, 2024.

But the Indictment affirmatively and explicitly concedes that all alleged acts of extortion and criminal coercion occurred between 2014 and 2017, long before the SOL cutoff. As to O’Donnell specifically, the alleged acts underlying the T/C Sub-

Conspiracy – *i.e.*, George Norcross’s “threats” to Dranoff, and the attorneys’ petitioning activities with Camden regarding the never-filed, never-threatened declaratory judgment lawsuit – ended no later than October 2016, when Dranoff sold his rights affecting the Triad and Cooper parcels, and the uncharged entities filed their initial applications for tax credits. (Pa47 ¶117, Pa53-54 ¶137, Pa63-64 ¶158.))⁷ Thus, had the State filed any stand-alone extortion or criminal coercion charges based on those alleged acts, such charges would have been time-barred as a matter of law. *See State v. Weleck*, 10 N.J. 355, 375 (1952) (holding that extortion is not a continuing offense and “is complete with the taking [or] the demand for payment not due to the defendant”). Indeed, the Indictment concedes that time bar by stating no such stand-alone extortion or criminal coercion charges against any defendant.

Instead, the Indictment purports to launder those nonexistent, indisputably time-barred charges as “continuing offenses” like the RICO conspiracy and three sub-conspiracies charged. But even though “the crime of conspiracy conceptually is a continuing wrong, the duration of a conspiracy generally terminates ‘when the crime or crimes which are its object are committed[.]’” *State v. Reid*, 456 N.J. Super.

⁷ Similarly, the alleged acts underlying the two sub-conspiracies in which O’Donnell is not charged – *i.e.*, those involving the L3 complex and the Radio Lofts building – ended long before June 2019. (Pa5 ¶7, Pa32 ¶82, Pa61-62 ¶¶152-154.) That Dranoff later sued Camden to recover his terminated redevelopment right regarding Radio Lofts – and ultimately not only abandoned that lawsuit but paid the Camden several million dollars for the privilege of cutting his losses, (Pa97 ¶222) – cannot extend the latter sub-conspiracy into the SOL period.

44, 64 (App. Div. 2018) (quoting *N.J.S.A. 2C:5-2(f)(1)*), *certif. den.*, 237 N.J. 205 (2019)). And here, “the crime or crimes which are [the] object” of the conspiracies charged – *i.e.*, the alleged acts of extortion and criminal coercion – were “committed” long before the June 13, 2019, SOL cutoff, thereby rendering the conspiracies facially time-barred.

Conceding that reality, the Indictment purports to extend the conspiracies charged past that SOL cutoff by alleging that the uncharged entities who developed the parcels later applied for, and received from the State, tax credits for those parcels. The Indictment also alleges acts of “intimidation and retaliation” and “concealment” as alternative means for extending the conspiracies charged into the SOL period.

But the State fails to appreciate that those affirmative and explicit allegations necessarily beg the question whether such tax credits and acts, as alleged, can extend those facially time-barred charges as a matter of law. That was indisputably a preliminary question of law for the trial court – not, as the State claims, an ultimate question of fact for the jury – to answer. Indeed, this Court has affirmed the facial dismissal of charges as time-barred even where the indictment alleged facts purporting to extend the charges into the SOL period. *See, e.g., State v. Cozen*, 405 N.J. Super. 266, 277 (App. Div. 2009) (affirming the dismissal of misapplied loan proceeds charges as facially time-barred – even though the indictment alleged that the loans were repaid within the SOL period – by holding that the crimes were

committed upon the proceeds misapplication and did not continue until the loans were repaid). *See also State v. Herbert*, 92 N.J.L. 341, 354 (1917) (in reversing conspiracy convictions as time-barred, holding that “the question” of “when did the unlawful agreement come to an end” is “purely a legal one” based on “the nature of [the] alleged criminal conspiracy” as informed by “a careful reading of the four counts of the indictment”).

The State cannot cite any contrary authority. Indeed, even the State concedes – in proposing its flawed “facial impossibility” standard to challenge the trial court’s “no crime” ruling – that an indictment must be dismissed where its fact allegations “disprove the possibility” of a conviction. But in its myopic focus on that “no crime” ruling, the State misses the undeniable reality that, even under that flawed standard, the Indictment would be facially time-barred because it affirmatively and explicitly alleges facts which “disprove the possibility” that the charges might be timely. Specifically, the Indictment affirmatively and explicitly alleges that all predicates of extortion and criminal coercion ended years before the June 13, 2019, SOL cutoff, and affirmatively and explicitly alleges tax credits, as well as acts of “intimidation and retaliation” and “concealment,” that cannot extend the time-barred conspiracy and derivative charges as a matter of law. Those allegations thus render a timely conviction “facially impossible” even under that flawed standard.

Unable to manufacture any procedural infirmity undermining the trial court's SOL ruling, the State can rely only on the Indictment's unsupported legal conclusions and *inapposite* caselaw. As detailed below, its arguments ring hollow.

B. The Indictment's naked allegations that the charged conspiracies continued "to the present" are legal conclusions entitled to no deference.

The State attacks the SOL issue through the prism of the RICO conspiracy charge and first argues that the trial court erred by rejecting the Indictment's conclusory allegation that this conspiracy (as well as the three sub-conspiracies) continued "to the present," arguing that this allegation is a "factual allegation" that must be "accepted as true" on this facial challenge. (Sb83-84.) Not true. As the trial court correctly held, that and other such bald allegations bespeak mere conclusions of law, not assertions of fact, and are entitled to no deference from – let alone blind acceptance by – this Court.

The State continues to ignore controlling authority confirming that conclusion. For example, in *Twiggs*, the State opposed a motion to dismiss an indictment as facially time-barred by arguing in part "that courts at the motion-to-dismiss stage are bound to the language in the indictment to determine whether it is facially valid." 233 N.J. at 530. But the Supreme Court refused the State's invitation to rubber-stamp the indictment's conclusory allegations and instead assessed whether the grand jury received "sufficient evidence to survive defendants' [] motions to dismiss their indictments' conspiracy counts" by suggesting "a

continuing course of conduct” designed “to insulate from discovery the co-conspirators’ roles in hindering and in the destruction of evidence.” *Id.* at 545.

Similarly, in *State v. Jeannotte-Rodriquez*, 469 N.J. Super. 69, 79 (App Div. 2021), this Court affirmed the pretrial dismissal of an indictment by finding, among other deficiencies, that “the indictment lacked sufficient detail to give defendants a fair opportunity to mount a defense.” After noting that “[i]t is fundamental that ‘an indictment ... must [] provide the accused with a sufficient description of the acts he is alleged to have committed to enable him to defend himself adequately,’” including “a satisfactory response to the questions of ‘who, ... what, where, and how,’” this Court held that an allegation that the crimes occurred “on or about January 2012 until on or about May 2017” failed “to apprise the defendants of the crimes alleged or to enable them to mount a defense.” *Id.* at 103-04 (citations omitted).

Twiggs and *Jeannotte-Rodriquez* confirm that indictments must allege facts, not mere legal conclusions, establishing their charges’ timeliness. Although both cases also assessed whether the grand jury received the temporal facts missing from those indictments, no such assessment was required here because the Indictment affirmatively and explicitly alleged facts establishing that the charged conspiracies were facially time-barred. The issue here was whether the temporal facts pled could salvage those time-barred conspiracies – a question of law for the court to resolve.

The State cites *State v. W.S.B.*, 453 N.J. Super. 206, 236 (App. Div. 2018), for the proposition that “a factual dispute concerning the proper computation of the statute of limitations ‘is for the jury to decide[.]’” (Sab84.) But *W.S.B.* merely quoted that proposition from a Law Division decision that involved “a factual dispute concerning the defendant’s fugitive status that would extend the limitations period.” *Id.* (citing *State v. Ochmanski*, 216 N.J. Super. 240, 245 (Law Div. 1987)). Here, in stark contrast, the trial court’s SOL ruling did not involve any “factual dispute.” To the contrary, it assumed the truth of all fact allegations in the Indictment.

The State also cites two federal trial court decisions for the same proposition, (Sab84), but those cases involved indictments which explicitly alleged facts that would extend the conspiracies into the SOL period. *See, e.g., United States v. Kozeny*, 492 F. Supp. 2d. 693, 714-15 (S.D.N.Y. 2007) (“As alleged, the conspiracy continued beyond the two-thirds transfer, and payment of medical expenses for Azeri officials [*i.e.*, bribes paid for that transfer] both before and after that transfer are within the scope of the conspiracy as charged”). Here, in contrast, the Indictment explicitly alleged facts which established that the conspiracies charged were time-barred and could not be extended into the SOL period. Federal courts routinely dismiss such facially time-barred conspiracies, even where their fact allegations suggest that their economic benefits continued into the SOL period. *See, e.g., United States v. Hitt*, 249 F.3d 1010, 1025 (D.C. Cir. 2001) (affirming dismissal of

conspiracy charge as facially time-barred by holding that the government cannot “rely on the ‘economic benefits’ theory, under which the ‘scheme’ is deemed to extend until the conspirators receive the economic benefits of the agreement”). *See also United States v. Turner*, 548 F.3d 1094 (D.C. Cir. 2008) (finding that “the government is quite mistaken” in arguing that “one need look only at the [conclusory allegations of the] indictment to determine the duration of the conspiracy”).

In sum, the Indictment’s naked allegations that the charges continued “to the present” are legal conclusions entitled to no deference.

C. The State misconstrues and misapplies *Cagno*.

The State next argues that the court below wrongly dismissed the RICO conspiracy charge as time-barred because *State v. Cagno*, 211 N.J. 488, 511 (2012), supposedly mandates that “the continuing nature of a RICO enterprise” precludes the SOL from commencing until all alleged conspiratorial objectives are accomplished. (Sab85.) The State essentially reads *Cagno* to dictate that no RICO conspiracy can ever terminate because every RICO enterprise, by definition, automatically continues in perpetuity. The State misreads *Cagno* and grossly overstates its significance.

Cagno held only that, in that organized crime case, a RICO conspiracy continued into the SOL period because the trial evidence suggested, among other facts, “that once an individual becomes a member of La Cosa Nostra, he is a member

for life”; that the defendant continued to have post-crime “meetings with other members of the crew and with crew superiors”; and that “the hierarchal, structured nature of the New Jersey crew of the Columbo crime family and the extensive activities in which it engaged” reflected a continuous organization. 211 N.J. at 511-12. Those mob-specific facts “permitted the jury to infer that the enterprise was an ongoing entity and did not disappear from existence after” the SOL cutoff date. *Id.*

But those mob-specific facts have no relevance to this case, in which the State strains mightily to mischaracterize routine business transactions negotiated by civic leaders, and advised by respected attorneys, as “extortionate” acts committed by a “racketeering enterprise.” Unlike the La Cosa Nostra soldiers in *Cagno*, O’Donnell and the other defendants wrongly charged as “racketeers” are not “member[s] for life” of any “hierarchal, structured crew,” let alone of any “crime family” which continues in perpetuity.

More fundamentally, the indictment in *Cagno* alleged facts establishing that the RICO conspiracy continued into the SOL period. Here, in stark contrast, the Indictment affirmatively and explicitly alleged facts establishing that the RICO conspiracy’s alleged acts of extortion concluded outside the SOL period, as well as post-conspiracy facts which cannot extend the conspiracy as a matter of law.

Put simply, the significance of *Cagno* is limited to organized crime cases, which the RICO statute was drafted, enacted, and intended to address. And even

then, *Cagno* had no cause to consider whether an indictment that affirmatively and explicitly alleges that the underlying criminal acts ended long before the SOL cutoff could be extended by other fact allegations purporting to do so. *Cagno* is irrelevant to – and in no way undermines – the trial court’s SOL ruling.

D. The State wrongly dismisses federal appellate precedent establishing that the tax credits cannot extend the time-barred conspiracy charges.

The State next argues that the court below erred by relying on *United States v. Doherty*, 867 F.2d 47 (1st Cir. 1989), and *United States v. Grimm*, 738 F.3d 498 (2d Cir. 2013), in finding that the tax credits cannot extend the time-barred charges, dismissing those decisions as “an exception” to the “ordinary rule” that “a conspiracy for economic gain continues until the accomplishment or abandonment of that objective.” (Sab87.) The State is wrong as a matter of law.

1. *Doherty*, *Grimm*, and their progeny correctly apply longstanding U.S. Supreme Court precedent and remain good law.

For over a century, U.S. Supreme Court precedent has held that even “[t]hough the result of a conspiracy may be continuing, the conspiracy itself does not thereby become a continuing one” where, as here, the indictment confirms the absence of any “[c]ontinuity of action to produce the unlawful result, or ... ‘continuous cooperation of the coconspirators to keep it up.’” *Fiswick v. United States*, 329 U.S. 211, 216 (1946) (quoting *United States v. Kissel*, 218 U.S. 601 (1910)). *Doherty*, *Grimm*, and their progeny explicitly rely on, and straightforwardly

apply, that longstanding precedent. And yet, the State (as it did below) fails even to cite *Fiswick* or *Kissel* and instead dismisses *Doherty* and *Grimm* as an “exception” to the “‘ordinary rule’ that a conspiracy for economic gain continues until the accomplishment or abandonment of that objective.” (Sab87 [citations omitted].) The State’s purposely shaded construction of federal law is fundamentally wrong and does a disservice to the trial court’s opinion and this Court’s review of it.

In *Doherty*, police officers conspired to illegally obtain advance copies of promotional exams and thus increased their salary payments based on their fraudulently obtained promotions. Even though the officers’ artificially enhanced salary payments would continue for years thereafter until they retired – and even though the indictment charged each such payment not merely as an overt act but as the conspiracy’s object – the First Circuit Court of Appeals reversed their convictions by holding that their receipt of the ill-gotten salary increases did not continue the conspiracy or re-start the SOL, which instead commenced when they obtained the fraudulent promotions. 867 F.2d at 61-62.

Writing for the unanimous Court in *Doherty*, future Supreme Court Justice Breyer summarized the government’s argument – which mirrors the State’s reliance on the same, so-called “ordinary rule” cases it cites here – as follows:

The government argues that a conspiracy stays in existence until its object is achieved. Here the object in part was to obtain salary, and so each act of receiving salary is a new “overt act.” (Presumably, in the government’s view, if one successfully conspires to obtain a lifetime

annuity through fraud, each monthly payment until the conspirator's death would constitute an overt act.) The government points to a line of cases that offer support for this proposition. *Id.* at 61 (citing *United States v. Girard*, 744 F.2d 1170, 1172-73 (5th Cir. 1984) (bid rigging conspiracy lasted beyond the award of the contract, until the conspirators received the final contract payment); *United States v. Helmich*, 704 F.2d 547, 549 (11th Cir. 1983) (although defendant had not transmitted secret information since 1964, conspiracy to commit espionage lasted until defendant collected final payment in 1981); *United States v. Mennuti*, 679 F.2d 1032, 1035 (2nd Cir. 1982) (conspiracy continued until conspirator received his anticipated payoff, a chance to buy property at bargain price); and *United States v. Walker*, 653 F.2d 1343, 1349-50 (9th Cir. 1981) (conspiracy continued until conspirators realized and divided up profits from fraudulently obtained timber contract). 867 F.2d at 61.

In rejecting the government's argument and reversing the defendants' convictions as time-barred, Justice Breyer explained that *Fiswick* and *Kissel* instead mandate that the mere fact that "the result of a conspiracy may be continuing" does not continue a conspiracy – even where that "result" is the conspiratorial object – where (as here) the conspirators have ceased acting in concert:

We cannot accept the government's view, however, without qualification. It may seem reasonable to say that the act of receiving a conspiratorial objective is part of the conspiracy, where the receiving consists of one action, or a handful of actions, taking place over a limited period of time, or where some evidence exists that the special dangers attendant to conspiracies, the dangers of "concerted" activity" and "group association" for criminal purposes, remain present until the payoff is received. []

But, where receiving the payoff merely consists of a lengthy, indefinite series of ordinary, typically noncriminal, unilateral actions, such as receiving salary payments, *and* there is no evidence that any concerted activity posing the special societal dangers of conspiracy is still taking place, we do not see how one can reasonably say that the conspiracy

continues. Rather, in these latter circumstances, one would ordinarily view the receipt of payments merely as the “result” of the conspiracy. That is what the Supreme Court suggested in *Fiswick v. United States*, when it wrote:

Though the result of a conspiracy may be continuing, the conspiracy itself does not thereby become a continuing one. Continuity of action to produce the unlawful result, or . . . “continuous cooperation of the coconspirators to keep it up,” is necessary. *Id.* at 61-62 (citations omitted).

Justice Breyer also explained that the cases cited by the government – *i.e.*, the same “ordinary rule” cases cited here by the State – are “consistent with this approach” because the payments therein reflected “one or a few discrete events, not an indefinite series continuing long after any active cooperation ceased,” and involved “more than unilateral activity [], for the payoff itself required cooperation” among the conspirators:

And, each of the cases the government has cited [] is consistent with this approach. In each of those cases, the receipt of payment was one or a few discrete events, not an indefinite series continuing long after any active cooperation ceased. Also, in most of those cases, more than unilateral activity was at issue, for the payoff itself required cooperation; for instance, in *Helmich*, 704 F.2d at 548, the spy was paid by coconspirators, and in *Walker*, 653 F.2d at 1347, the realization and division of profits required “continuing cooperation.” We cannot read these cases as extending the conspiracy statute of limitations indefinitely beyond the period when the unique threats to society posed by a conspiracy are present. To do so “would for all practical purposes wipe out the statute of limitations in [this kind of] conspiracy cases” *Id.* at 62 (citations omitted).

The Second Circuit Court of Appeals later embraced, but distinguished, Justice Breyer’s holding in *Doherty* in *United States v. Salmonese*, 352 F.3d 608 (2d

Cir. 2003), which the State cites but fails to analyze. Specifically, *Salmonese* agreed that a conspiracy ends – notwithstanding the conspirators’ future receipt of anticipated profits – “where [] the payoff merely consists of a lengthy, indefinite series of ordinary, typically noncriminal, unilateral actions ... *and* there is no evidence that any concerted activity posing the special societal dangers of conspiracy is still taking place.” *Id.* at 616 (quoting *Doherty*, 867 F.2d at 61) (emphasis in original). Distinguishing that principle while continuing to cite *Doherty*, the Second Circuit found that a conspirator’s receipt of anticipated profits ten weeks after the sale of illegally stripped warrants extended the conspiracy for SOL purposes, explaining that such “payoffs could reasonably be viewed as part of a conspiracy where their receipt ‘consists of one action, or a handful of actions, taking place over a limited period of time, or where some evidence exists that the special dangers attendant to conspiracies ... remain present until the payoff is received.’” *Id.* (quoting *Doherty*, 867 F.2d at 61).

The Second Circuit subsequently harmonized the holdings in *Doherty* and *Salmonese* in *Grimm*, in which three General Electric (“GE”) employees “conducted a multi-year scheme to fix below-market rates on interest paid by GE to municipalities” on guaranteed investment contracts (“GICs”). 738 F.3d at 499. “The district court held that the statute of limitations continued to run during the period

when GE paid the (depressed) interest to the municipalities, and that the interest payments could constitute overt acts.” *Id.*

Reversing the convictions as time-barred, the Second Circuit explained that “*Doherty* and *Salmonese* list features to describe serial payments that do not constitute overt acts: lengthy, indefinite, ordinary, typically noncriminal and unilateral,” such that “overt acts have ended when the conspiracy has completed its influence on an otherwise legitimate course of common dealing that remains ongoing for a prolonged time, without measures of concealment, adjustment or any other corrupt intervention by any conspirator.” *Id.* at 503. Applying those principles, the Court found that the below-market interest payments resulting from the GE employees’ fraud

fit that description in every particular. Payments of interest on a GIC are ordinary commercial obligations, made pursuant to a common form of commercial arrangement; they are noncriminal in themselves; they are made unilaterally by a single person or entity; and they are made indefinitely, over a long time, typically up to 20 years or more. Some are still being paid. And since the government adduced no evidence of overt acts after [the date the SOL period otherwise ran] other than the interest payments, “there is no evidence that any concerted activity posing the special societal dangers of conspiracy is still taking place.” *Id.* (citations omitted).

Here, too, the tax credits “fit that description in every particular” because – by the Indictment’s explicit admission – they “are ordinary commercial obligations, [] noncriminal in themselves, [] made unilaterally by a single [uncharged] entity; []

made indefinitely, over a long time, [] [and] are still being paid,” without any “concerted activity” among the defendants. *Id.*⁸

The government in *Grimm* argued that the payments therein, while lengthy in duration, were “not ‘indefinite’ because each GIC has a maturity date and prescribes the number of payments to be made,” essentially arguing that “a conspiracy continues so long as a stream of anticipated payments contains an element of profit.” *Id.* at 503. But the Second Circuit rejected that argument because it “proves too much,” explaining that “[a] conspiracy to corrupt the rent payable on a 99-year ground lease would, under the government’s theory, prolong the overt acts until long after any conspirator or co-conspirator was left to profit, or to plot”:

“Indefinite” cannot mean “without end.” Even in *Doherty*, the salary payments lasted only as long as the officers’ employment. Payments can be “indefinite” either in the sense that they are of undetermined number or in the sense that they are prolonged beyond the near future. *Id.* (emphasis supplied).

Moreover, even where payments are not “prolonged beyond the near future,” the Court in *Grimm* added that “when anticipated economic benefit continues, in a regular and ordinary course, well beyond the period ‘when the unique threats to society posed by a conspiracy are present,’ [] the advantageous interest payment in

⁸ Distinguishing *Salmonese*, the *Grimm* Court noted that “the sales of the stripped warrants [in *Salmonese*] ... were completed within ten weeks of the public offering and were “hardly ‘indefinite’ in number or ‘lengthy’ in duration.” *Id.* at 502-03 (citing *Salmonese*, 352 F.3d at 616).

the result of a completed conspiracy, and is not in furtherance of one that is ongoing.”

Id. (quoting *Doherty*, 867 F.2d at 62). To that point, the Second Circuit quoted *Fiswick* and *Kissel* for the same principle that Justice Breyer relied on:

Though the result of a conspiracy may be continuing, the conspiracy does not thereby become a continuing one. Continuity of action to produce the unlawful result, or ... “continuous cooperation of the conspirators to keep it up” is necessary. *Id.* at 503-04 (citation omitted).

Because “[t]he stream of GIC interest payments does not raise the underlying concern of concerted action,” those payments are “not a continuous action that prolongs the life of the conspiracy.” *Id.*

Doherty and *Grimm* not only remain good law, but courts continue to apply those precedents to reject as time-barred conspiracy (or scheme) charges despite the defendant’s post-SOL receipt of resulting payments. For example, in *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020), *cert. den.*, 141 S. Ct. 656 (2021), a public official was convicted of a bribery scheme in which the official issued government grants to a physician in exchange for patient referrals to the official’s law firm, which pursued and profited from the patients’ claims. The official ceased issuing grants to the physician in 2007, but the physician continued to refer patients to the official’s law firm until at least 2013, and the law firm continued to pay the official for fees it recovered from those referred cases. The official was indicted in February 2015 and moved to dismiss the bribery charge as time-barred under the applicable five-year SOL, arguing that the scheme had ended when he ceased issuing grants in 2007 and

that the post-2010 referrals to, and payments from, his law firm did not continue the scheme. The district court denied the motion, but the Second Circuit reversed his conviction on appeal as time-barred based on *Grimm*.

Specifically, the Court in *Silver* found that the continued patient referrals to the official's law firm after the grants ceased in 2007 were not "back pay" for those prior grants but "were, instead, intended to curry generalized goodwill." *Id.* at 572-73. More pointedly, the Court also found that the law firm's continued, post-2010 payments to the official did not "provide evidence of an ongoing scheme" and instead "much more closely resemble[] the indefinite and prolonged interest payments in *Grimm*," in which "we determined that regular investment payments on a [GIC] did not trigger a new limitations period because they were 'serial payments that ... [were] lengthy, indefinite, ordinary, typically noncriminal and unilateral,' and made by wire over a 'prolonged time.'" *Id.* at 573 (quoting *Grimm*, 738 F.3d at 503). After noting that *Grimm* had been distinguished in *United States v. Rutigliano*, 790 F.3d 389, 400-01 (2d Cir. 2015), the Court explained why *Grimm* nevertheless dictated that the post-2010 payments did not extend the scheme:

The thing of value (or the *quid*) that [the official] received from [the physician] in exchange for his promise to deliver the [] grants was the referrals themselves – not the subsequent payouts from [the law firm] on the referrals that generated fees for the firm. If [the official] had been paid in oil leases or diamonds or savings bonds, the result would be the same, regardless of when those properties were subsequently monetized. Here, [the physician] paid his bribe in referrals made between 2005 and 2007 – well before the February 2010 limitations cut

off. The fact that [the firm] later earned fees and cut checks to [the official] does not alter the fact that the [scheme] was completed by 2007. Thus, because the within limitations payments to [the official] from [the firm] were “the result of a completed [scheme], and ... not in furtherance of one that [was] ongoing,” the [] scheme was not renewed with each payment.” *Id.* at 574 (quoting *Grimm*, 738 F.3d at 503 (emphasis in *Grimm*)).⁹

Similarly, in *United States v. Colon-Munoz*, 192 F.3d 210 (1st Cir. 1999), *cert. den.*, 529 U.S. 1055 (2000), the indictment charged the defendant with conspiring to misapply bank funds, through false statements, to enable him to purchase and ultimately pay off a farm. *Id.* at 227. Although the defendant received the loan outside the SOL, the government posited that the conspiracy continued until the defendant made his final payments cancelling the loan, arguing that those payments “were the last stages through which [the defendant] attempted to fulfill the object of the conspiracy to ultimately pay for [the] farm” *Id.* at 227-28.

Rejecting that argument, the First Circuit held that “[a] conspiracy does not continue indefinitely simply because the fruits of the conspiratorial objective

⁹ *Silver* explained that *Ruttigliano* had “review[ed] [a] conspiracy to commit mail and wire fraud under *Grimm*’s standard” but found that the limitations period was extended because the *Ruttigliano* “coconspirators ‘engaged, within the limitations period, in “measures of concealment” and “other corrupt intervention,”” by “mail[ing] false disability recertification forms to secure controlled payments.” *Id.* at 573 (quoting *Ruttigliano*, 790 F.3d at 400-01) (quoting *Grimm*, 738 F.3d at 503))). Here, unlike *Ruttigliano*, the Indictment cannot allege that the uncharged entities’ tax credit applications were in any way “false.” In any event, New Jersey law dictates that “mere overt acts of concealment” cannot “extend the life of a conspiracy.” *Twiggs*, 233 N.J. at 543. *See infra* Point Two, Section E.

continue into the future” and analogized the defendant’s “repayment” of the fraudulently obtained loans “to the continued receipt of increased salary as the result of the fraudulently obtained promotions at issue in *Doherty*.” *Id.* at 228. Finding that “[t]he goal of the conspiracy was realized” earlier when the defendant used the loan proceeds to purchase the farm – notwithstanding the indictment’s language to the contrary – the Court in *Colon-Munoz* explained as follows:

There is no allegation that [defendant’s] repayment of the [] loan was itself illegal or that it involved the type of concerted activity through which conspiracies pose “special societal dangers.” [] The government’s theory of the case would encompass any subsequent re-financing of [defendant’s] payment for [the farm], however legitimate, as furthering the conspiracy. To the extent that [defendant] continued in his efforts to complete payment on the loan [], those were his acts alone and not part of the conspiracy with [his coconspirator] to use [the loan] funds to purchase [the farm]. *Id.* at 228-29.

Because the repayments did not involve any illegal activity by the defendant or any concerted activity with his coconspirator, the First Circuit held that they did not extend the conspiracy, despite the indictment’s allegation that the conspiratorial object was to pay off the farm with them. *Id.*

Indeed, other Courts of Appeals have relied on these principles to affirm the dismissal of indictments as facially time-barred notwithstanding allegations that the defendants continued to receive “economic benefits” from the conspiracy during the SOL period. In *Hitt*, for example, the indictment charged the defendant with conspiring to fraudulently obtain export licenses needed to sell and ship equipment

to a Chinese company that misused the equipment. 249 F.3d at 1012. The trial court dismissed the charge as facially time-barred by holding that the conspiracy ended when the export licenses were obtained. *Id.* The government appealed, arguing that the conspiracy continued until the equipment was shipped to the Chinese company by relying on the same “ordinary rule” decisions cited by the State in this case. *Id.*

In rejecting that argument and affirming the conspiracy charge’s facial dismissal, the D.C. Circuit refused to apply “the ‘economic benefits’ theory, under which the ‘scheme’ is deemed to extend until the conspirators receive the economic rewards of the agreement.” *Id.* at 1025 (citing “ordinary rule” cases). Although the Court relied mainly on the alleged conspiratorial agreement’s scope, it also explained that extending the conspiracy to include “the consequence of [defendant’s] alleged fraudulent acquisition of the export licenses” would violate *Fiswick* and *Doherty*:

As the Supreme Court explained in *Fiswick*, “though the result of a conspiracy may be continuing, the conspiracy does not thereby become a continuing one ... “‘Continuous cooperation of the conspirators to keep it up’ is necessary.” 329 U.S. at 216 (citations omitted); *see also United States v. Doherty*, 867 F.2d 47, 61-62 (1st Cir. 1989).

Id. at 1026. The Court also cited *Doherty* in stating that extending the conspiracy in that manner “would frustrate ... the purpose of having a statute of limitations.” *Id.*

Doherty, *Grimm*, and their progeny – and the Supreme Court’s decisions in *Fiswick* and *Kissel* on which those decisions rely – bespeak a longstanding principle of law, *i.e.*, that the continued receipt of economic benefits resulting from a

conspiracy cannot continue the conspiracy itself absent continued concerted activity by the conspirators, especially where (as here) those benefits are unilateral, lawful, and prolonged. Contrary to the State’s conclusory characterization, that principle is not an “exception” to the “ordinary rule” decisions on which the State relies.

Indeed, as detailed above, those “ordinary rule” decisions were explicitly distinguished by the “exception” decisions. Justice Breyer explained that *Girard*, *Mennuti*, and other such “ordinary rule” cases relied on by the State are “consistent with” *Doherty* (and *Fiswick* and *Kissel*) because the SOL-timely payments in the former cases reflected “one or a few discrete events, not an indefinite series continuing long after any active cooperation ceased,” and involved “more than unilateral activity [], for the payoff itself required cooperation.” *Doherty*, 867 F.2d at 61-62 (citations omitted). And the Second Circuit’s decisions in *Salmonese* and *Rutigliano* (also relied on by the State) not only explicitly adopted *Doherty*’s rationale but were distinguished factually by *Grimm* and *Silver*, respectively.

In sum, *Doherty*, *Grimm*, and their progeny correctly apply longstanding U.S. Supreme Court precedent and remain good law.

2. *Doherty* and *Grimm* are consistent with New Jersey law.

The State next purports to dismiss *Doherty* and *Grimm* as contrary to New Jersey law by claiming that they held only that the payments therein were not “overt acts,” noting that New Jersey conspiracy law does not require overt acts and instead

provides that conspiracies continue until their central objectives have been accomplished or abandoned. (Sab90.) But the State’s purported distinction between federal and state law lacks any difference because both *Doherty* and *Grimm* explicitly charged the payments in those cases as conspiratorial objectives, and not as mere overt acts.

The indictment in *Doherty* charged that the “objective of the conspiracy” was not just to secure the appointments or promotions to which the defendants were not entitled, but also to obtain “the benefits of such appointment or promotion, which benefits included the salary or increased salary by reason of appointment to or promotion within the police department and whatever pension benefits would accrue by reason of the appointment to or promotion within the police department.” *Id.* at 61. Indeed, Justice Breyer relied on those allegations in concluding that the indictment charged not just an “honest services” conspiracy but also “a valid conspiracy to defraud the Commonwealth of ‘money or property,’ namely, a scheme ‘for obtaining’ the money used to pay the salaries of those improperly promoted ‘by means of false or fraudulent pretenses.’” *Id.*

Similarly, the indictment in *Grimm* charged that “one of the goals of each of the conspiracies charged” was “to obtain money and property from municipal issuers ... increasing [] the [] profitability of investment agreements and other municipal finance contracts awarded [] by municipal issuers.” 738 F.3d at 506 (Kearse, C.J.,

dissenting). And yet, even though those payments were charged as a conspiratorial objective, the Court in *Grimm* held that this “stream of GIC interest payments does not raise the underlying concern of concerted action, and therefore is not a continuous action that prolongs the life of the conspiracy.” *Id.* at 504.

Because the indictments in *Doherty* and *Grimm* explicitly charged the payments therein as conspiratorial objectives, and not merely as overt acts (as the State erroneously claims), the State’s purported distinction between federal and New Jersey conspiracy law is entirely immaterial.

The State also suggests that *Doherty* and *Grimm* conflict with *Cagno* because that New Jersey decision supposedly “acknowledges no exceptions at all to the rule for continuing offenses” like the RICO conspiracy charged. (Sab89.) As previously established, however, the significance of *Cagno* is limited to organized crime cases and cannot extend to this commercial case, in which the defendants are indisputably not “member[s] for life” of any “hierarchal, structured crew,” let alone of any “crime family” which continues in perpetuity. 211 N.J. at 511-12. And even then, *Cagno* had no cause to consider whether lawful, unilateral, and prolonged payments (like the tax credits) could somehow extend alleged conspiracies whose predicates and central objectives (like the allegedly extortionate acts and acquisition of the Triad and Cooper parcels) were fully accomplished years before the SOL expired.

Finally, and significantly, the State completely ignores New Jersey precedent explicitly adopting the fundamental principle first articulated in *Kissel* on which *Fiswick* expanded and from which *Doherty*, *Grimm*, and their progeny emanated. For example, in *Herbert*, the Court dismissed as time-barred a conspiracy in which “the object to be attained by the alleged conspirators [*i.e.*, to obtain a divorce for one of them] was a lawful one but the means [*i.e.*, to entrap the innocent spouse into adultery] were unlawful and criminal.” 92 N.J.L. at 355. The false evidence’s submission in the divorce case occurred outside the SOL period, but the divorce judgment occurred within the SOL period. *Id.*

In dismissing the conspiracy charge as time-barred, *Herbert* rejected the indictment’s reliance on “the results flowing from the criminal means used to accomplish the object of the agreement – that is, the divorce” – to extend the conspiracy based on *Kissel*, in which “Mr. Justice Holmes very aptly remarks: ‘It is also true, of course, that the mere continuance of the result of a crime does not continue the crime.’” *Id.* (citation omitted). *Herbert* added that any contrary rule would effectuate “a condition that the United States Supreme Court warns against – that is, the likelihood of unconsciously converting the result of a conspiracy into a continuing one,” adding that “if the courts, for some reason or other, did not decide the case in a year from the time of argument, then, in conformity with the State’s theory, the life of the conspiracy would be extended until the decision was handed

down. The unsoundness of this view is too manifest to need any further comment.” *Id.* at 358. The Court thus “distinguish[ed] the present case from that class of cases where the object of the agreement is the perpetration of a crime and to divide the proceeds thereof, or where the object is to commit an unlawful act injurious to the public, although the means used to accomplish that objective end were lawful.” *Id.*

Here, too, as charged in the T/C Sub-Conspiracy, “the object to be attained by the alleged conspirators [*i.e.*, to purchase Dranoff’s rights] was a lawful one but the means [*i.e.*, to “extort” Dranoff] were unlawful and criminal.” *Id.* at 355. As alleged, that sub-conspiracy was complete when the last unlawful means occurred and did not continue beyond that until the lawful object was accomplished – let alone for another 14 years until the last lawful tax credit will issue in 2030. The State’s purported reliance on such lawful “results” – which are far more attenuated and prolonged than the divorce judgment in *Herbert* – to extend the SOL deadline to 2035 bespeaks an “unsoundness ...too manifest to need any further comment.” *Id.*

In sum, *Doherty* and *Grimm* are consistent with New Jersey law.

3. The State’s attempts to distinguish *Doherty* and *Grimm* are wrong.

The State next argues that *Doherty* and *Grimm* “are inapt as applied to these allegations.” (Sab90.) But the distinctions claimed by the State are entirely illusory.

First, the State contends that the uncharged entities’ continuing receipt of tax credits is not “indefinite,” as referenced in those decisions, because those entities’

eligibility for such credits “ends in six years.” (Sab90.) But the State ignores the eight (8) years that have already elapsed – and the prior tax credits that were paid during those 8 years – since the T/C Sub-Conspiracy concluded in October 2016.

Moreover, as previously detailed, the Second Circuit in *Grimm* rejected the prosecution’s argument that the payments therein were “not ‘indefinite’ because each GIC has a maturity date and prescribes the number of payments to be made” and that “a conspiracy continues so long as a stream of anticipated payments contains an element of profit.” 738 F.3d at 503. That argument, *Grimm* held, “proves too much” because “[a] conspiracy to corrupt the rent payable on a 99-year ground lease would, under the government’s theory, prolong the overt acts until long after any conspirator or co-conspirator was left to profit, or to plot.” *Id.* Instead, *Grimm* reasoned that

“Indefinite” cannot mean “without end.” Even in *Doherty*, the salary payments lasted only as long as the officers’ employment. Payments can be “indefinite” either in the sense that they are of undetermined number or in the sense that they are prolonged beyond the near future. *Id.*¹¹

Here, the Indictment’s explicit concession that the uncharged entities will continue to receive tax credits through 2030 – *i.e.*, 14 years after the T/C Sub-Conspiracy concluded in October 2016 – dictates that those economic benefits are

¹¹ Indeed, the salary payments received by the defendant whose charges were time-barred in *Doherty* continued for just two years after that defendant fraudulently secured his promotion. 867 F.2d at 63. Because Justice Breyer found those two years of salary payments were sufficiently “prolonged” to preclude their extending the conspiracy, the 14 years of tax credits – as affirmatively and explicitly alleged in the Indictment – cannot possibly extend the time-barred conspiracies here.

“prolonged beyond the near future.” *Id.* Again, to conclude otherwise would mean that the State could have deferred filing this Indictment until 2035 – a two-decade extension that is absurd on its face. Such an extended period is plainly “indefinite” within the meaning of *Doherty*, *Grimm*, and their progeny.

Second, the State argues that, whereas the salary payments and interest payments in *Doherty* and *Grimm*, respectively, involved “a passive ‘unilateral’ act,” the “defendants, through the entities they are alleged to control and use for these purposes, must apply annually for the tax credits [] and make specific showings.” (Sab90-91.) But the Indictment explicitly confirms (by affirmatively alleging) that the uncharged entities, not the defendants, filed those applications and received the resulting tax credits. The defendants’ only alleged involvement in that ministerial process was that some of them signed the applications on those entities’ behalf.

Moreover, the Indictment acknowledges that those applications were simply routine paperwork whose rote submission was mandated by law. Indeed, the Indictment further concedes that the State not only vetted and approved all such applications, and paid all such credits, but also is continuing to do so to this day. Given those conceded facts, that the uncharged entities applied for those credits, rather than passively received them, is immaterial.

Third, the State claims that “the length of this program is not random – it is a structure that defendants themselves allegedly shaped” and thus is “part and parcel

of the conspiracy,” citing a single trial court decision from over 25 years ago which distinguished *Doherty*. (Sab91 (quoting *United States v. Derman*, 23 F. Supp. 2d 95, 102 (D. Mass. 1998)). But in *Derman*, unlike here, “the facts alleged in the indictment describe criminal activity within the five-year limitations period,” specifically, “eleven acts” of illegal “financial transactions ... alleged to be part and parcel of the conspiracy.” 23 F. Supp. 2d at 102. *Derman* thus readily distinguished *Doherty*, in which “the only evidence of the ongoing conspiracy was the defendant’s receipt of valid noncriminal payments and [] no evidence of concerted criminal activity” existed. *Id.* at 102. Here, as in *Doherty* but unlike *Derman*, the Indictment concedes that the tax credits themselves were “valid noncriminal payments” which did not involve, let alone require, any “concerted criminal activity.” *Id.*

Fourth, the State argues the defendants allegedly “worked together to conceal that the credits stemmed from criminal activity.” (Sab91.) But the only such allegation in the Indictment fails even to refer to the tax credit applications, much less to assert that the uncharged entities (let alone the defendants) in any way coordinated the applications’ preparation, submission, or distribution. Instead, that vague allegation refers only to unidentified instances of “misleading the public, law enforcement, the news media, and others” without any suggestion that the applications themselves were “misleading” or that the State was ever misled by them. (Pa84 ¶215(g).) In short, the Indictment confirms, rather than undermines,

that the uncharged entities' applications were "unilateral." And in any event, New Jersey law dictates that "mere overt acts of concealment" cannot "extend the life of a conspiracy." *Twiggs*, 233 N.J. at 543. *See infra* Point Two, Section E.

Finally, the State goes so far as to equate the uncharged entities' public acquisitions of Dranoff's redevelopment rights, and their subsequent receipt of State-approved tax credits over the next 14 years, with "a ring of art thieves [who] stole ten Rembrandts and sold off one per year." (Sab92.) The State's absurd analogy merely underscores the dispositive defects undermining its facially time-barred charges. As alleged in the Indictment, the tax credits are not proceeds of those charged conspiracies; were neither sought nor received by the defendants; were approved and issued by the State; are still being approved and issued by the State even after the Indictment's filing; and will continue for at least another five years.

In short, the defendants not only did not "steal" anything – they also did not "sell off" the proceeds of the uncharged entities' lawful purchases (*i.e.*, Dranoff's rights affecting the undeveloped parcels). A better analogy would be that the State – by continuing to vet, approve, and issue tax credits to those uncharged entities – have continuously and repeatedly verified the legality of the "Rembrandts" resulting from the defendants' businesses' investments of time, capital, and resources, *i.e.*, their successful restoration of the blighted Camden waterfront.

In any event, the SOL inquiry under *Doherty* and *Grimm* asks whether the benefits themselves involved continued conspiratorial activity, not whether such benefits resulted from such activity in the distant past. Indeed, the fraudulently increased salary payments in *Doherty* resulted from the defendants' fraud far more directly and temporally than the tax credits resulted from the conspiracies charged.

In sum, the State's efforts to distinguish *Doherty* and *Grimm* are wrong.

E. The Indictment's allegations of "concealment" and "intimidation and retaliation" cannot extend the time-barred conspiracy charges.

Beyond the tax credits, the State relies on the Indictment's few allegations of "concealment" and "intimidation and retaliation" to extend the time-barred charges. (Sab92-96.) Neither set of allegations does so.

Preliminarily, the State concedes that *Twiggs* dictates that "mere overt acts of concealment" cannot "extend the life of a conspiracy," 233 N.J. at 543, but purports to distinguish that controlling decision because, in the RICO conspiracy charged here, "concealment was a core objective that facilitated the conspiracy's central aim: capturing the value of the tax credits." (Sab93). But the State misconstrues *Twiggs*, which confirms that the Indictment cannot extend the time-barred conspiracies charged simply by alleging concealment as a conspiratorial objective.

Twiggs embraced *Grunewald v. United States*, 353 U.S. 391 (1957), in which "the United States Supreme Court concluded that prosecutors cannot 'extend the life of a conspiracy indefinitely' by inferring a conspiracy to conceal 'from mere overt

acts of concealment.” *Twiggs*, 233 N.J. 543 (quoting *Grunewald*, 353 U.S. at 402)). *Grunewald* “held that ‘after the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment.’” *Twiggs*, 233 N.J. at 544 (citation omitted). In so holding, *Grunewald* “stressed a ‘vital distinction’ ‘between acts of concealment done in furtherance of the main criminal objectives of the conspiracy,’ which extend the conspiracy and toll the statute of limitations, and ‘acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime.’” *Id.*

Unlike *Grunewald*, which reversed convictions as time-barred after trial,¹² *Twiggs* (like this case) concerned a motion to dismiss a conspiracy charge as time-barred. Seeking to distinguish *Grunewald*, the State argued in *Twiggs* (as it does here) that the “defendants’ acts of concealment were part of the charged conspiracy, not a subsidiary conspiracy to conceal after the central criminal purposes of the conspiracy,” and highlighting four overt acts by defendants to support that argument.” 233 N.J. at 529-530.

¹² *Grunewald* “reversed the defendants’ convictions for conspiracy to defraud the United States because the Government failed to ‘show anything like an express original agreement among the conspirators to continue to act in concert in order to cover up, for their own self-protection, traces of the crime after its commission.’” *Twiggs*, 233 N.J. at 544 (quoting *Grunewald*, 353 U.S. at 404)).

But as previously stated, rather than defer to that charging language in the indictment (as the State urges here), the Supreme Court in *Twiggs* reviewed the grand jury presentation to determine whether it “presented sufficient evidence to survive defendants’ [] motions to dismiss their indictments’ conspiracy counts” by suggesting “a continuing course of conduct” designed “to insulate from discovery the co-conspirators’ roles in hindering and in the destruction of evidence.” *Id.* at 545. By doing so, *Twiggs* confirms that an indictment’s conclusory allegations that concealment was a conspiratorial objective are entitled to no deference on a motion to dismiss. Rather, courts confronted with such motions must look beyond the indictment’s facial characterization of alleged acts of concealment as conspiratorial “objectives” and determine whether “the central criminal purposes of [the] conspiracy have been attained” and whether those acts allege “merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment.” *Twiggs*, 233 N.J. at 544 (quoting *Grunewald*, 353 U.S. at 402).

In that vein, *Twiggs* concluded that the conspiracy charge was timely because concealment was its central objective. Specifically, the indictment in *Twiggs* alleged predicate crimes of tampering, obstruction, and hindering offenses to cover up a homicide, *i.e.*, a conspiracy which necessitates concealment. 233 N.J. at 544. And

the grand jury evidence confirmed that the defendants had engaged in a continuing course of conduct designed to conceal evidence regarding the homicide. *Id.*

Here, in stark contrast, the Indictment facially establishes that the central objectives of conspiracies charged were the allegedly extortionate purchase of rights affecting redevelopment properties on the Camden waterfront. Those commercial real estate transactions required extensive, publicly filed documents and generated enormous media attention. Nothing about those transactions involved concealment. Indeed, the Indictment goes out of its way to allege various efforts to publicize them.

Moreover, the Indictment's concealment allegation facially suggests, at most, "merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment." *Id.* That allegation has two components: (1) allegedly misleading statements to the media regarding the L3 complex made by defendants other than O'Donnell in October 2019, (Pa36-37 ¶¶91-92); and (2) a motion filed by Tambussi on behalf of Camden to exclude reference to George and Phil Norcross in Dranoff's unsuccessful lawsuit regarding the Radio Lofts building in August 2023, (Pa62-62, ¶¶155-157.) Both components thus allege sporadic acts that occurred several years after the conspiracies' central objectives – *i.e.*, the property rights' acquisition – were fully accomplished. Such random, belated acts bespeak, at most, "mere overt acts of

concealment,” not a central conspiratorial objective, and thus cannot extend those concluded conspiracies as a matter of law.

Similarly, the Indictment’s lone “intimidation and retaliation” allegation claims that defendants other than O’Donnell retaliated against Dranoff by causing Camden to delay issuing an approval related to the Radio Loft building through 2023, when Dranoff relinquished his redevelopment right in his failed lawsuit. That limited allegation, too, neither constitutes a central conspiratorial objective nor extends those concluded conspiracies under *Twiggs* and *Grunewald*.

In any event, those limited allegations cannot extend the charges against O’Donnell because they fail to assert any involvement by him or any relationship to the T/C Sub-Conspiracy. Rather, those acts were allegedly performed by defendants other than O’Donnell and concerned the two sub-conspiracies in which he is not charged or even mentioned.

Finally, those innocuous allegations facially fail to suggest any “intimidation” or “concealment” as a matter of law. The “intimidation” allegation bizarrely concerns Dranoff’s attempt to intimidate Camden by filing a lawsuit against Camden – but not any of the defendants – which he not only abandoned but had to pay Camden several million dollars for the privilege of surrendering. Equally bizarre, the “concealment” allegation concerns affirmative efforts to bring matters to the public’s attention (through media statements), not any effort to evade or hide, and a

respected attorney (Tambussi) simply doing his job by filing and arguing a routine pretrial motion in that same lawsuit. The innocent nature of those allegations – beyond their utter lack of any relationship to O'Donnell or the lone sub-conspiracy in which he is charged – underscores the absurdity of the State's position that they somehow resuscitated the time-barred charges against him.

In sum, the Indictment's allegations of "concealment" and "intimidation and retaliation" cannot extend the time-barred conspiracy charges.

F. The derivative charges are also facially time-barred.

Because the Indictment's conspiracy charges are facially time-barred, that same fate befalls the derivative charges of financial facilitation, corporate misconduct, and official misconduct. The financial facilitation and corporate misconduct charges are governed by the same 5-year SOL governing the conspiracy charges and rely entirely on the legally flawed theory that the tax credits charged therein "derived from" those time-barred conspiracies when, in truth, they did not as a matter of law. (*See supra* Point One, Section B.4.) That some of the tax credits issued within the SOL period is meaningless because the Indictment cannot allege any facts suggesting that they are criminal. To the contrary, the Indictment affirmatively and explicitly alleges that (1) uncharged entities, not the defendants, sought and received the tax credits; (2) the applications – which the State vetted, approved, and continues to this day to annually audit, certify and issue – involved no

concerted (much less criminal) activity by those entities (let alone the defendants); and (3) the entities first sought such credits in 2016 and remain eligible to receive more credits through 2030. And the State has continued to approve and issue tax credits to the uncharged entities even after the Indictment was filed.

The official misconduct charge relies on a few alleged official acts by Mayor Redd which occurred in 2013, 2014, and 2016, well before the applicable 7-year SOL expired on June 13, 2017. That Mayor Redd commenced a new job in the private sector six months later cannot extend that charge because the Indictment cannot allege that her acquisition of that position was either an official act or a criminal act. And in any event, the Indictment is utterly devoid of any fact allegations suggesting that O'Donnell had any interaction whatsoever with Mayor Redd or, for that matter, with anyone else in Camden's government. Nor does the Indictment allege any facts suggesting that he or anyone else did anything, or ever contemplated doing anything, that would corrupt her or her office.

CONCLUSION

We cannot improve on the trial court's succinct conclusion: "[W]hat did ... O'Donnell do? The answer, giving the State the benefit of every positive inference and accepting every fact alleged in the indictment as true, is simply nothing criminal." (Pa184.) O'Donnell is not alleged to have threatened Dranoff, agreed to threaten him, or even known of any threats against him, before or after they occurred.

Rather, he is alleged only to have agreed (in one passing remark) with two attorneys' recommendations that they engage in constitutionally protected petitioning. And that lone comment occurred – and the lone sub-conspiracy against him concluded – almost eight years before the State belatedly returned this ill-conceived Indictment.

The trial court correctly held that the Indictment's allegations of fact both fail to sustain the charges against O'Donnell and establish that those legally defective charges are facially time-barred. For either reason, the Dismissal Order should be affirmed in its entirety.¹³

Respectfully submitted,

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Dated: July 23, 2025

¹³ O'Donnell respectfully joins in the arguments advanced in the briefs filed by the other defendants/respondents to the extent those arguments apply to him.

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

GEORGE E. NORCROSS, III,
PHILLIP A. NORCROSS, WILLIAM
M. TAMBUSSI, 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

: On Appeal from:
SUPERIOR COURT OF NEW
: JERSEY
LAW DIVISION, MERCER COUNTY
:
INDICTMENT NO. 21-05-73-S
:
Sat Below: Peter E. Warshaw, P.J. Cr.

:
CRIMINAL ACTION
:

BRIEF OF DEFENDANT-RESPONDENT
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PRELIMINARY STATEMENT

The trial court properly dismissed the Indictment as to all Defendants, including former Camden Mayor Dana Redd, because it fails as a matter of law to allege the crimes charged. In 100 carefully reasoned pages, Superior Court Judge Peter E. Warshaw did not weigh facts, adjudicate credibility, or stray from precedent. Instead, His Honor examined whether the Indictment's allegations, taken as true, described crimes recognizable under New Jersey law. They did not and the trial court's order of dismissal was correct.

This is not a case about factual insufficiency or prosecutorial overreach. It is a case where, even granting full credit to every paragraph of the 111-page Indictment, the State has failed to allege a cognizable crime. The State attempts to criminalize political influence, routine governmental discretion, and alleged business threats. It does so by stretching extortion, coercion, racketeering, and misconduct statutes far beyond their text and purpose. But it is not enough for the State to assert that power was wielded aggressively or that public-private partnerships were unsavory. The Indictment must allege crimes. Here, it does not.

A Superior Court judge has the inherent, mandatory authority to dismiss a palpably defective Indictment when the allegations in an indictment do not support the charges. That mandate is not new or exclusively applied to this case. That is the

law of this State, rooted in constitutional principles and due process, and well accepted by our courts.

Ironically, the State accuses the trial judge of writing his own rules and nonetheless asks this Court to endorse an unprecedented framework that precludes a trial judge from dismissing an Indictment until the State has had an opportunity to investigate its case and to engage in the discovery practice. In re-writing the rules, the novel approach proffered by the State would also preclude a facial dismissal until a trial court has analyzed the grand-jury transcripts.

Requiring a defendant to endure a prosecution, premised on a facially deficient Indictment, so that the State can “investigate its case” and “engage in the discovery process” is the quintessence of injustice.

Here, the trial court recognized that the allegations conjured by the State were fundamentally and fatally flawed, warranting dismissal, without having to review the grand jury presentation, much less conduct a trial. The Indictment accuses lawyers of criminal acts and racketeering because they made statements to members of the media. The Indictment accuses George Norcross of criminal acts and racketeering because he used curse words in negotiations with a rival developer. The Indictment accuses George Norcross’s business partners of criminal acts and racketeering because they stood to benefit from successful development projects.

Most unusually, the Indictment accuses Former Camden Mayor Dana Redd of criminal acts—racketeering and Official Misconduct—without alleging a single criminal or conspiratorial act whatsoever. Former Mayor Redd is nowhere alleged to have taken bribes, threatened anyone, enriched herself, or deviated from lawful authority in any way. The most the Indictment claims is that she “aligned” with certain political or economic actors. Even if true, “alignment” is not misconduct; it is a feature of representative democracy. To convert it into a crime would turn the criminal code into a political weapon.

The State argues that the trial court adopted an unheard-of form of review. Essentially, the State’s position is that a grand jury’s accusation, no matter how legally defective, is immune from judicial scrutiny. That is not and has never been the law. Courts do not ignore the misuse of the criminal process and should not do so here.

Requiring presumably innocent individuals to suffer the cost, expense, and risk of a criminal prosecution and trial on a patently deficient indictment serves no purpose in our justice system; it only serves to burden the defendants and the courts. Well-established authority supported a dismissal. And that is what the trial judge did and why he did it.

STATEMENT OF FACTS

The State's appellate "Statement of Facts" (falsely) accuses the Respondents of "Plotting" and "Scheming" and "Conspiring" and "Extorting" and "Threatening" as a means to advance private development in the City of Camden.

These are allegations, however, not facts. Importantly, the allegations against Former Camden Mayor Dana Redd do not support the inferences the State seeks to advance, even when taken as true and viewed in the light most favorable to the State.

Dana Redd won Camden's mayoral election in 2010. (Pa8). ¹ Indisputably, in the proceeding decades, Camden had experienced a multi-generational and spiraling increase in crime, homelessness, and urban decay. Due to her efforts, and the efforts of other community leaders and organizations, including Cooper Hospital and the Cooper's Ferry Partnership ("CFP"), it equally indisputable that the City of Camden has experienced a rebirth in the last fifteen years.

Cooper University **Hospital** is one of the largest employers in Camden and plays a vital role in supporting the city and community. The Cooper **Foundation** "supports the charitable purposes, programs and services of Cooper Health and its affiliates" including CFP. (Pa7, 35). Cooper's Ferry **Partnership**

¹ Pa refers to the State's appendix, accompanying its amended brief. None of the material factual assertions in this brief are sourced from anywhere but the State's Indictment.

was a private nonprofit corporation dedicated to planning and implementing redevelopment projects in the City of Camden. It was first founded in 1984 as Cooper's Ferry Development Association ("CFDA") with a focus on the Camden Waterfront. It worked with the public and private sectors to redevelop the Camden Waterfront. In 2011, CFDA merged with the Greater Camden Partnership to form CFP with the mission to create sustainable economic and community development.

(Pa9).

George Norcross was the chair of the board of trustees of Cooper University **Hospital**. (Pa1). Philip Norcross was the chair of the Cooper **Foundation**. (Pa6).

Dana Redd was one of the co-chairs of Cooper's Ferry **Partnership**. (Pa30).

I. THE L3 PROJECT

The L3 Project was not a project sponsored by or associated with the City of Camden; it was a private development project related to CFP (now known as Camden Community Partnership). (Pa21-31).

Around 2013, CFP began looking into acquiring the L3 Complex, a pair of three-story buildings on a large lot near the Waterfront. (Pa21). At the same time, Cooper Health was considering relocating its headquarters out of Camden, a proposal that would have had a devastating impact on the City and CFP. (Pa27). Cooper Health officials had "determined that it could not, even with tax credits obtained from the [Economic Opportunity Act of 2013 ("EOA")], afford to construct its own office building in Camden." (Pa21) By April 2014, Cooper

Health leaders concluded that the L3 Complex was the only workable alternative. (Pa26-27).

The State alleges that CFP subsequently entered an agreement in January 2014 to buy the L3 Complex from the Economic Development Authority (“EDA”) at a discounted price, which the EDA could allow due to CFP’s nonprofit status. (Pa24). The State further alleges that CFP “planned” to partner with an investor in the purchase, and it chose Keystone Property Group and Mack-Cali Realty Corporation (KPG/MC). (Pa24)

The State further alleges that, shortly thereafter, Cooper Health CEO-1 told both CFP’s CEO and CFP’s President that George Norcross was angry that CFP was involved in purchasing the L3 Complex and that they should meet with Philip Norcross about the deal. (Pa24-25).

In this context, the State alleges that Former Mayor Redd’s chief of staff (not Mayor Redd herself or alleged at her direction) told CFP to meet with Philip Norcross, to make sure everyone was comfortable with CFP’s “various projects.” (Pa22). To the extent that Former Mayor Redd did or said anything **herself**, she did so as a Board Member and co-chair of CFP, not in her official capacity as mayor. (Pa30).

But from the start, CFP’s would-be acquisition of L3 concerned George Norcross. In short, he believed CFP “would fail” because they “did not know what

they were doing.” (Pa24). And George Norcross did not want the L3 redevelopment to fail, in part because it was the best space for Cooper Health, which he wanted to relocate to the Waterfront as part of his personal commitment to the revitalization. (*See* Pa27-28).

Concerns spiked after CFP announced it was going to partner with a non-local firm (KPG/MC) to handle this project. (Pa25, 27). Philip Norcross pressed CFP to abandon that partner and enter a venture with Investor-1 instead. (Pa25). CFP did not want to because the non-local firm allegedly offered more favorable terms. (Pa29). Eventually, though, CFP relented, after Philip Norcross squarely told the CEO of CFP that they were “not allowed” to use KPG/MC, and “should only use Investor-1.” (Pa14). The CEO allegedly “understood” this instruction to be an implicit “threat,” based not on what was said but on who said it; as the CEO saw it, the Norcrosses were powerful in New Jersey and were not known as happily spurned men. (Pa23, 28).

The result was that CFP scrapped plans to partner with KPG/MC; eventually, an investor group—through which the Norcrosses were indirectly involved—acquired the L3 Complex. (Pa31-32). Cooper Health later moved in and has received incentive tax credits from New Jersey as a consequence—a great success for the City and mayor. (Pa33-34).

II. RADIO LOFTS AND VICTOR VIEW EASEMENT²

As it pertains to Former Mayor Redd in her official capacity, this Indictment stems from a civil litigation between Developer Carl Dranoff and the City of Camden related to a blighted building in the city that sat vacant for decades: the Radio Lofts. (*See* Pa11-12). The Radio Lofts building is an important parcel because it is the first building visible in Camden when traversing the Benjamin Franklin Bridge from Philadelphia. (Pa182).

More than twenty-two years ago, on August 20, 2002, the Camden Redevelopment Authority (“CRA”) and Dranoff executed an option agreement for Radio Lofts (the “Option Agreement”). (Pa40-41). In the Option Agreement, the CRA granted Dranoff an exclusive option to enter into a redevelopment agreement with the CRA to purchase and redevelop Radio Lofts (the “Radio Lofts Redevelopment Agreement”). (Pa40-41). The Option Agreement provided that the Radio Lofts Redevelopment Agreement “shall provide [that] . . . environmental remediation with respect to [Radio Lofts] as may be required by the New Jersey Department of Environmental Protection . . . shall have been completed . . .” *Ibid.*

² The State alleges, “Between 2018 and 2023, Defendants worked together to use their control over Camden government to leverage Developer-1’s interests in the Radio Lofts and Victor Lofts properties.” State Br. at 8. Dana Redd was no longer in office at this time. (*See* Pa8 (explaining that, “[f]rom 2010 to 2018, [Dana Redd] served as the Mayor of the City of Camden”)).

In other words, the CRA owned the property, but Dranoff had the right to develop the Radio Lofts. (Pa40-41). Importantly, the City wanted Dranoff to develop the Radio Lofts as a residential, **not** commercial property. *Ibid.* Consequently, the parties entered an agreement memorializing this provision. *Ibid.*

A decade after the agreement was signed, the Radio Lofts building had not been developed. (Pa40-41). It still isn't. (*See* DRDa070).

Dranoff determined not to develop the property as a residential property because, after the agreement was entered, he learned that there was a significant presence of dioxin in the building that required environmental remediation. (Pa49). The New Jersey Department of Environmental Protection ("DEP"), however, required post-construction testing. *Ibid.* This meant that Dranoff would not know whether the remediation was successful until **after** he redeveloped the residential property—an undesirable condition he would not accept. *Ibid.*

Consequently, Dranoff changed course, seeking to renege on the agreement and attempted to persuade Camden to allow commercial, as opposed to residential, development of Radio Lofts. (Pa49). The DEP testing requirements were more relaxed for commercial buildings. *Ibid.*

While Dranoff's attorneys were negotiating the zoning issue with City officials, including the CRA, Dranoff sought to bypass the CRA, zoning board, and

the City's attorney's office and schedule a meeting with Former Mayor Redd—allegedly. (Pa49-50).

The Indictment alleges that Former Mayor Redd did not return the call because Defendant Philip Norcross suggested she not return the call at a time when Dranoff was actively in private negotiations related to the waterfront development. (Pa50).

PROCEDURAL HISTORY

I. THE INDICTMENT

On June 13, 2024, Former Mayor Redd was charged by Indictment with one count of first degree racketeering conspiracy, in violation of *N.J.S.A.* 2C:41-2(d); two counts of first degree conspiracy to commit theft by extortion, criminal coercion, financial facilitation of criminal activity, misconduct by corporate official, and Official Misconduct, in violation of *N.J.S.A.* 2C:5-2, related to the L3 Complex, Triad1828 Centre, and 11 Cooper; six counts of first degree financial facilitation of criminal activity, in violation of *N.J.S.A.* 2C:21-25(a) and (c), related to the Triad1828 Centre, L3 Complex, and 11 Cooper tax credits; two counts of second degree misconduct by a corporate official, in violation of *N.J.S.A.* 2C:21-9(c), related to Cooper Health and the Triad1828 Centre and 11 Cooper companies; and one count of second degree Official Misconduct, in violation of *N.J.S.A.* 2C:30-2. (Pa81-110).

The Indictment contains only eleven references to Former Mayor Redd.

Those allegations are identified as follows, as set forth exhaustively by the trial judge in his Opinion, who assumed the truth of the facts alleged and gave the State the benefit of every conceivable inference:

- “In 2013, the Mayor’s chief of staff [not the mayor] told Cooper’s Ferry Partnership CEO-1 that he should meet regularly with Philip Norcross. Ind. ¶ 49.” (Pa195).
- “In 2014, the Mayor declined to intercede when CFP CEO-1 asked for help when the L3 complex deal was being negotiated. Another [private citizen] person, CC-2, was asked to help as well. They both told CFP-CEO-1 that he had to deal with Philip Norcross. She also told CFP CEO-1 that his job was in jeopardy. Ind. ¶ 77.” (Pa196).
- “In 2015, the Mayor attended a press conference announcing LPT’s plans for the Camden waterfront. The Governor was also present. Ind. ¶ 106.” (Pa196).
- “In 2016, the Mayor signed a letter to the EDA on behalf of the City of Camden **supporting** Developer-1’s application for ERG tax credits for the residential development contemplated as a joint venture between DPI and TMO. Ind. ¶ 113.” (Pa196) (emphasis added).

- “In or around 2016, the Mayor failed to return Developer-1’s phone calls even though she used to do so. This was pursuant to the instruction of Philip Norcross. Ind. ¶¶ 124-125. Developer-1 wanted to discuss the Radio Lofts project.” (Pa196).
- “In December 2017, CFP CEO-1 was told [not by Former Mayor Redd but by another person] that Defendant Redd needed a job when her mayoral term ended, and she would become the CEO of the Rowan-Rutgers Joint board and the person she replaced as CEO would take CFP CEO-1’s position. Ind. ¶ 174. This led to CFP CEO-1’s resignation. Ind. ¶ 180. In accepting the new position, Defendant Redd benefitted greatly from the new pension legislation shepherded by the Senate President which helped only a “handful of people.” Ind. ¶ 178.” (Pa197).

II. DEFENDANTS’ MOTION TO DISMISS

Defendants moved to dismiss the Indictment because it failed to allege the crimes charged. And, despite the State’s pre-argument attempts to characterize Defendants’ briefs as implicating evidence outside the Indictment,³ Defendants made clear that they were only asking the trial court to consider whether—accepting everything in the four corners of the Indictment as true—any crime had

³ See State Br. at 14-15 (citations omitted).

been alleged.⁴ *See* 1T at 34:19 – 35:6; 4T at 6:6-8, 11:14-19, 18:1-3, 18:24 – 19:2, 21:3-7, 21:20-22, 23:25 – 24:2, 26:19-20, 28:16 – 29:6, 30:8—12, 31:1-3, 33:2-6, 34:21-23; Pa214-218.

At oral argument, Defendants maintained that dismissal of the Indictment was necessary because it alleged no crime against any of the Defendants. *See generally* 5T. With respect to Former Mayor Redd in particular, defense counsel argued that: (1) a trial court has the authority to dismiss an indictment on a facial challenge because whether an act is illegal is a question of law (5T at 168:17 – 171:11); (2) none of the acts attributed to Former Mayor Redd constitute Official Misconduct (*id.* at 171:12 – 179:4); (3) the Official Misconduct charge is barred by the statute of limitations (*id.* at 179:5-21); (4) any count dependent on Official Misconduct must also be dismissed (*id.* at 169:2-6, 179:24 – 180:1); and (5) the Indictment did not allege any essential facts tying Former Mayor Redd to any of the other crimes charged (*id.* at 169:8-17, 180:1-13).

III. THE TRIAL COURT’S OPINION

On February 26, 2025, the trial court granted Defendants’ motion and dismissed the Indictment in its entirety.

⁴ 1T refers to a transcript dated July 9, 2024.

2T refers to a transcript dated August 7, 2024.

3T refers to a transcript dated September 10, 2024.

4T refers to a transcript dated October 16, 2024.

5T refers to a transcript dated January 22, 2025.

a. A Facial Challenge Was Appropriate.

At the outset, the trial court agreed with Defendants that “when the allegations in an indictment do not support the charges, the indictment is palpably defective and subject to dismissal.” (Pa152). With that in mind, the court found that “[t]he facial challenge defendants bring is appropriately heard because the argument makes no reference to the grand jury record, and because it assumes that every factual allegation in the Indictment is true and was adequately supported before the grand jury.” *Ibid.* More specifically, the court “disagree[d] with the State’s argument that defendants [were] really just attacking the persuasiveness of the Indictment’s narrative by challenging how alleged conduct should be interpreted” and explained that it was only “consider[ing] that which is factually alleged against the conduct proscribed by statutes.” (Pa153).

b. The Indictment Was Dismissed Against Former Mayor Redd Because She Was Not a Member of an Enterprise and Did Not Commit Official Misconduct.

With respect to Former Mayor Redd in particular, the trial court concluded that she was not a member of an enterprise and did not commit Official Misconduct. (Pa192-200). To reach this conclusion, the court first set forth each and every allegation against Former Mayor Redd, assuming the factual allegations as true and giving the State the benefit of every conceivable inference. (Pa195-197). The court emphasized that “[t]he indictment does not say much about

[Former Mayor Redd's] actual conduct.” (Pa195). The court correctly observed that those few acts “largely entail[ed] day to day discretionary decisions” which did not constitute “an unauthorized exercise of her official functions.” (Pa198). Rather, the court noted that “[a]ll facts alleged in the indictment are presumed true,” but “[c]onclusions drawn as to the law and the State’s arguments as to how facts are to be interpreted do not get the same deference.” (Pa199). More specifically, the court explained:

[A] mayor has the right to consult citizens’ groups which include powerful, unpopular people in public policy discussions as critical as the redevelopment of a blighted city. A mayor has the right to hold an opinion as to the best redevelopment options and the right to favor one side over the other and the right to participate in a press conference attended by the sitting Governor. It should be noted that this Mayor did these things but, at the same time supported her less favored developer’s application for ERG tax credits: a mayor has the right to hedge her bets in an effort to keep the City’s redevelopment moving forward. A mayor has the right to join forces with coalitions which she believes have the best chance of prevailing. There was no non-discretionary duty of allegiance or support owed by Redd to CFP CEO-1 or Developer-1. And she had no official duty to keep either of them from getting hurt financially, personally, or reputationally. A mayor has the right to decide which phone calls she returns.

(Pa198).

Even in the context of the rest of the Indictment, the trial court could find no support for the State’s assertion that “all discretionary decisions made by Redd

discussed in the Indictment were made because of allegiance to the Enterprise.” (Pa199).

Further, while the trial court assumed that there may be “room to criticize the apparently close, mutually beneficial political relationship that the Mayor shared with George Norcross, a man of formidable influence,” it also expressed concern that the misuse of a public office required for Official Misconduct “does not include every bad or self-interested act performed by a public servant.” (Pa199-200). In this case, “[t]he facts alleged by the grand jury and accepted as true by the court do not support the notion that Mayor Redd compromised the duties of her office with an intention to benefit herself or anyone else.” (Pa200). Indeed, “[t]he court c[ouldn’t] interpret the indictment to conclude that Redd’s new job was a reward, or a benefit, for service to the enterprise.” *Ibid.*

c. The Indictment Was Dismissed Because the Charges Were Facially Time-Barred.

Finally, the trial court concluded that the Indictment’s dismissal was mandated—even if it was not facially deficient—because the charges—even if validly alleged—were time-barred by the applicable statute of limitations. (Pa200-210).

First, the trial court explained that, to be timely, the racketeering conspiracy charged in Count One of the Indictment “must have continued beyond June 13, 2019.” (Pa202). Although the Indictment alleged a time frame of “between 2012

and the date of the Indictment” and purported to delineate the purposes of the enterprise, the trial court noted that “[t]he alleged time frame and the alleged purposes of the enterprise are not facts. They are allegations, assertions and, ultimately, conclusions.” (Pa202). Thus, the court examined the individual acts alleged to determine whether the charge was timely. (*See* Pa202-209). In its examination, the court found that “many critical events occurred prior to June 13, 2019” (Pa202-203) and none of the acts that occurred after June 13, 2019 were sufficient to extend the conspiracy. (Pa203-209).

Second, the trial court found that Official Misconduct, as charged in Count Thirteen of the Indictment, was also time-barred. (Pa209-210). Although “[t]he time frame alleged for the commission of th[e] offense [wa]s between January 1, 2014 and December 31, 2017,” the only time within the limitations period was between June 13, 2017 and December 31, 2017. (Pa209). The court further rejected the State’s argument that the charge was timely because “the crime continued until the end of 2017” and the Enterprise operated continuously between June and December 2017. (*e.g.*, the end of Former Mayor Redd’s mayoral term). *Ibid.* Instead, the court found that “[n]o action [Former Mayor Redd] took between June and December 2017, as described in the indictment, was criminal” and “[n]othing any other defendant did constitutes aiding and abetting.” (Pa210). Indeed, “[a]ll [Former Mayor Redd] did after June 2017 was finish her term and get a job.” *Ibid.*

JOINDER

Defendant-Respondent Dana L. Redd respectfully joins the briefs filed by Defendant-Respondents George E. Norcross, III, Philip A. Norcross, William M. Tambussi, Sidney R. Brown, and John J. O'Donnell. She submits this brief in opposition to the State's appeal based on legal arguments and circumstances pertaining to her, specifically Official Misconduct.

LEGAL ARGUMENT

I. A TRIAL COURT HAS THE AUTHORITY TO DISMISS AN INDICTMENT IF IT IS FACTUALLY UNSUPPORTED ON ITS FACE.

The State criticizes the trial court for conducting what it calls a “novel” form of review, claiming it created an “unprecedented” facial standard by relying solely on the text of the Indictment without reviewing the grand jury record. State Br. at 21-23. That criticism is itself unsupported by case law and misplaced. Indeed, it is the State that is propounding a novel form of review here, one that essentially involves the trial and appellate courts deferring entirely and exclusively to the State to construct and prosecute an indictment of its own design, without regard to whether the indictment alleges actual criminal offenses under New Jersey law.

Under our law (law that applies equally to the State's prosecutive authority), it is well-settled that the “essential facts constituting the crime must be directly stated in the indictment,” rather than “supplied by inference or implication.”

George E. Norcross, III Br. at 18, 32, 41, 51 (quoting *State v. De Vita*, 6 N.J. Super. 344, 347 (App. Div. 1950) and citing *State v. Dorn*, 233 N.J. 81, 93-94 (2018); *State v. Saad*, 461 N.J. Super. 517, 522-23 (App. Div. 2019); *State v. Newell*, 152 N.J. Super. 460, 466-68 (App. Div. 1977)); *see also* Sidney R. Brown Br. at 17-18 (citations omitted). It is likewise well-established that whether an indictment charges a crime is a question of law to be decided by the court. *State v. Schneiderman*, 20, N.J. 422, 426 (1956). Accordingly, “where [an] indictment is factually unsupported . . . on its face . . . dismissal is appropriate.” *State v. Mason*, 355 N.J. Super. 296, 299 (App. Div. 2002); *see also* Sidney R. Brown Br. at 18-19 (collecting cases).

The State argues on appeal that “[t]he trial court’s sole justification for proceeding” to “judge[] the Indictment’s validity based solely on the sufficiency of the facts detailed therein” “was that the grand jury returned a ‘speaking indictment’ and therefore ‘open[ed] the door’ to [a] sufficiency-of-the-evidence-in-the-indictment analysis.” State Br. at 20 (citation omitted). Not so.

As the trial court noted, it reviewed every word of the 111-page Indictment to determine whether the charges could be sustained as a matter of law, and explicitly stated it was not weighing the sufficiency of the grand jury evidence (and did not do so). (Pa125-127). Contrary to the State’s contention, the trial court’s methodology—reviewing the Indictment “on its face”—is both valid and long-

recognized. The trial court made explicitly clear: “[t]hat a speaking indictment was used does not change the standards governing a motion to dismiss.” (Pa151). The trial court went on to explain that “when the allegations in an indictment do not support the charges, the indictment is palpably defective and subject to dismissal.” (Pa152) (citing *State v. Brady*, 452 N.J. Super. 143 (App. Div. 2017)). Thus, the trial court appropriately “consider[ed] that which is factually alleged against the conduct proscribed by statutes” to determine whether the alleged acts fell within the statute(s) invoked. (Pa153) (citing *State v. Perry*, 439 N.J. Super 514 (App. Div. 2015); *State v. Riley*, 412 N.J. Super. 162, 169 (App. Div. 2009)).

II. THE STATE FAILS TO APPRECIATE THE DISTINCTION BETWEEN LEGAL AND SUFFICIENCY-OF-EVIDENCE CHALLENGES.

The State devotes considerable attention to the proposition that a trial court **must** review the “record before the grand jury entirely” to evaluate an indictment. State Br. at 2, 19-23. But that assertion is true only when the motion challenges the **sufficiency** of the evidence. Where, as here, the motion argues that the facts alleged in the Indictment fail to state a crime, a facial review is proper.

As the New Jersey Supreme Court has made clear, there are two distinct ways in which a defendant may challenge an indictment: (1) a sufficiency-of-evidence challenge, which requires review of the grand jury record, and (2) a legal sufficiency or facial challenge that looks only to the indictment’s allegations and

whether they state a crime. *State v. Brady*, 452 N.J. Super. at 158 (quoting *State v. Morrison*, 188 N.J. 2, 12 (2006)); *see also State v. Hogan*, 144 N.J. 216, 229 (1996); State Br. at 23.⁵

In short, therefore, the trial court’s approach was entirely consistent with precedent. Its task was to determine whether the Indictment—on its face—charged conduct that meets the legal definitions of the crimes alleged. It correctly concluded that it did not.⁶

III. THE TRIAL COURT GAVE THE STATE THE BENEFIT OF ALL INFERENCES.

A trial court deciding a motion to dismiss an indictment “determines ‘whether, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, a grand jury could reasonably believe that a crime occurred and that the defendant committed it.’” *State v. Saavedra*, 222 N.J. 39 (2015). Contrary to the State’s arguments, the trial court

⁵ For a more fulsome discussion of the types of motions to dismiss that can be brought, Former Mayor Redd explicitly joins in and relies upon Section I of Defendant-Respondent Sidney R. Brown’s brief.

⁶ The State relies on various federal authority, including *Kaley v. United States*, 571 U.S. 320 (2014), for the proposition that “a challenge to the reliability or competence of the evidence supporting a grand jury’s finding of probable cause will not be heard.” State Br. at 22. The State’s reliance on *Kaley* is inapt. *Kaley* involved the validity of a pretrial asset freeze in the face of a facially sufficient indictment; it did not concern a trial court’s ability to dismiss charges that fail to allege a crime. The trial court here made no factual findings and explicitly avoided any evidentiary evaluation—precisely what *Kaley* prescribes.

here **did** give it the benefit of all rational inferences before correctly concluding that the Indictment must be dismissed because it did not allege any crime.

With respect to Former Mayor Redd, the State asserts that the trial court improperly “made sweeping conclusions about what motivated Redd . . . based only on the Indictment.” State Br. at 44. Had the trial court reviewed the grand jury materials, the State promises that it could have made a convincing presentation as to why the inferences it asked the trial court to draw about the motivations behind Former Mayor Redd’s actions were correct. *Ibid*.

In essence, the State proposes an unwarranted break with well-established case law. An indictment must state each of the elements of the charged offense and the essential conduct that violated each of those elements. What the State proposes here—requiring a review of “thousands of pages of grand-jury transcripts and exhibits”—is untenable, unsupportable, and unnecessary.

In any event, the trial court’s review **was** limited to what was in the Indictment. The court, consistent with the authorities set forth below, scrutinized the legal adequacy of the charges. It did not challenge the grand jury’s role. Rather, it asked the essential question: Assuming every factual allegation is true, do these allegations constitute crimes under New Jersey law? (Pa117-120, 148-149). Finding they did not, the trial court correctly dismissed the Indictment.

The State’s assertion that the Indictment should be reinstated because there was evidence presented to the grand jury supporting the Indictment allegations (State Br. at 2-3) misses the point, too. The relevant question is not whether the grand jury heard evidence—but whether, taken at face value, the Indictment’s allegations describe criminal conduct. They do not. And, because the Indictment contained no allegations of fact to support the inference that Former Mayor Redd undertook otherwise lawful actions for an unlawful purpose, dismissal of the Indictment was proper.

IV. THE INDICTMENT DOES NOT VALIDLY ALLEGE CRIMINAL EXTORTION.

The trial court accurately identified that “[t]he validity of every count in th[e] thirteen-count indictment depends upon the existence of unlawful threats” and ultimately concluded that “[t]he indictment must be dismissed because its factual allegations do not constitute extortion or criminal coercion as a matter of law.” (Pa153, 155). The brief filed by Defendant-Respondent George E. Norcross, III—and supplemented by Defendant-Respondents Philip A. Norcross, Sidney R. Brown, and John J. O’Donnell—conclusively establish that the court’s finding was correct. For purposes of brevity, Former Mayor Redd expressly joins in the briefs filed by George E. Norcross, III, Philip A. Norcross, Sidney R. Brown, and John J. O’Donnell related to this argument in its entirety.

V. THE INDICTMENT DOES NOT VALIDLY ALLEGE THAT FORMER MAYOR REDD WAS A MEMBER OF A RICO CONSPIRACY.

The trial court correctly dismissed Count One of the Indictment because there was no racketeering enterprise. (Pa174-200). With respect to Former Mayor Redd in particular, the court found that

To conclude that all discretionary decisions made by [her] discussed in the Indictment were made because of allegiance to the [so-called] Enterprise is not a conclusion supported by a review of every word in the Indictment. There is no evidence of even a vague promise that [she] would be taken care of when her term ended.

(Pa199).

Indeed, the court elaborated that it could not “interpret the indictment to conclude that [Former Mayor] Redd’s new job was a reward, or a benefit, for service to the [alleged] enterprise.” (Pa200).

Finally, the court noted that “[t]he reasons discussed as to other alleged Enterprise members generally apply to [Former Mayor] Redd as well.” *Ibid.* To that end, and for purposes of brevity, Former Mayor Redd expressly joins in the brief filed by Defendant-Respondent Sidney R. Brown related to the dismissal of the RICO conspiracy charge in its entirety.

VI. THE INDICTMENT DOES NOT VALIDLY ALLEGE OFFICIAL MISCONDUCT.

The trial court correctly dismissed Count Thirteen of the Indictment (“Official Misconduct”) because it fails to state a valid offense against Dana Redd in her capacity as Mayor of Camden. The Official Misconduct statute criminalizes abuses of public power—acts taken with corrupt intent, outside lawful authority—not discretionary or controversial policy choices. *State v. Begyn*, 34 N.J. 35, 49 (1961) (“misconduct in office is **corrupt misbehavior** by an officer in the exercise of the duties of h[er] office or while acting under color of h[er] office”) (emphasis added and internal quotation marks omitted); *id.* at 50 (the indictment must charge and the proofs must “support the conclusion that the acts alleged were done with evil motive or in bad faith”).

At most, the Indictment alleges that Former Mayor Redd advanced redevelopment policies favored by a political coalition. That is governance, not misconduct.

A. Elements of Official Misconduct *N.J.S.A. 2C:30-2*.

A public servant may only be accused of Official Misconduct if:

with purpose to obtain a benefit for h[er]self or another or to injure or deprive another of a benefit: (a) [sh]e commit[ed] **an act relating to h[er] office but constituting an unauthorized exercise of h[er] official functions**, knowing that such act is unauthorized or [s]he . . . committ[ed] such act in an unauthorized manner; or (b) [sh]e **knowingly refrain[ed] from**

performing a duty which is imposed upon him by law or is clearly inherent in the nature of h[er] office.

N.J.S.A. 2C:30-2 (emphasis added).

In other words, the Official Misconduct statute allows for a prosecution if the official “committed an act relating to her office” (subsection (a)) **or** “refrain[ed] from performing a duty” (subsection (b)). This disjunctive provision sets forth two distinct theories of prosecution.

The State has expressly confirmed that the prosecution against Dana Redd is pursuant to 2(a), **not** 2(b). (State Br. at 74; *see also* Pa194 (“The State is proceeding only pursuant to N.J.S.A. 2C:30-2(a)”)).

The Official Misconduct statute—especially 2(a)—is not about **any** misconduct done by an official; instead, it requires some specific exercise of **power or authority**. Put differently, there must be some **use** of the office. *See State v. Morrison*, 227 N.J. 295, 309 (2016) (Official Misconduct requires a misuse of “governmental authority”); *Saavedra*, 222 N.J. at 60-61 (“[A]n act sufficiently relates” to office when the officer “commit[s] an act of malfeasance because of the office [he] hold[s] or because of the opportunity afforded by that office”); *State v. Kueny*, 411 N.J. Super. 392, 407 (App. Div. 2010) (“[T]he wrongdoer must rely upon his or her status as a public official to gain a benefit or deprive another”).

B. The Factual Allegations Against Former Camden Mayor Dana Redd Pursuant to *N.J.S.A. 2C:30-2(a)* are Facially Deficient.

The legal significance of the State's concession in this regard cannot be overstated, as it conclusively and fatally undermines the State's theory of prosecution against Former Mayor Redd. In other words, the State cannot sustain the case even if the factual assertions in the Indictment are assumed to be true. Why? The very narrow and limited set of allegations that remain are entirely unrelated to actions Dana Redd took in an official capacity. Indeed, they relate **only** to her function as co-chair of CFP, a private, non-profit organization. In addition, even if she was appointed *ex officio* to the CFP board, her CFP-related actions did not make use of her official mayoral office. (See Pa22 (alleging that Dana Redd's chief of staff told CFP CEO-1 that he should meet with Philip Norcross and herself to make sure that CFP had the approval of the Norcrosses for CFP's various projects); Pa30 (alleging that Dana Redd, as co-chair of CFP, told CFP CEO-1 that he had to deal with Philip Norcross to resolve issues related to the L3 transaction and that his (CFP CEO-1's) job was in jeopardy); Pa31 (alleging that Dana Redd, as co-chair of CFP, told CFP CEO-1 that CC-1 would replace Cooper Health CEO-1 on the board and as co-chair of CFP, in part because having CC-1 as co-chair would help get CFP back on the good side of George Norcross)). Thus, because they neither "relat[e] to h[er] office nor "constitute an unauthorized

exercise of h[er] official function” (in the words of the statute), they cannot constitute Official Misconduct.

On appeal, the State first argues that “the [trial] court’s conclusion that Redd committed no unauthorized act cannot be squared with the point that using one’s public office to commit crimes is not authorized.” State Br. at 75. In other words, the State relies upon the tautology that Official Misconduct prohibits a public official from committing crime and, therefore, Former Mayor Redd committed Official Misconduct because she committed crimes. The Indictment, however, does not allege that Former Mayor Redd committed any crime constituting Official Misconduct or otherwise. The actions attributed to her are entirely benign and could not constitute crimes even if they were performed with bad intent. Her actions—supporting legislation, executing redevelopment policies, making appointments, attending public events—were squarely within the scope of her elected role. Her alleged non-actions—not returning calls, declining to intercede in a private dispute—are squarely within her legitimate prerogatives. This is everyday, routine, innocent official activity, not clandestine maneuvering. Of course, had the State alleged that Former Mayor Redd’s actions (or non-actions) were undertaken after receiving a bribe, for example, they could be criminal actions. But nowhere does the indictment allege that Former Mayor Redd took bribes, received personal financial benefits, threatened or coerced anyone, or acted

outside the normal and accepted and legal bounds of mayoral discretion and activity. Thus, the State’s argument that Former Mayor Redd committed official misconduct by using her office to commit crimes falls apart.

C. The Indictment Does Not Allege That Former Mayor Redd Used Her Office to Commit a Crime; Only Ordinary Political Interactions with Constituents and Stakeholders.

The Indictment’s allegations regarding Former Mayor Redd are scattered throughout the 111-page document. They may be difficult to decipher, but in any event are altogether facially deficient. To be clear: the Indictment barely mentions Former Mayor Redd; where it does, it depicts garden-variety political and governing activities—not anything ethically untoward, much less unlawful. The Indictment does not even try to specify any official duties or any legal authority Former Mayor Redd allegedly violated. It simply asserts that the Mayor (somehow) fell below the “highest ethical standards of public service” and failed to “devote her best efforts to the interests of the city.” (Pa109-11). Naturally, New Jersey law does not subject public officials to a “best efforts” standard, punishable by prison. The Indictment thus falters light years away from alleging any criminal offense involving Former Mayor Redd.

As set forth above, Official Misconduct requires misuse of office; it does not include every bad or self-interested act performed by someone who happens to be a public official. *See State v. Kueny*, 411 N.J. Super. at 404-07; *accord State v.*

Hupka, 407 N.J. Super. 489, 511 (App. Div. 2009). The self-interested behavior must be official action in violation of some legal limitation. That is not to say the conduct must be independently criminal; nor must the legal limit or duty be expressly enumerated in a statute, rule, or regulation. *Kueny*, 411 N.J. Super. at 404-07; *accord Hupka*, 407 N.J. Super. at 511. But the official must use her office in a way that crosses an “unmistakabl[e]” legal line—that is, she must contravene a concrete legal command that squarely regulates some aspect of her position. *Brady*, 452 N.J. Super. at 164; *see also, e.g., State v. Thompson*, 402 N.J. Super. 177, 198 (App. Div. 2008). To commit a crime, an official must cross a “non-discretionary” line—a law, regulation, inherent duty, or the like—that is “so clear” it holds the force of law. *See* 1971 Commentary, at 291. Naturally, this principle is derived from fundamental criminal law tenets: the need for notice to the putative offender that her conduct is illegal and the need for intent of a criminal nature.

Correspondingly, the basis for these requirements is clear: New Jersey’s Official Misconduct statute is not a malleable license for prosecutors to criminalize every act they deem a “breach of good judgment,” *Brady*, 452 N.J. Super. at 164, or to enforce the “general [ethical] standards” of public office, *Thompson*, 402 N.J. Super. at 200. Rather, the statute distinguishes between an official contravening a “moral or ethical” obligation, and that official using her office to breach a “specific legal duty.” *Cannel*, New Jersey Criminal Code Annotated, at 583. Only the latter

is criminal. *See ibid.*; *see also State v. Tolotti*, 2019 WL 692300, at *5 (N.J. App. Div. Feb. 20, 2019) (affirming dismissal of Official Misconduct charge where office did not impose duty to act). One need look no further than this case to see the wisdom in this reasoning.

Courts have consistently policed this line. In *Brady*, the court held that a judge did not commit criminal misconduct when she violated the “general [ethical] statements” of the Judicial Code. 452 N.J. Super. at 170. In *Thompson*, the court dismissed misconduct counts premised on local officials accepting gifts in violation of general conflicts of interest rules. 402 N.J. Super. at 201. And in *Kueny*, the court overturned a misconduct conviction because the State failed to muster any binding law, rule, or other source of legal authority that a police officer contravened when he withdrew money from someone else’s ATM account while off-duty. 411 N.J. Super. at 406-07. In each instance, the court held that “general and generic” ethical rules—those that “apply across-the-board” to virtually all public officials—are not sufficiently specific to give rise to “criminal liability.” *Thompson*, 402 N.J. Super. at 202. While the basic expectations that officials behave in good faith and honorably are no doubt important (and may give rise to disciplinary, administrative, and civil sanctions, as well as political repercussions), violating those general edicts is not a basis for criminal prosecution. *Brady*, 452 N.J. Super. at 173.

Other states have drawn the same distinction. *See id.* at 567. Of particular note, New York—whose misconduct statute was the basis for New Jersey’s, *see Thompson*, 402 N.J. Super. at 499—holds that “ethical impropriety, although unquestionably to be condemned, provide[s] no predicate for the imposition of criminal penalties.” *People v. La Carrubba*, 389 N.E.2d 799, 802 (N.Y. 1979); *see also, e.g., State v. Green*, 376 A.2d 424, 428 (Del. Super. Ct. 1977) (similar statute “does not include the duty of avoiding violation of unspecified conflict-of-interest or other ethical standards”).

Indeed, even a cursory review of the most recently authored opinions by this Court related to Official Misconduct demonstrate how truly far-fetched the State’s position is: in *State v. Formisano*, Docket No. A-1624-22, 2025 WL 942794 (N.J. Super. Ct. App. Div. Mar. 28, 2025), the Court affirmed that there was a sufficient basis for an Official Misconduct charge against a Newark police officer who murdered his wife and attempted to kill her lover while wearing his police uniform and using his duty firearm; in *State v. Dennis*, Docket No. A-2755-22, 2025 WL 914357 (N.J. Super. Ct. App. Div. Mar. 26, 2025), the Court upheld the conviction of a state trooper who was charged with Official Misconduct for (1) “‘falsely representing that he had performed calibration checks’ on the Alcotest units ‘consistent with mandated procedure’” and (2) “‘exercising ‘unlawful control over . . . a new Jersey State Police issued wallet identification’ card””; in *State v. Woody*,

Docket No. A-0171-23, 2025 WL 762847 (N.J. Super. Ct. App. Div. Mar. 11, 2025), the Court upheld the conviction of a Plainfield police officer charged with Official Misconduct and criminal sexual contact for actions undertaken when he was in his police uniform, had his police radio, and was driving his police vehicle; in *State v. Thomas*, 2025 WL 87963 (N.J. Super. Ct. App. Div. Jan. 14, 2025), the Court addressed discovery issues following a charge of Official Misconduct against a Jersey City Board of Education member/hopeful Jersey City council member for accepting bribes related to his office; and in *State v. McVey*, Docket No. A-3152-22, 2024 WL 3269362 (N.J. Super. Ct. App. Div. July 2, 2023), the Court noted that the defendant was a Phillipsburg council member charged with Official Misconduct for sending a threatening email to a political rival and inappropriate use of the town's 9-1-1 system.

The State also argues that the trial court erred because it “link[ed] whether the acts were ‘discretionary’ to whether they were ‘unauthorized.’” State Br. at 75 (quoting Pa198). Specifically, the State asserts that “whether Redd’s conduct involved ‘no non-discretionary duty,’ (Pa198), is beside the point” because “when an official ‘commit[s] an act of malfeasance ... because of the opportunity afforded by [her] office,’ that conduct ‘support[s] a conviction under *N.J.S.A.* 2C:30-2(a).’ *State v. Bullock*, 136 N.J. 149, 157 (1994).” State Br. at 76 (alterations in original). But the State misunderstands and mischaracterizes the trial court’s

ruling. To be clear, the trial court did not find that the acts Former Mayor Redd allegedly undertook were not unauthorized **because** they were discretionary. Rather, the court found that “[t]he acts Mayor Redd is accused of committing largely entail day to day discretionary decisions,” and **separately concluded** that those discretionary decisions “w[ere] not an unauthorized exercise of her official functions.” (Pa198). The argument the State seeks to advance is simply inapposite.

In none of the cases cited by the State—nor in New Jersey jurisprudence generally — has a public official been held liable for misconduct based solely on policy decisions made in collaboration with political allies. Rather, New Jersey courts have historically resisted attempts to transform political dealings into indictable offenses. To equate coalition-building (“alignment,” according to the State) with criminal enterprise—as the State attempts here—would fundamentally alter the landscape of public service. The State’s theory would empower prosecutors to criminalize any official action that arguably produces downstream benefit for an allied interest. That approach would expose nearly all political actors to criminal liability and would obliterate the distinction between legitimate political strategy and corruption.

Political appointments, collaboration on legislation, and redevelopment policy do not, standing alone, meet the threshold for criminality. To that end, the trial court was right to recognize that Former Mayor Redd’s conduct, even if taken

as true, and even if portrayed as politically aligned, does not amount to criminal misconduct under *N.J.S.A. 2C:30-2*. No case cited by the State supports the notion that political coordination or advocacy, without more, constitutes criminal activity. That proposition is unprecedented and undesirable.

Moreover, there is no suggestion in the Indictment that Former Mayor Redd acted deceptively, used her office for personal gain, or engaged in acts that courts have historically or customarily treated as Official Misconduct (*e.g.*, bribery, embezzlement, self-dealing). The State’s entire prosecution theory hinges on proximity to power wielded by public officials by virtue of their governmental authority and private stakeholders by virtue of their political engagement—a dangerously vague standard. Courts have long cautioned that criminal statutes must provide clear notice of prohibited conduct. That notice is sorely lacking here.

The State’s overreach becomes more evident when juxtaposed against the structure of the misconduct statute itself. *N.J.S.A. 2C:30-2* criminalizes only acts that are “unauthorized” and committed with “purpose to obtain a benefit.” There is no identifiable allegation that Former Mayor Redd acted outside her authority, or that she did so with a specific corrupt intent. To allow this Indictment to proceed to trial would collapse the statute’s authorization and intent requirements, permitting liability for any act targeted by a prosecutor.

The trial court’s ruling was rooted in this doctrinal clarity. Its analysis adheres to the principle that misconduct must be tied to unequivocally wrongful conduct—not political associations, policy preferences, or governing style. That restraint is not merely wise; it is constitutionally required.

Finally, the State argues that the trial court “erred in concluding that there were insufficient allegations that Redd acted with a purpose to benefit herself or another.” State Br. at 76. The State can point to **nothing** in its own Indictment, however, that supports this argument. The allegations that Former Mayor Redd “act[ed] with the purpose to obtain [a benefit]” for herself and/or for another (State Br. at 77) amount to nothing more than a parroting of the statute:

DANA L. REDD . . . did commit the offense of Official Misconduct, in that the said DANA L. REDD, acting with the purpose to obtain a benefit for herself and another . . . did commit an act relating to her office but constituting an unauthorized exercise of her official functions, knowing that such an act was committed in an unauthorized manner.

(Pa109). ⁷

⁷ The State also argues that “the Indictment alleges sufficient facts about Redd’s intent.” State Br. at 77. Yet almost in the same breath the State appears to concede that the Indictment does not actually allege anything about Former Mayor Redd’s intent. *See ibid.* (“[a] more than fair inference from the allegations that Redd benefitted from her participation [in the alleged Enterprise] is that she acted with the purpose to do so”). Accordingly, that argument too can be quickly disposed of. In any event, the Indictment fails to allege the required mental state. It must show that Former Mayor Redd acted with the “purpose to obtain a benefit or to injure another.” This requires more than a showing that a decision benefitted others. The

As the State must concede: The indictment here does not allege any personal gain from former Mayor Redd while in office; she is not accused of accepting favors, property, or money, bribe, or anything else. There is no *quid pro quo* alleged. Nor is she alleged to have pursued policies that had no public rationale. Her asserted conduct—advancing redevelopment, supporting jobs, and pursuing tax incentives—was plainly tied to public objectives. Moreover, even if some developers, that is, people other than herself, ultimately benefited, that is not misconduct. If it were, every mayor who favored a development plan that generated political controversy or benefited the developers themselves could face indictment. That is not the law.

Absent a *quid pro quo*, the State is left to argue that Former Mayor Redd’s conduct **in 2012 and 2013** was tied to accepting a position in **2018 after she left office** with the Rowan-Rutgers Joint Board (by any definition, not an entity owned or controlled by George Norcross). Once again, the State fails to allege such a connection. At the most basic level, it is not unlawful for a public official to accept private employment immediately following the termination of their service. The only post-employment restrictions on a local government official contained in New Jersey’s Revised States are outlined in *N.J.S.A.* 40A:9-22.5 as follows:

statute demands purposeful conduct—a specific intent to enrich oneself or harm others.

- b. No independent local authority shall, for a period of one year next subsequent to the termination of an office of a member of that authority:
- (1) award any contract which is not publicly bid to a former member of that authority;
 - (2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or
 - (3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated thereto, any former member of that authority.
- The restrictions in this subsection shall also apply to any business organization in which the former member holds an interest.

None of these restrictions apply to Former Mayor Redd accepting a position on the Rowan-Rutgers Joint Board. Additionally, while some municipalities have their own restrictions in addition to those set forth in *N.J.S.A. 40A:9-22.5* (*see e.g., Jersey City Municipal Code* §§ 33-1 – 33-3), Camden is not one of them.

This is but one example of the State’s attempt to frame lawful conduct as unlawful. As a further example, the State characterizes the New Jersey legislature’s adoption of the Economic Opportunity Act as action in furtherance of the conspiracy. State Br. at 82. Similarly, the State characterizes the New Jersey legislature’s adoption of pension reform as an act in furtherance of the conspiracy. *Id.* at 77. None of this is criminal, of course; the State’s criminalization of it, however, amounts to a dangerous gambit by New Jersey’s top law enforcement official to criminalize ordinary and constitutional legislative activity.

Even if it were true that a State University offered Former Mayor Redd a position on its Board because of her alleged loyalty to the so-called Enterprise—and the trial court “assume[d] that every factual allegation in the Indictment [wa]s true” for purposes of the motion to dismiss (Pa152)—the Indictment simply does not and cannot connect the conspiratorial dots. (*See* Pa69, Pa71-72). This was not a *quid pro quo*. The Indictment does not allege that Dana Redd accepted a post-mayoral position simply because she participated in the conspiracy or did anything to further the conspiracy’s objectives. Furthermore, a job offered by unrelated individuals through an unrelated entity does not amount to official action by Dana Redd in an official capacity. (Pa200) (“The court cannot interpret the indictment to conclude that Redd’s new job was a reward, or a benefit, for service to the enterprise”).

VII. THE COURT ALSO CORRECTLY DISMISSED THE INDICTMENT AGAINST DANA REDD AS BARRED BY THE STATUTE OF LIMITATIONS.

A. Substantive Charge of Official Misconduct

Count 13 charges the **substantive** offense of Official Misconduct—that is, “committing ‘an act relating to [Dana Redd’s] office’ that she knew to be ‘an unauthorized exercise of her official functions.’” State Br. at 128. Naturally, there must be “a specific act of misconduct ... within the relevant period.” *Ibid.*; *see State v. Diorio*, 216 N.J. 598, 613 (2014) (explaining that an indictment must be

filed within five or seven years “of the commission of the charged offenses”). That means that Former Mayor Redd must have committed an official, unlawful act after June 2017 to be within the statutory period.

The State points to two acts of alleged misconduct after June 2017 that it claims make this charge timely, that is, within seven years of the June 2024 Indictment, but neither suffices.

First, the State says “the [conspiratorial] agreement itself constituted Official Misconduct,” and it “continued through the end of Redd’s mayoral term.” State Br. at 129. That is plainly wrong; again, it sets forth an entirely new and radical approach to limitations analysis that should be swiftly and summarily rejected. An “agreement” is not “an act relating to [her] office but constituting an unauthorized exercise of [her] official functions.” N.J.S.A. 2C:30-2(a); *see Morrison*, 227 N.J. at 309 (Official Misconduct requires a misuse of “governmental authority”); *Saavedra*, 222 N.J. at 60-61 (“[A]n act sufficiently relates” to office when the officer “commit[s] an act of malfeasance because of the office [he] hold[s] or because of the opportunity afforded by that office”); *Kueny*, 411 N.J. Super. at 407 (“[T]he wrongdoer must rely upon his or her status as a public official to gain a benefit or deprive another”). The Indictment purports to allege that the Mayor **agreed to take** such acts—but the agreement and the act are distinct. The agreement might matter if Count 13 were a conspiracy count, as “[t]he essence of

conspiracy is the agreement to commit a crime.” *State v. Samuels*, 189 N.J. 236, 252 (2007). But Count 13 charges the substantive offense only and “agreement” is not an element of Official Misconduct; hence, a putatively continuing “agreement” cannot make the charge timely.

Second, the State argues that Dana Redd’s offense continued in that she received financial benefits for her participation by obtaining an enhanced pension and securing a new job, both **after** the end of her term as mayor. State Br. at 100. In other words, the State argues that actions attributed to a state legislature (in a bipartisan pension legislation considered by over 70 state senators and assembly members), or a State University (in offering a position on its Board) somehow extend the limitations period. Significantly, the Indictment falls short of alleging any participation in those actions by Dana Redd (or any other codefendant for that matter). Furthermore, those actions, undertaken by uncharged, unrelated individuals, entities, and governing bodies, do not amount to an official act by Dana Redd in an official capacity. In any event, the State’s argument only matters if this were a **conspiracy** charge—and, indeed, the State repeatedly invokes the language of conspiracy here (State Br. 98)—but it is not a conspiracy charge. Needless to say, taking a job after one is no longer a public official is not an official act. The only question is whether a substantive act of Official Misconduct occurred after June 2017; the Indictment never identifies one.

There are eleven paragraphs that reference Dana Redd in the Indictment: Paragraphs 49, 77, 78, 106, 113, 124-25, 134. (Pa22, 30-31, 44, 46, 49-50, 52-43). Of the eleven paragraphs, eight contain allegations that are clearly outside of the limitations period. *See ibid.* (containing allegations between 2013 and October 2016—i.e., eight to eleven years before the Indictment was filed). Of the remaining three paragraphs, there exist no allegation that Dana Redd used an unauthorized exercise of her official function to commit Official Misconduct. (Pa70-71) (discussing pension reform by the New Jersey Legislature **after** Former Mayor Redd left office); (Pa72) (alleging that Former Mayor Redd replaced Individual-1 as the CEO of the Rowan-Rutgers Joint Board **after** she left office); (Pa169) (alleging that, during a December 2017 phone conversation, CC-1 and CFP CEO-1 [but, notably, not Former Mayor Redd herself] discussed where Dana Redd would work **after** she left office).

In other words, the Indictment alleges **no acts whatsoever** by Dana Redd within the limitations period. She is not alleged to have requested, let alone made any “demand,” for a new job, in other words, no *quid pro quo*. The offense of Official Misconduct—as alleged—was thus completed before June 2017; as a result, Count 13 is time-barred.

The trial court correctly dismissed Count 13 as barred by the statute of limitations.

B. Conspiracy Charges

The five-year statute of limitations related to the conspiracy charges in the Indictment was appropriately applied by the trial court, warranting dismissal. The brief filed by defendant John O'Donnell overwhelmingly establishes that the trial court correctly dismissed those counts. Specifically, the trial court correctly concluded that naked allegations in the Indictment that the charged conspiracies continued "to the present" were legal conclusions entitled to no deference. Rather, the Indictment affirmatively and explicitly alleged facts establishing that the conspiracy charges are facially time-barred, particularly when considering federal appellate precedent establishing that the tax credits afforded to certain Defendants did not result in tolling the applicable statute of limitations. For purposes of brevity, Former Mayor Redd expressly joins in the brief filed by respondent John O'Donnell related to this argument, in its entirety.

CONCLUSION

Regardless of the ground, whether based on a facially-deficient indictment or the statute of limitations, dismissal is necessary. If the State's theory against Former Mayor Redd were to be accepted, the floodgates would open to politically motivated prosecutions of local, county, and state officials based solely on policy outcomes and political affiliations. Every planning board decision, tax incentive policy, or redevelopment ordinance could become the subject of a criminal probe.

Mayors, council members, commissioners, and school board trustees could be forced to defend their votes—not in elections, but in court.

Here, the State seeks to impose criminal penalties for conduct that was indistinguishable from lawful governance. The Indictment lacks any limiting principle to guide public officials in determining which policy decisions cross the line into misconduct. Former Mayor Redd—by participating in development policy, supporting legislative goals, and making lawful mayoral decisions—cannot be deemed to have had clear notice that her conduct was criminal. Allowing this type of indictment to stand would create a dangerous precedent in which political actors are left to guess whether their alliances or initiatives may one day be re-characterized as crimes. That is the very scenario due process is designed to prevent.

The damage to democratic governance would be profound. Officials would hesitate to support even well-meaning policies if doing so could be spun into a benefit for a connected entity. The chilling effect on candid debate, forward-looking policy, and legislative compromise would be acute. *See United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 408 (1999) (warning against overly expansive interpretations of anti-corruption statutes that risk chilling legitimate conduct).

Criminal law must be reserved for true corruption: bribes, fraud, extortion, or willful dereliction of legal duties. None of that is alleged here. The political context of Former Mayor Redd's decisions—in collaboration with regional leaders—is not unique. Coalitions are the currency of effective government. They reflect the consensus-building that is central to democratic leadership. Criminalizing that process would reverse centuries of political tradition.

It would also distort the role of prosecutors, who would prospectively wield enormous power to dismantle political careers based on mere disagreement with policy goals or alliances or other ill motives.

Criminal statutes are not substitutes for elections and criminal prosecutions are not vehicles for relitigating policy disputes. The dismissal of the Official Misconduct charges against Former Mayor Redd reflects this fundamental principle. It must be affirmed.

For the foregoing reasons, this Court should affirm the dismissal of the Indictment.

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July 23, 2025

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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v.

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-1833-24T5

Criminal Action

On Appeal From
Superior Court of New Jersey,
Law Division, Mercer County

Docket No.: MER-24-001988

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Sat Below:

Hon. Peter E. Warshaw, Jr., P.J.Cr.

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PRELIMINARY STATEMENT

The authorized practice of law is not a crime. No one disputes that. Yet, with this case, the State is trying to turn that simple principle on its head. The State alleges Defendant-Respondent William M. Tambussi, Esq. participated in a litigation strategy meeting and argued a pretrial motion. Based on that, the State swept Mr. Tambussi into every count of a thirteen-count indictment, with charges running the gamut from racketeering to misconduct by a corporate official. Staggering charges for the authorized practice of law.

The Association of Criminal Defense Lawyers of New Jersey (the “ACDL”) joins Mr. Tambussi in asking this Court to affirm the order dismissing the State’s indictment against him. The State indicted Mr. Tambussi, a licensed New Jersey attorney, for nothing more than Mr. Tambussi’s authorized practice of law. The State’s attempt to cast Mr. Tambussi’s lawyering as criminal conduct finds no support in either the indictment itself or well-established principles of law. The trial court recognized the indictment against Mr. Tambussi rested on nothing more than the legitimate acts of a lawyer representing his clients and correctly dismissed the charges.

To indict anyone for nothing more than engaging in his lawful occupation is troublesome enough, but to indict an attorney for nothing more than representing his client—work he is ethically obligated to do—is particularly extreme. The

charges against Mr. Tambussi not only jeopardize his personal liberty but also raise grave concerns for the ACDL and the criminal defense bar.

Nothing chills the practice of law more than making it an indictable offense. And the State's indictment of Mr. Tambussi does exactly that. The State alleges Mr. Tambussi participated in discussions with his client about litigation strategy and engaged in motion practice before the courts of this State. The State does not allege that Mr. Tambussi engaged in the unauthorized practice of law or committed an act that, on its own, violates New Jersey's criminal code. Nor does the State allege that Mr. Tambussi violated any Rule of Professional Conduct ("RPC").

Rather, the State calls Mr. Tambussi the "long-time personal attorney" for his client and, from that ordinary fact, the State leaps to the conclusion that Mr. Tambussi is a co-conspirator and makes him a co-defendant. The State's theory of the case: guilt by professional association. In our ordered system of justice, the State's indictment of Mr. Tambussi reflects a cavalier approach to criminal prosecution. And the State's theory reflects an equally cavalier approach to the essential role of lawyers in our justice system.

It is important to say plainly what the Attorney General has done here. The State charged Mr. Tambussi with criminally conspiring with his client where the only evidence of Mr. Tambussi's "agreement" to conspire is the legal work he did for other clients. The State does not allege that Mr. Tambussi's work was unlawful

or unauthorized or unethical. If the indictment against Mr. Tambussi is allowed to stand, any attorney representing a client will be fair game for an aggressive prosecutor. Nothing in the indictment marks the line between bona fide legal work and criminal legal work. The indictment of Mr. Tambussi should alarm every attorney in this State.

With that in mind, the indictment against Mr. Tambussi cannot stand. Reviving the indictment of Mr. Tambussi would send a message to all practicing attorneys that they face the risk of criminal charges any time one of their clients—guilty or not—is the target of the State’s criminal investigation. That outcome would fatally wound an attorney’s obligation to zealously represent the interests of his clients. For those reasons, the ACDL joins Mr. Tambussi and respectfully requests that the Court affirm the order dismissing the indictment as to Mr. Tambussi.

LEGAL ARGUMENT

The ACDL respectfully submits that the trial court’s well-reasoned opinion correctly concluded that the State indicted Mr. Tambussi for nothing more than practicing law and representing his clients. The State’s attempt to navigate around that immovable conclusion are unconvincing. Moreover, an indictment based on nothing more than an attorney’s representation of his client could clash with the Sixth Amendment right to counsel. The ACDL also calls attention to the fact that

the present indictment represents only the latest episode in an otherwise long history of prosecutorial tactics being used as a means of wrongfully targeting attorneys for ethically and zealously representing their clients.

I. The trial court correctly held that Mr. Tambussi was indicted for practicing law.

The indictment barely mentions Mr. Tambussi, and, where it does, the indictment relates to two acts of lawyering. The first, providing legal research and advice with respect to the viability of a contemplated but ultimately unfiled declaratory judgment action. (Pa186). The second, filing and arguing of a pretrial motion. (Pa186). Both actions were, without doubt, authorized practice of law by an attorney licensed in the State of New Jersey. See State v. Rogers, 308 N.J. Super. 59, 66 (App. Div. 1998) (“[T]he practice of law is not ‘limited to the conduct of cases in court but is engaged in whenever and wherever legal knowledge, training, skill and ability are required.’”) (quoting Stack v. P.G. Garage, Inc., 7 N.J. 118, 121 (1951)). Indeed, as Judge Warshaw’s well-reasoned opinion recognized, “[t]he Indictment focuses on things Tambussi did as a lawyer” and “Tambussi did what he did in this case by being a lawyer.” (Pa186).

The State attempts to bypass this problem by couching Mr. Tambussi’s actions as done in furtherance of a criminal enterprise, despite failing to identify facts to support that argument. In other words, the State cannot establish probable cause. See State v. Chippero, 201 N.J. 14, 28 (2009) (“For probable cause to arrest,

there must be probable cause to believe that a crime has been committed and ‘that the person sought to be arrested committed the offense.’”) (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)). “Probable cause is a suspicion or belief that is well-grounded in facts.” Schneider, 163 N.J. at 362 (emphasis added). “[E]stablishing probable cause . . . requires more than a showing of what ‘may’ have occurred.” State v. Missak, 476 N.J. Super. 302, 321 (App. Div. 2023); State v. Irelan, 375 N.J. Super. 100, 118 (2005) (noting “[p]robable cause requires more than a mere hunch or bare suspicion”).

Here, the trial court correctly held that “as a matter of law . . . there is no prima facie case that Tambussi was part of any enterprise” and that the indictment only alleges Tambussi made “himself part of this criminal enterprise” because “[h]e represented clients.” (Pa185). Indeed, the trial court recognized that the indictment failed to allege the existence of any criminal enterprise at all, much less a criminal enterprise including Mr. Tambussi. (See Pa174-92). Put differently, the State’s indictment of Mr. Tambussi, without supporting facts, is based on bare suspicion. That does not satisfy the probable cause standard necessary to justify criminal charges.

Although the Legislature has criminalized the unauthorized practice of law, N.J.S.A. 2C:21-22, it has not criminalized the authorized practice of law. Instead, the authorized practice of law falls under the purview of the Supreme Court of

New Jersey and the RPCs, both of which, as Mr. Tambussi points out, permit the alleged conduct. (Tambussi Resp't Br. at 27-28, 36-45 (citing Rule 4:42-3 (governing declaratory judgment actions); Rule 4:25-8 (approving pretrial motions); RPC 1.3 (requiring an attorney to diligently and zealously advocate on behalf of a client))). The Legislature decides what is and is not criminal, and the Supreme Court governs the authorized practice of law. The Attorney General must yield to those authorities. And the courts should not allow the State, through its indictment of Mr. Tambussi, to encroach on both the judicial and legislative branches by criminalizing conduct that is otherwise not criminal.

The State neither alleges that Mr. Tambussi engaged in the unauthorized practice of law nor that his purported conduct violated either a Court Rule or an RPC. Instead, the State doubles down on the argument that lawyering activities do not operate as an immunity to criminal prosecution and, in doing so, draws focus to cases upholding the prosecution of lawyers. (Appellant's Br. at 78-79). But the cases cited by the State involve the prosecution of lawyers for their direct involvement in criminal activity, not legitimate lawyering activities taken in furtherance of representing clients. See, e.g., Matter of Goldberg, 105 N.J. 278, 282-83 (1987) (disbarring attorney in disciplinary matter stemming out of attorney's guilty plea to conspiracy to distribute substance used in the manufacturing of methamphetamine); United States v. Aguilar, 515 U.S. 593, 599,

606 (1995) (upholding conviction of judge for illegally disclosing wiretap in violation of federal law); United States v. Bergrin, 650 F.3d 257, 261-63, 276 (3d Cir. 2011) (reversing dismissal of RICO and RICO-based counts where attorney was ringleader of group that, among other things, conspired to have witnesses murdered); United States v. Cueto, 151 F.3d 620, 627 (7th Cir. 1998) (affirming attorney's convictions for conspiracy to defraud the United States and obstruction of justice which stemmed from the attorney's involvement in his client's illegal gambling scheme).

The State did not indict Mr. Tambussi for helping to run an illegal gambling operation. Nor was he indicted for illegally disclosing wiretaps, helping to distribute illegal drugs, or conspiring to have witnesses murdered. He was indicted for discussing litigation strategy and arguing a motion—acts lawyers engage in every day. The trial court, in dismissing the indictment, aptly recognized that practicing law is not an indictable offense. The ACDL respectfully submits that this Court should affirm that decision for the same reason.

II. Indictments like the one against Mr. Tambussi carry with them the potential for grave risks to the criminal defense bar and a defendant's right to counsel under the Sixth Amendment.

The ACDL was established in 1984, in part, to respond to the continuing problems confronting criminal defense lawyers when they honestly, ethically, but zealously represented their clients. Part of the ACDL's mission is to safeguard the

constitutional right to counsel, a right that comes under direct threat when prosecutors target members of the bar for criminal prosecution simply for practicing law on behalf of their clients.

The ACDL acknowledges this is not a Sixth Amendment case because the indictment does not stem from Mr. Tambussi acting as defense counsel in a criminal proceeding. Nevertheless, the indictment of Mr. Tambussi for practicing law sharpens the point that the State may wield indictments against members of the criminal defense bar for practicing law during the representation of their clients in a criminal proceeding. That outcome poses dangers not only to the personal liberty of those attorneys but also to their clients' Sixth Amendment right to counsel.

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence." U.S. Const. amend. VI. At the heart of the Sixth Amendment's guarantee is the "right to select counsel of one's choice." United States v. Gonzalez-Lopez, 548 U.S. 140, 147-48 (2006); see Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624 (1989) (stating that the accused has "the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire."). The right to counsel of one's choice is "fundamental" due to "the necessarily close working relationship between lawyer and client, the need for confidence, and the critical importance of trust." Luis v. United States, 578 U.S. 5, 11-12 (2016). Accordingly, the government cannot

interfere with the Sixth Amendment right directly, and “a government official cannot do indirectly what she is barred from doing directly.” Nat’l Rifle Ass’n v. Vullo, 602 U.S. 175, 190 (2024).

An indictment, like the one against Mr. Tambussi, when brought against an attorney representing a client in a criminal prosecution, would clash with that constitutional right. Courts have repeatedly emphasized that a criminal defense lawyer’s concern about being personally investigated or scrutinized—much less indicted—by the government creates a conflict of interest that poses serious dangers to the Sixth Amendment right to counsel. See United States v. Fulton, 5 F.3d 605, 613 (2d Cir. 1993) (warning that conflict arising from attorney’s “powerful self-interest in avoiding criminal charges or reputational damage” violates Sixth Amendment); Armienti v. United States, 234 F.3d 820, 825 (2d Cir. 2000) (“A lawyer in these circumstance[s], while dealing on behalf of his client with the office that is prosecuting him personally may, consciously or otherwise, seek the goodwill of the office for his own benefit. A lawyer’s attempt to seek the goodwill of the prosecutor may not always be in the best interest of the lawyer’s client.”); United States v. Lopesierra-Gutierrez, 708 F.3d 193, 201 (D.C. Cir. 2013) (“Whenever an attorney is or is likely to be the subject of a criminal investigation, courts worry that he might attempt to curry general favor with the government by pulling punches.”); United States v. Levy, 25 F.3d 146, 156 (2d Cir. 1994)

(holding that conflict based in part on counsel being prosecuted in unrelated criminal proceeding gave rise to actual conflict of interest because counsel “may have believed he had an interest in tempering his defense of [his client] in order to curry favor with the prosecution, perhaps fearing that a spirited defense of [his client] would prompt the Government to pursue the case against [counsel] with greater vigor”); see also Briguglio v. United States, 675 F.2d 81, 82 (3d Cir. 1982) (holding that, where defense counsel in criminal trial was under investigation by prosecutor’s office that was prosecuting counsel’s client, evidentiary hearing was required to ascertain whether conflict of interest existed that prejudiced the client’s defense).

While this case may not be a Sixth Amendment case, the ACDL respectfully submits that the Court should be mindful of the constitutional implications of resuscitating the indictment against Mr. Tambussi. Criminal defense lawyers, even those in this case, could be faced with the State alleging “they are in on it” simply because of their authorized practice of law. The Court should further note that other constitutional rights may be implicated by a prosecutor’s indictment of an attorney for practicing law, including, for example, the First Amendment’s protection of the right “to petition the Government for a redress of grievances.” U.S. Const. amend I; see Borough of Duryea v. Guarnieri, 564 U.S. 379, 387 (2011) (“This Court’s precedents confirm that the Petition Clause protects the right

of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.”); California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972) (“The right of access to the courts is indeed but one aspect of the right of petition.”); Wilmer Cutler Pickering Hale & Dorr LLP v. Executive Office of President, __ F. Supp. 3d __, No. 25-917, 2025 WL 1502329, at *18 (D.D.C. May 27, 2025) (“Filing and pursuing lawsuits are forms of protected petitioning.”); see also BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524-25 (2002) (“We have recognized this right to petition as one of ‘the most precious of the liberties safeguarded by the Bill of Rights,’ and have explained that the right is implied by ‘the very idea of a government, republican in form.’” (citations omitted)).

III. The indictment is the latest in a long line of prosecutorial tactics designed to curb zealous representation and chills the practice of law.

The ACDL’s formation came at a time when prosecutors were engaging in heavy-handed tactics that sought to weaken the criminal defense bar’s ability to zealously advocate on behalf of their clients. These tactics included, among other things, issuing grand jury subpoenas to criminal defense attorneys in an effort to breach the attorney-client privilege and gather evidence to support an indictment of the subpoenaed attorneys’ clients. See David Rudovsky, The Right to Counsel Under Attack, 136 U. Pa. L. Rev. 1965, 1966 (1988) (discussing use of grand jury subpoenas and noting that “[t]he government has moved to restrict zealous

advocacy of lawyers representing those persons seen as the greatest threat to our social and political order. Over the past several years, a combination of legislative, investigative, and prosecutorial policies have created a high degree of unease in the legal community.”); William J. Genego, The New Adversary, 54 Brook. L. Rev. 781, 811-12 (1988) (discussing numerous government tactics and noting that forty-six percent of attorneys responding to a survey reported they had changed their practice based on the government’s activities). For its part, the founding members of the ACDL banded together to respond to those abusive practices by prosecutors and turn the tide against improper use of grand jury subpoenas.

As bad as grand jury subpoenas directed at attorneys were, what is happening here is far worse. It poses a structural threat to the practice of law. Or certainly to the practice of law in the way our adversary system requires law to be practiced. Mr. Tambussi is charged in a first-degree racketeering case where the alleged goal was the unlawful procurement of state tax credits. The basis for the charge against him is not that he procured the credits himself or benefitted from the credits. He did neither. The basis for the charge is that he must have been “in on it” because he lawfully practiced law for other clients in a way that had spillover benefits for his “long-time” client in obtaining the tax credits.

To be certain, the State indicted an attorney along with his client based on nothing more than conjecture and the mere existence of an attorney-client

relationship. If the indictment against Mr. Tambussi can stand, any lawyer can be indicted merely for representing their clients, especially those who have a long-standing attorney-client relationship, or for pursuing claims on their clients' behalf.

For example, an attorney may have drafted a lawful safe harbor agreement in a healthcare business relationship for a long-term client who thereafter is alleged to have committed healthcare fraud. Applying the State's logic in this case to that situation, the attorney could be charged as a co-conspirator for no reason other than drafting the agreement, despite the absence of facts otherwise tying the attorney to the alleged misconduct. Not only does that sidestep probable cause, as previously discussed, it also raises questions surrounding notice.

Attorneys, often relying on information from others, are not always privy to their clients' conduct, thoughts, and intentions. They would have no notice that their otherwise lawful conduct (drafting a safe harbor agreement) might, someday in the future, be viewed as criminal if the State targets the attorney's client. See State v. Bond, 365 N.J. Super. 430, 438 (App. Div. 2003) (noting the Constitution requires criminal statutes to provide "notice of illegality and . . . clear standards of enforcement").

Allowing the State to criminalize otherwise lawful conduct, the practice of law, by bootstrapping it to generalized criminal statutes, like conspiracy, undermines that constitutional requirement. Every attorney, every day, would face

the prospect that the actions and judgments they are licensed to make could be turned criminal by an enterprising prosecutor who wants to target that attorney's client. The ACDL is alarmed by that possibility and the implications for the practice of law, especially those who practice criminal law. It would be all too easy for the State to take the next step and charge attorneys for defending their clients in government investigations by claiming the attorneys are "in on it" or somehow obstructed justice by practicing law and representing their clients' interests.

In short, all attorneys, whether criminal or civil, trial or transactional, stand in harm's way if the indictment the State has brought against Mr. Tambussi is allowed to stand. Indictments like this threaten their occupation, their livelihood, and their liberty. There can be no greater chill on the practice of law than to make it a crime.

CONCLUSION

The State indicted Mr. Tambussi for nothing more than the authorized practice of law. Mr. Tambussi participated in a litigation strategy meeting and argued a pretrial motion. Incredibly, Mr. Tambussi was charged with numerous felonies in a sweeping indictment that hardly even mentions him. The indictment of Mr. Tambussi is rife with fatal flaws, chief among them, a lack of probable cause that Mr. Tambussi committed any criminal acts.

The Legislature has determined that the authorized practice of law is not a crime, and the Supreme Court has not adopted any rule governing the courts or lawyers that Mr. Tambussi allegedly violated. The State cannot make a crime out of conduct the legislative and judicial branches have sanctioned and that Mr. Tambussi is licensed to do.

The indictment of Mr. Tambussi should set off alarm bells with the bench and the bar. To call what the State has done overreach is to suggest the indictment of Mr. Tambussi has any merit. It does not. The indictment of Mr. Tambussi is without basis in law and undermines the principles of the justice system.

For those reasons, and as set forth by Mr. Tambussi in his respondent brief to this Court, the ACDL respectfully submits that the order dismissing the indictment of Mr. Tambussi should be affirmed.

Respectfully submitted,

MANDELBAUM BARRETT PC
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By: /s/ Andrew Gimigliano
Andrew Gimigliano
Robert C. Scrivo
Austin W.B. Hilton

Dated: July 23, 2025

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-Appellees.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-001833-24

Criminal Action

Proceedings Below:

Docket No. MER-24-001988

Indictment No.: 24-06-00111-S

**On Appeal from Order Dismissing
Indictment by Honorable Peter E.
Warshaw, Jr., P.J. Crim.**

**BRIEF OF AMICUS CURIAE NEW JERSEY STATE
COMMITTEE OF THE AMERICAN COLLEGE OF TRIAL LAWYERS**

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PRELIMINARY STATEMENT

In response to an executive order from President Trump targeting certain law firms, New Jersey Attorney General Matthew Platkin proclaimed that “Targeting lawyers for doing their jobs is illegal, dangerous, and a grave threat to the rule of law.” @NewJerseyOAG, X (Mar. 29, 2025, 10:01 AM) <https://x.com/NewJerseyOAG/status/1905983586332733757>. Amicus curiae New Jersey State Committee of the American College of Trial Lawyers (the “ACTL State Committee”) agrees. Somehow, the Attorney General does not seem to appreciate the irony of his statement given his office’s prosecution of attorneys Philip Norcross and William Tambussi. The State’s prosecution of Tambussi and Norcross may be less obvious an attack on lawyers and lawyering than the President’s executive order, but it’s no less dangerous.

The State’s indictment does the very same thing as the President’s executive order—it chills zealous advocacy. If lawyers can be targeted economically for representing clients unpopular with the President or prosecuted criminally for representing clients unpopular with the Attorney General, the effect is the same: fewer lawyers willing to “act with ... zeal in advocacy upon the client’s behalf.” MODEL RULES OF PRO. CONDUCT R. 1.3 (AM. BAR. ASS’N. Comments 1983). That is something of grave concern to the ACTL State Committee and should be of equally grave concern to lawyers and courts everywhere.

The State's indictment against Tambussi seeks to criminalize legal research, advice, and motion practice. Against Norcross, it seeks to criminalize his lobbying activities on behalf of a client. These are core lawyering activities. The Attorney General cannot criminalize them; it is the job of the Supreme Court to regulate lawyers and the practice of law. And the Attorney General certainly cannot criminalize those activities without any allegation that Norcross or Tambussi provided wrong advice or violated any Rule of Professional Conduct. The trial court recognized this, and we ask the Appellate Division to do the same. If the State's indictment against Tambussi and Norcross is permitted to stand, lawyers across New Jersey will be silenced. Their clients harmed. The system hobbled.

Attorney General Platkin said it best. The State's indictment, like the President's executive order, is "plainly retaliat[ion] against lawyers based on protected speech and association[]" and is "inconsistent with the right to effective counsel[.]" Open Letter from Matthew J. Platkin, New Jersey Attorney General, to the Legal Community (Apr. 29, 2025), https://www.nj.gov/oag/newsreleases25/2025-0429_Open-Letter-to-Legal-Community-April-2025.pdf. (Attorney General Platkin's open letter response to White House memo) [hereinafter Open Letter]. It targets "lawyers simply for doing their jobs." See Shayna Jacobs, *New Trump Memo Seen As Threat To Lawyers, Attempt To Scare Off Lawsuits*, The Washington Post (updated Mar. 23, 2025), <https://www.washingtonpost.com/national->

[security/2025/03/22/trump-litigation-lawyers-pam-bondi/](https://www.nj.gov/courts/appellate/2025/03/22/trump-litigation-lawyers-pam-bondi/) (Attorney General Platkin’s response to White House memo) [hereinafter Threat to Lawyers]. This is unacceptable in our adversary system.

The decision of the trial court dismissing Tambussi and Philip Norcross from the indictment must be upheld.

STATEMENT OF AMICUS CURIAE

Amicus curiae, the ACTL State Committee, is comprised of Fellows of the New Jersey chapter of the ACTL, which is a professional organization that “strives to preserve and enhance trial practice, civility, professionalism, and the administration of justice through support of an independent judiciary, the rule of law, trial by jury, and access to justice.” About ACTL, <https://www.actl.com/about-actl/>. Member attorneys of the ACTL regularly appear in state and federal courts, prosecuting and defending criminal offenses, and providing representation to plaintiffs and defendants in civil lawsuits. The filing of this amicus brief has been endorsed unanimously by a vote of a quorum of the ACTL State Committee.¹

¹ The members of the ACTL State Committee are: Eric R. Breslin (Chair), William D. Wallach (Vice Chair), Wanda M. Akin, Craig Carpenito, Dennis J. Drasco, Rowena M. Duran, Cathy Fleming, Vito A. Gagliardi, Jr., Sandra Grannum, Andrew B. Joseph, Eric G. Kahn, Edward T. Kole (Immediate Past Chair), Michael P. Korbanics, William A. Kraus, Kevin H. Marino, Eric W. Moran, Paul G. Nittoly, Jeffrey Lawrence O’Hara, Michael R. Ricciardulli, Tracey Salmon-Smith, Thomas P. Scrivo, Joseph B. Shumofsky, Rubin M. Sinins, John L. Slimm, Robert G. Stahl and Peter J. Torricollo.

Defendant William M. Tambussi is a Fellow of the ACTL.

PROCEDURAL HISTORY/STATEMENT OF FACTS²

Amicus first provides the following factual recap of the indictment as related to attorney Defendants William Tambussi and Philip Norcross.

i. William Tambussi

William Tambussi is an attorney at the law firm Brown and Connery and long-time attorney to George E. Norcross, III. (Indic. ¶11). He has served as counsel to the Camden County Democratic Committee, City of Camden, the Camden Redevelopment Agency (“CRA”), Cooper Health, and Conner Strong & Buckelew (“CSB”). Id.; State v. Norcross, No. 24-1988, at 70 (Law Div. Feb. 26, 2025) (order granting motion to dismiss to all Defendants).³ The indictment targets Tambussi for two instances of lawyering regarding his representation of the CRA.

First, Tambussi is alleged to have agreed with the other Defendants “to cause the CRA to bring court action against [Dranoff Properties, Inc.] with the purpose of creating additional pressure on Developer-1 to sell his rights” to a view easement associated with the Victor Lofts. (Indic. ¶127). The State alleges that Tambussi (1) researched the feasibility of successfully bringing a condemnation action against

² Amicus adopts the parties’ Procedural History and Statement of Facts. The relevant facts from the indictment, for purposes of this amicus brief, are set forth below.

³ The trial court’s Order is hereinafter cited as “Op.”

Developer-1, (Indic. ¶¶133, 135), and (2) engaged in a phone call with all defendants except Mayor Redd regarding the potential condemnation action, (Indic. ¶¶140–149). Brown and Connery worked at least 86 hours to research and prepare “an order to show cause requesting that the court declare that the CRA had the power to condemn Developer-1’s easement.” (Indic. ¶135). Tambussi brought his research forward to his clients and gave his recommendation regarding the merits. (Indic. ¶¶142, 145–146). Tambussi wrote to Philip Norcross stating, “The likelihood that the court will declare that the CRA has the right to condemn the view easement under the present circumstances is good. The harder part will be to convince the court to expedite the process.” (Indic. ¶133). Ultimately, nothing was filed. (Indic. ¶151).

Second, the State alleges that Tambussi, in his role as counsel to Camden and the CRA, furthered the purposes of the alleged enterprise by filing “a pre-trial motion in the Superior Court of Camden County, on August 31, 2023, to preclude any reference to George [and] Philip [] Norcross in the matter” in litigation filed by Developer-1 against Camden and the CRA concerning the Radio Lofts site. (Indic. ¶¶155–156). Specifically, in August 2023, Developer-1 sought to introduce evidence that George and Philip Norcross cultivated hostility between Developer-1, Camden, and the CRA in 2016. (Indic. ¶156). Tambussi filed a pre-trial motion *in limine* to preclude any reference to the Norcrosses. Id. On September 1, 2023, Tambussi argued the motion. (Indic. ¶157). In the same month, Developer-1 agreed to settle

with Camden wherein he agreed pay Camden approximately \$3.3 million. (Indic. ¶195).

ii. Philip Norcross

Philip Norcross is the Chair of the Cooper Foundation and a managing shareholder and CEO of the law firm Parker McCay. (Indic. ¶10). The indictment targets Philip Norcross for three instances of constitutionally protected conduct.

First, the indictment alleges that Philip Norcross, and another lawyer (“Lawyer-1”) at Parker McCay, participated in meetings, exchanged emails, and had phone conversations with Cooper Ferry Partnership (“CFP”) President-1 and CFP CEO-1 regarding New Jersey legislation that would ultimately become the Economic Opportunity Act (“EOA”). (Indic. ¶32). While CFP CEO-1 and CFP President-1 wanted “retail” to be a priority in the legislation, Philip Norcross resisted efforts to include it and instead prioritized a focus on redevelopment. Id. Philip Norcross and Lawyer-1 repeatedly engaged in communications with the then-Governor’s office and then-Senate President. (Indic. ¶¶38–42). Throughout June 2013, Philip Norcross and Lawyer-1 sent drafts of the EOA to government officials. (Indic. ¶¶40–41). The EOA was ultimately enacted into law on September 18, 2013. (Indic. ¶42).

Second, the indictment alleges that Philip Norcross represented Camden Partners Tower group, a group consisting of some of the other Defendants who had

property interests on the Camden waterfront. (Indic. ¶107). As the representative of the group, Philip Norcross negotiated with Liberty Property Trust (“LPT”) “regarding the construction of an office tower that was later called Triad1828 Centre and a residential building that became 11 Cooper.” Id. The indictment alleges that Developer-1 acted as an impediment to the Camden Partners’ redevelopment interests. To allegedly further the Camden Partners’ goals, Philip Norcross, in his capacity as a lawyer, forwarded Tambussi a legal memo analyzing whether the CRA could condemn Developer-1’s view easement. (Indic. ¶132). After Tambussi and his firm researched the issue and sent Philip Norcross their conclusions, Philip Norcross contacted the attorney for LPT regarding the potential CRA condemnation action. (Indic. ¶¶150–151). “LPT declined to cooperate” and instead “offered to pay Developer-1 an additional approximately \$200,000 out of its own end” to resolve the view easement issue. (Indic. ¶151).

Third, the indictment alleges that in March 2018, Philip Norcross met with various Camden officials and advised them on how Camden should approach the termination of Developer-1’s option agreement to purchase the Radio Lofts. (Indic. ¶¶186–88). Camden was ultimately successful. (Indic. ¶191). During the subsequent (and aforementioned) litigation, Philip Norcross provided Tambussi with “talking points” for the litigation. (Indic. ¶193). Developer-1 settled the lawsuit in September 2023. (Indic. ¶195).

ARGUMENT

I. A CRACK DOWN ON ZEALOUS ADVOCACY WILL CHILL EFFECTIVE LAWYERING.

Protection of the rule of law is one of the foremost goals of the ACTL; it is central to its mission statement. At all times, attorneys Philip Norcross and William Tambussi were acting in their capacity as lawyers to zealously represent their clients and, in doing so, protect the rule of law. The ACTL State Committee files this amicus brief to make clear that if the rule of law is to be protected, zealous advocacy must be applauded, not prosecuted.

A. Zealous advocacy is not merely an ingredient of effective lawyering; it is the embodiment of effective lawyering.

ABA Model Rule of Professional Conduct 1.3 comment describes a lawyer's professional duty: "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." MODEL RULES OF PRO. CONDUCT R. 1.3 (AM. BAR. ASS'N. Comments 1983). The Rule is not of recent vintage. The lawyer's first duty has always been to his client. "An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client." Monroe H. Freedman, *Henry Lord Brougham, Written by Himself*, GEO. J. LEGAL ETHICS

1213, 1215 (2006) (quoting 2 Trial of Queen Caroline 3 (1821)). Lord Brougham’s language and sentiment during the trial of Queen Caroline resonate even today, centuries later. Lawyers are taught to represent their clients with empathy and passion, crucial qualities that create trust between the client and the attorney.

That is precisely what Tambussi and Norcross did, according to the State.

1. The indictment targets Tambussi for routine lawyering and zealous advocacy.

As to Tambussi, the indictment alleges that his criminal conduct consisted of (1) exploring whether his firm’s client had legal authority to pursue a condemnation action, and (2) filing a pre-trial motion *in limine* on behalf of his clients.

Regarding the potential condemnation action, Tambussi was indicted for legal research. He and his firm “worked at least 86 hours” researching the merits of a potential declaratory judgment action to determine whether Developer-1’s view easement was condemnable under the eminent domain statute. (Indic. ¶135). At no point, taking the factual allegations in the indictment as true, is it suggested that Tambussi engaged in any predicate acts outside of conducting typical legal research. Instead, he presented the viability of a legal path to his client and to another attorney. That is what attorneys do every day. It is what is required of them under the Rules of Professional Conduct.

After conducting the research, Tambussi determined that the CRA could likely rely on eminent domain to condemn the view easement. Philip Norcross informed

LPT's counsel, LPT declined to cooperate with the condemnation action, and the matter was resolved by other means. The declaratory judgment was not filed.

To target this conduct as criminal is to contest the merits of the never-filed claim. Worryingly, the State does not draw a clear line stating how this conduct was illegal. It instead relies on a blanket charge of conspiracy to omit allegations of any intentional wrongdoing. This is a critical attack against the rule of law. At what point did the legal research become criminal? The indictment does not explain. If Tambussi and his firm had determined that the declaratory action was not viable on the merits, would that also have violated criminal law? It seems not. Thus, the indictment does not just criminalize research of a legal issue, but relies instead on the legal conclusions drawn by the lawyer from that research. This blatantly contravenes the rule of law.

The indictment's targeting of the motion *in limine* echoes a similar need for this Court's protection. Frankly, it is difficult to ascertain where the alleged root of criminality starts. The indictment addresses the pre-trial motion in only three paragraphs. See (Indic. ¶¶155–57). To allege that preparation and filing of a motion *in limine* to “preclude any reference to George E. Norcross, III and Philip Norcross in the matter,” (Indic. ¶156), is evidence of criminal intent is an entirely novel idea, which Amicus strongly opposes.

The indictment seemingly contends that Tambussi sought to mislead the civil court by stating that the transaction in question, to “which George Norcross and Phil Norcross were not parties,” was “between [Developer-1] and Liberty [Property Trust].” (Indic. ¶157). But the indictment simultaneously recognizes the truth of this statement: “In truth and in fact, the transaction Tambussi referred to was consummated, at the insistence of Philip A. Norcross, through a four-party agreement among DPI; LPT; Camden Partners Land LLC . . .; and TMO.” *Id.* It is again difficult to discern the criminal nature of Tambussi’s motion.

The State by this prosecution seeks to don the robes of the civil litigation judge and to decide Tambussi’s pre-trial motion via the indictment despite the out-of-court resolution of the case in which the motion was filed. Tambussi made a factually correct argument in front of a court. The State somehow does not like how that argument was made and thus alleges it was criminal. That is dangerous logic that this Court should reject.

Furthermore, in alleging criminality regarding the motion *in limine*, the indictment supplants the New Jersey Rules of Professional Conduct. There were avenues for the parties in the civil matter to take had they believed that Tambussi made a false statement to the Court. Targeting such conduct as criminal racketeering has never been one of those avenues. That is not how the rule of law operates nor

how it should operate. It is not the government's role effectively to intervene in civil matters by criminalizing conduct that it does not like.

2. The indictment targets Philip Norcross for constitutionally protected petitioning of the government and routine lawyering.

As to Philip Norcross, the indictment merely alleges that his criminal conduct consisted of (1) drafting EOA legislation and petitioning the government to pass such legislation, (2) conducting legal research and negotiations on behalf of his client related to the potential condemnation action, and (3) providing legal advice to his client on the termination of an agreement and assisting his client's litigation counsel in the subsequent litigation.

Petitioning the government is a guaranteed right of all Americans. The right to petition is “one of the most precious of the liberties safeguarded by the Bill of Rights.” Wilmer Cutler Pickering Hale & Dorr LLP v. Executive Office of President, No. 25-917, 2025 WL 1502329, at *25 (D.D.C. May 27, 2025) (federal reporter citation not yet available) (quoting BE&K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) (internal citation omitted)). This right to petition is even more clearly at play when the petition is made by an attorney representing a client. “Filing and pursuing lawsuits are forms of protected petitioning.” Id. at *18. As such, recent efforts by government entities to limit attorneys from engaging in constitutional petitioning have been rejected by courts. Id. Neither the federal nor state governments can infringe on an attorney's constitutional right to petition by limiting

the attorney's advocacy. Yet, like President Trump, this is what the Attorney General has sought to do.

Regarding his efforts to aid the EOA, Philip Norcross and his firm submitted ideas to the legislature to further the passage of legislation. They exercised their constitutional right to petition, and the State listened. The trial court put it simply: "It is beyond obvious to observe that people and entities try to influence legislation every day." (Op. 75). To label that as criminal racketeering strikes at the heart of the rule of law.

As with Tambussi, the State here also seeks to criminalize the common practices of lawyers. In declaring that the assistance Philip Norcross provided to Tambussi in the declaratory judgment research and the Radio Lofts litigation constitutes racketeering, the State forgets that cooperation is fundamental to the practice of law. Declaring such conduct criminal is a misguided legal claim. Lawyers with common interests work together all the time. It is a foundational aspect of the rule of law. Lawyering requires cooperation. The indictment absurdly criminalizes such practice.

* * *

The indictment in this matter brazenly mischaracterizes the lawyer Defendants' actions as conduct furthering the racketeering enterprise. This depiction makes the indictment a threat to the rule of law. To group lawyerly conduct that

further clients' legitimate goals into predicate acts that further a racketeering enterprise blows the proverbial hinges off the door and would allow for the criminal prosecution of lawyers for their everyday conduct in advocating for their clients. If the Attorney General could transform routine lawyering into criminal charges with no notice, effectively on a whim, because the lawyer's client or the lawyer's brother is out of favor with the prosecutor, then the rule of law will suffer for the same reasons Attorney General Platkin has voiced regarding the recent executive orders signed by President Trump.

The New Jersey Attorney General has made it clear that he condemns the recent federal Executive Orders targeting law firms as “unprecedented and frankly outrageous attempt[s] to threaten lawyers simply for doing their jobs.” Threat to Lawyers (emphasis added).

In fact, the New Jersey Attorney General echoes arguments that he made in an open letter from 20 state Attorneys General noting that it is a “dangerous attack[] on the rule of law” to “target law firms and lawyers for advocacy [the Government] disfavors.” Open Letter. Yet that is exactly what has happened here. The indictment targets legal research and advice. It condemns a lawyer's ability to “advance arguments and policy positions that [the State] vigorously disagree[s] with” See id. It targets “lawyers simply for doing their jobs.” Threat to Lawyers.

As an organization of trial lawyers, the ACTL State Committee agrees that “[a]dvocates who appear in courtrooms must enjoy the right to speak freely on behalf of themselves and their clients without fear of retribution from their government.” Open Letter. That is why Amicus accepts the Attorney General’s “invit[ation]” for lawyers to band together “so that we can all stand together in preserving the integrity of our legal system.” Id. In this case, unfortunately, that means standing together in opposition to the Attorney General himself.

The chilling effect that this indictment could have on lawyering speaks for itself. Our Supreme Court put it best in stating that such wrongful pursuit of lawyers “performing their duties . . . will become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends.” LoBiondo v. Schwartz, 199 N.J. 62, 101 (2009). This case presents the Court with a vital opportunity to speak against allowing the machinery of the Attorney General’s Office to be wielded against the routine practice of law.

II. THIS COURT SHOULD REMIND PROSECUTORS THAT THEIR INHERENT DUTY IS NOT TO ADVOCATE OR SECURE CONVICTIONS, BUT RATHER, TO SEE THAT JUSTICE IS DONE.

The New Jersey Supreme Court “ha[s] often noted that ‘[t]he primary duty of a prosecutor is not to obtain convictions, but to see that justice is done.’” State v. Blakney, 189 N.J. 88, 96 (2006) (quoting State v. Ramseur, 106 N.J. 123, 320 (1987)). Prosecutors, thus, have a “special role” and are “entrusted with the

responsibility” to pursue criminal proceedings. State v. Smith, 212 N.J. 365, 402 (2012).

Over time, the Supreme Court has had to “[a]gain . . . remind prosecutors that they have ‘a unique role and responsibility in the administration of criminal justice and, therefore, have an extraordinary power to undermine or destroy the efficacy of the criminal justice system.’” State v. Frost, 158 N.J. 76, 89 (1999) (quoting In re Rachmiel, 90 N.J. 646, 656 (1982)). Amicus submits that another reminder to prosecutors may be necessary.

New Jersey Rule of Professional Conduct 3.8 highlights the prosecutor’s special responsibilities. See N.J. RPC 3.8. In particular, prosecutors must “refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” N.J. RPC 3.8(a). “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” MODEL RULES OF PRO. CONDUCT R. 3.8 (AM. BAR. ASS’N Comments 1983). At issue here is the State’s decision to pursue this case against two attorneys contrary to its role as minister of justice.

Prosecutors must occasionally be reminded that their subjective advocacy objectives do not always equate with the effective, fair and impartial administration of justice. This case presents the opportunity for the Court to issue such a reminder.

CONCLUSION

As a number of federal courts have emphasized, “we find it extremely difficult to fathom any scenario in which an attorney might expose himself to RICO liability by offering conventional advice to a client or performing ordinary legal tasks (that is, by acting like an attorney).” RSM Prod. Corp. v. Freshfields Bruckhaus Deringer US LLP, 682 F.3d 1043, 1052 n.7 (D.C. Cir. 2012) (quoting Handeen v. Lemaire, 112 F.3d 1339, 1349 (8th Cir. 1997) (cleaned up)). Amicus respectfully requests the Court to affirm the Superior Court’s Order to dismiss the indictment.

Respectfully submitted,

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Dated: July 8, 2025

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-1833-24T5

STATE OF NEW JERSEY,

Plaintiff-Appellant,

V.

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

Defendants-Respondents.

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.

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WTb - William Tambussi's respondent brief
DRb - Dana Redd's respondent brief
JOb - John O'Donnell's respondent brief
SBb - Sidney Brown's respondent brief
Pra - Appendix to this reply brief

PRELIMINARY STATEMENT

This appeal asks whether the trial court erred in granting a facial motion to dismiss a grand jury indictment. Because defendants’ challenges do not turn on pure issues of statutory interpretation but rather mixed questions of law and fact—not just the definition of a “threat,” but also what defendants did, intended, and agreed, and what victims reasonably understood—the answer is plainly yes.

Across 359 pages, defendants have identified no basis to affirm. Most defendants do not defend the crux of the trial court’s opinion—that a speaking indictment “open[ed] the door” to a facial review unavailable for a barebones indictment. But their arguments fare no better. Defendants’ claim that facial review is always permissible is based on a 1950 opinion that has never been read that way (and not cited by any court for 60 years)—and would upend criminal procedure. The suggestion that this facial review was permissible because the Indictment disclosed the grand jury’s “theory” fails too, as it lacks any workable principle or caselaw support. Further, while defendants insist that all conduct at issue was hard-bargaining or protected petitioning, divining the meaning and context of their words and acts is a fact-dependent query, not a facial one.

Nor is that the only error that justifies reversal. Most centrally, even assuming the trial court’s flawed standard of review, the extortion and coercion conspiracy charges are valid. Precedent confirms that threats—like the threats

to inflict governmental, reputational, or unrelated economic harm charged here—are context-dependent. And the evidence in the Indictment alone suffices to support the grand jury’s finding that what defendants meant and agreed to, and victims understood, was not mere hard bargaining or petitioning. But of course the evidence included in the Indictment was not the whole story: the grand jury heard 2,000+ pages of testimony and 341 exhibits, over five months, and there was no basis for the trial court to dismiss without allowing the State to rely on this evidence, or even reviewing the evidence itself. This Court should reverse and remand, at which point defendants may raise a some-evidence motion and the State can rely on the voluminous grand-jury record in response.

LEGAL ARGUMENT

POINT I

DEFENDANTS’ ARGUMENTS BELONG IN A SOME-EVIDENCE MOTION INSTEAD.

Defendants fail to rehabilitate the core problem with the decision below: their theories do not belong in a facial motion, but rather a some-evidence motion. Defendants rightly do not deny that even barebones indictments are facially valid so long as they provide notice, see (Pb40), and no defendant offers a good reason that a speaking indictment can change the analysis absent a proffer or stipulation, which it cannot, see (Pb28-34, 39-45). Nor does any defendant say that they can obtain review of mixed questions of law and fact via a facial

motion. Together, those points are dispositive: assessing the scope and nature of extortion and coercion conspiracies is a fact-dependent exercise, (Pb27-30 & n.4; 34-35 & n.6; 55; 61-63 & n.17), inappropriate on a facial posture regardless of the Indictment’s length. That is all this Court needs to hold to reverse.¹

1. Defendants respond with five main arguments, but all are unavailing.

First, defendants attempt to recast the trial court’s ruling as one that did not weigh the evidence or misapply usual standards of review. E.g., (GNb46; DRb20; SBb30). But defendants’ briefs make little effort to support the trial court’s opinion, which both reasoned that the use of a speaking indictment “open[ed] the door” to a sufficiency-like review, (Pa152), and made numerous defense-favorable inferences in undertaking that review, (Pb38-45). And those two errors—adopting what amounted to an unprecedented form of review, and then erring in applying it—are each dispositive. See (Pb39-56).

Second, defendants contradict precedent, logic, and the trial court’s own reasoning in arguing that because “essential facts” must always be alleged, a defendant can always challenge his indictment by assuming the truth of every “essential fact” and then testing sufficiency based only on those facts—regardless of the grand-jury record. See, e.g., (GNb18-21). The main case they

¹ Sidney Brown’s argument that he was denied notice, (SBb18), is inconsistent with the trial court’s own ruling, (Pa151), and flawed, see infra at 30, but in any event can be addressed on remand. No other defendant challenges notice.

repeatedly cite is a 75-year-old opinion, State v. De Vita, 6 N.J. Super. 344 (App. Div. 1950), which has not been cited by a single court in 60 years, and which for good reason has never been read defendants' way. De Vita reproduces the two-sentence indictment at issue, making clear that the problem was that those sentences failed to charge an essential element ("falsity") and to clarify what proceeding defendant was charged with obstructing. 6 N.J. Super. at 345-47. De Vita is thus an example of the notice-and-elements issues that facial motions properly test—issues that would have been cured by including "falsely" and "in the upcoming trial" in that indictment. See ibid.; see also, e.g., State v. Wein, 80 N.J. 491, 497-98 (1979) (similar, as to notice); State v. Newell, 152 N.J. Super. 460, 466-68 (App. Div. 1977) (similar); (Pb28-29). But here, no one contends the trial court based its ruling on notice or elements. See (Pa151) ("Defendants do not dispute notice."); (Pa81-110) (charging all elements).²

Nor are defendants trying to test a "purely legal question as 'applied to a fixed universe of uncontested facts.'" E.g., (GNb43) (quoting Pb36). For one,

² Defendants' other cases also offer no support. Philip Norcross relies on State v. Lisa, 391 N.J. Super. 556 (App. Div. 2007), aff'd, 194 N.J. 409 (2008), but Lisa set aside an indictment based on the prosecutor's charge to the grand jury, id. at 564-65, 580-81; see also State v. Bennett, 194 N.J. Super. 231, 234-36 (App. Div. 1984) (affirming dismissal based on grand-jury record); State v. Keogh, 481 N.J. Super. 67, 81 (App. Div. 2025) (affirming dismissal of count based on grand-jury record); State v. Borg, 9 N.J. Misc. 59, 60-65 (1931) (dismissing indictment on notice grounds after reviewing grand-jury record).

despite ostensibly accepting “all” such facts, see ibid., they never accept the ones the grand jury alleged in each count, (Pa81-110)—as would suffice for a barebones indictment. For another, in construing “fixed” to mean no more than all illustrative facts in the speaking portion of the Indictment but no more, e.g., (GNb30-32, 42-43), they overlook their own acknowledgment that they must assume at this stage that an unlimited “amount of evidence” supports each allegation, see (GNb21)—including, for example, the allegation defendants agreed to “use[] the Enterprise’s reputation for controlling governmental entities to intimidate and threaten” victims into handing over property, (Pa85). And that means accepting that nothing “on [the Indictment’s] face appears incapable of supporting a judgment of conviction.” State v. Riggs, 91 N.J.L. 456, 458 (1918); see also State v. Shipley, 10 N.J. Super. 245, 250 (App. Div. 1950).

Indeed, if defendants were right that they could raise a facial issue by accepting merely the facts in the speaking portion of an indictment and ignoring factual elements and grand-jury evidence, then most indictments—especially barebones ones and non-barebones ones where mental state is a key issue (such as witness tampering, domestic violence, or possession with intent to distribute)—would be uniquely vulnerable to attack. Imagine a short indictment that alleges a defendant violated a threats statute by telling the victim, “I’d be careful crossing the street if I were you.” See State v. Crescenzi, 224 N.J. Super.

142, 147-48 (App. Div. 1988). On defendants’ theory, that defendant could pursue a facial challenge solely by assuming he said that sentence and no more. But the grand jury might have seen a range of evidence as to context or motive, and would have necessarily made element-based findings as to each—and this Court has made clear that whether the evidence supports its charge is “a question of fact for the jury” based on its “appraisal of the context.” Ibid.,³ accord State v. Fair, 256 N.J. 213, 238-39 (2024) (confirming that objective and subjective elements of terroristic threats are for jury); State v. Gibbons, 4 N.J.L. 45, 49-50 (1818) (cited at GNb52) (confirming that whether a statement is a challenge to a duel “is always a question for the jury, upon the whole evidence,” while invalidating indictment for failing to allege that statement was such a challenge).

Third, some defendants obliquely defend the rationale that this speaking indictment “open[ed] the door” to a kind of sufficiency analysis, (Pa152), but their version fares no better. Defendants aver that the Indictment disclosed the

³ The indictment in Crescenzi itself would have been vulnerable if defendants’ theory were correct, since the witness-tampering charges in the four-paragraph indictment identified only the statements “If we find out who started this investigation, we are going to have to get rid of him for his own protection” and “If the informant is uncovered, I will see that he goes down the road for his own personal safety.” (Pra1-4). This Court made clear, however, that Crescenzi could not have simply asked to throw out the indictment by asserting that “[t]he inferences the State asks the court to draw, while theoretically feasible, are not supported by the evidence” in the indictment, cf. (Pa200), rather than waiting for a factfinder to consider the full context. See 224 N.J. Super. at 147-48.

State’s “theory of prosecution,” e.g., (PNb2, 27; SBb20-23 & n.5), and that all issues can therefore be recharacterized as pure statutory interpretation, but that does not follow when there are factual disputes. After all, absent a stipulation or proffer, no indictment lays out all the relevant evidence—least of all for context-dependent charges like conspiracy, extortion, or threats. See (Pb39-47 & n.13); United States v. Phillips, 690 F. Supp. 3d 268, 278 (S.D.N.Y. 2023) (grand jury may “give a defendant more detail ... without assuming the risk that a court will treat such detail as a proffer of all of the evidence.”). So defendants’ arguments about statutory meaning overlook that there are also disputes about the facts to which any statutory reading must be applied. See infra at 12-18.⁴

To be sure, the State has always agreed there are cases that turn purely on statutory interpretation, rather than mixed questions of law and fact. E.g., State v. Brady, 452 N.J. Super. 143, 173-74 (App. Div. 2017) (whether enforcing an arrest warrant can be a duty “clearly inherent” in judge’s role); State v. Perry, 439 N.J. Super. 514, 519 (App. Div. 2015) (whether administrative license suspension can be a “suspension”); State v. Mason, 355 N.J. Super. 296, 305 (App. Div. 2002) (whether contractors can be “public servants”); State v.

⁴ Defendants also continue to inject facts that reveal the flaws in their approach. For instance, O’Donnell argues that he “had every reason to accept, and no reason to question, the legal advice and petitioning strategy that Phil Norcross and Tambussi devised and advocated.” (JOb30-31). This assertion is not in the Indictment, and the only way to test it pretrial is via a some-evidence motion.

Thompson, 402 N.J. Super. 177, 201 (App. Div. 2008) (whether bare violations of Conflicts of Interest Law can be Official Misconduct); State v. Moscato, 253 N.J. Super. 253, 260-61 (App. Div. 1992) (whether a non-permitted “solid waste facility” can be required to file tariff, and relying on “record” and “evidence”); see also (Pb24-25, 44-45); State v. Pandozzi, 136 N.J. Super. 484, 491 (App. Div. 1975) (whether exculpatory denial could be “false information”). These are properly facial because the only dispute is about statutory meaning. But defendants’ arguments turn on mixed questions of law and fact, and highly context-dependent ones—such as the application of (contested) theories of extortion, coercion, and conspiracy law to (contested) theories of what defendants meant and agreed to, and what victims understood them to mean.⁵

Fourth, defendants argue that cases from other jurisdictions support the court’s approach, but a review of those cases reveals otherwise. United States v. Enmons, 410 U.S. 396 (1973), asked whether the (uncontested) use of physical violence and property destruction in a labor dispute could be extortion under the Hobbs Act. See id. at 399; see also United States v. Sittenfeld, 522 F.

⁵ George Norcross argues briefly that “whether the facts alleged in an indictment constitute an unlawful threat is a question of law,” (GNb47); cf. (SBb22, 24), but the two cases he cites say nothing at all about threats, and recent, binding terroristic-threats precedent confirms that “the jury determines” in the first instance whether a threat was made, subject to ordinary appellate review. Fair, 256 N.J. at 238; see also Crescenzi, 224 N.J. Super. at 147.

Supp. 3d 353, 366 (S.D. Ohio 2021) (citing Enmons as case where “as a matter of law, the charged crime did not occur”). United States v. Landham, 251 F.3d 1072 (6th Cir. 2001), on post-verdict appeal, determined that two statements could not have been threats as a matter of law, where one was a threat to kidnap one’s own child (legally impossible in that jurisdiction) and the other did not include an implicit threat of future harm. See id. at 1081-83; see also id. at 1083 (noting “the difficulty in analyzing these types of counts absent context”). United States v. Panarella, 277 F.3d 678 (3d Cir. 2002), considered whether a guilty plea should have been vacated because the charging instrument failed to allege the payments to a state legislator improperly influenced the legislator—thus failing as a matter of law to make the defendant an accessory to honest-services fraud. See id. at 685.⁶ None contradicts that a some-evidence motion is the proper way to press defendants’ mixed-law-and-fact arguments.

Finally, defendants contend that reversing the trial court’s unprecedented form of review would undermine defendants’ rights to bring motions to dismiss, e.g., (DRb2-3; JOB25; SBb2), but that could not be further from the truth. The

⁶ See also United States v. McGeehan, 584 F.3d 560, 572-75 (3d. Cir. 2009) (similarly interpreting honest-services-fraud statute); United States v. Brewbaker, 87 F.4th 563, 576, 579-80, 583 (4th Cir. 2023) (on appeal from antitrust conviction, addressing whether type of restraint on trade charged qualified as “per se” illegal, and agreeing that “trial court had to accept the facts as found by the grand jury” while noting that Supreme Court requires courts considering antitrust questions to also “consult economic evidence”).

State's point is simply that where an indictment provides adequate notice and charges the requisite elements, then—absent a proffer or stipulation—a defendant who wishes to advance mixed law-and-fact arguments must do so through a some-evidence motion, allowing the State to then rely on all the evidence the grand jury saw and heard. Defendants cannot achieve the same type of review while requiring the State and the court to ignore such evidence.

2. Defendants' objections to the grand jury's government-harms charges under N.J.S.A. 2C:20-5(d) and 2C:13-5(a)(4) are also misguided. Those provisions cover threats by a non-official to "cause an official to take or withhold action," ibid., and defendants argue those portions must fail because any such threats are necessarily only threats to ask for official action, which in turn is protected speech. E.g., (GNb64-66; PNb47; JOB26-32). For the most part, this argument is likewise premature, since it assumes facts in dispute. Compare, e.g., (GNb65) (claiming "there is no alleged threat to withhold ... access to the Camden government" or cause "adverse official action"), with (Pa50, 53, 61-62; Pb39-40). That is, defendants' attempts to liken their conduct to benign petitioning or negotiating (protected) rather than the conduct in United States v. Collins, 78 F.3d 1021 (6th Cir. 1996) (unprotected), turns on what they indeed intended and did—factual questions a facial motion cannot test.

That said, two defendants do seem to advance an extraordinary theory (not

reached below) that would qualify as facial. The argument seems to go that so long as a citizen is not a public official, he enjoys categorical First Amendment immunity from extortion or coercion charges that turn on leveraging the power of government, because by virtue of not himself holding office he is necessarily threatening just to ask the government to do his bidding. See (PNb47; JOB27-30). This would tee up a pure-law dispute as to the government-harms threats charges for those defendants, as their argument would provide blanket immunity to every non-officeholder, no matter the facts. But this was not part of the ruling below, and for good reason: the theory is without merit. See infra at 18-21; see also (GNb65) (appearing to agree). So this Court can reject this argument or leave it for remand, while holding that every other theory is premature.

POINT II

THE EXTORTION/COERCION CONSPIRACY CHARGES ARE FACIALLY VALID.

Even accepting these flawed facial theories, the Indictment sufficiently charges extortion and coercion conspiracies for agreeing to threaten governmental, reputational, and unrelated economic harm. See (Pb46-67).

Start with common ground, which reveals how difficult defendants' arguments are at this stage. All parties agree that every count hinges on the proper allegation of an extortion or coercion conspiracy. All parties also agree that, for extortion or coercion, the threatened act need not be "independently

criminal”—as when someone threatens to have an employee fired (itself legal) unless she hands over her watch (illegal). (GNb25); see (GNb28; PNb45); see also State v. Roth, 289 N.J. Super. 152, 158 n.4 (App. Div. 1996); (Pb49-50). At least some defendants agree that threats to cause reputational or governmental harm, as charged here, can be unlawful. E.g., (GNb65). And defendants do not dispute that threats will often be implicit, and that determining whether a threat is “benign” or “unlawful,” State v. Monti, 260 N.J. Super. 179, 185 (App. Div. 1992), is a fact-driven inquiry—as with trying to figure out what a defendant meant by “I’d be careful crossing the street if I were you,” Crescenzi, 224 N.J. Super. at 147-48; see also, e.g., Fair, 256 N.J. at 238; (Pb50-51). Thus, because whether the grand jury charged conspiracies to make “perfectly legal” threats, (GNb57), requires a fact-driven inquiry into what those threats meant, defendants face a steep climb, even treating the Indictment as the sum of all evidence, contrary to established law.

And the evidence included in the Indictment is itself sufficient. The Indictment alleges, for instance, that defendants conspired to (and did) threaten Developer-1 with governmental, reputational, and unrelated economic harm if he did not release his property rights—e.g., by telling him “if you f**k this up, I’ll f**k you up like you’ve never been f**ked up before” and “I’ll make sure you never do business in this town again.” (Pa39, 47). Defendants (like the trial

court) note that statements like these are susceptible to multiple interpretations, as implicit threats typically are. See Crescenzi, 224 N.J. Super. at 147-48; supra at 6 & n.3. And defendants naturally tell the story their way, as involving nothing but “classic hard bargaining” between “private parties negotiating deals,” (GNb31, 26); see also (SBb1; JOB27; PNb40). But these are arguments for a factfinder, and the allegations provide ample context for the grand jury’s finding of what was meant, agreed to, and reasonably understood. E.g., (Pa53-54) (threatening “enormous consequences” as he pursued scheme to wield city’s condemnation power);⁷ see (Pb55-58, 66-67) (collecting allegations). And with even more context from 2,000+ pages worth of testimony and 341 exhibits heard over five months, the grand jury found probable cause to conclude that the defendants had agreed to go beyond lawful means.

Defendants’ two main buckets of contrary arguments—first, on hard bargaining, and second, on petitioning—are unavailing.⁸

⁷ Defendants say “[t]he State perplexingly asserts that Defendants ‘threat[ened]’ [Developer-1] with ‘eminent-domain power.’” (GNb65). But the State’s brief simply says: “The conspiracy to flaunt eminent-domain power to gain leverage over Developer-1 is illustrative.” (Pb65). That is true: that someone is simultaneously conspiring to use the extraordinary public power of eminent domain to punish an adversary is good evidence that when that person threatens “enormous consequences,” he does not mean “a bad review on Yelp,” (GNb26).

⁸ Defendants’ focus on the Developer-1 charges is also telling: it reveals they have no argument that the nonprofit leaders in the L3 conspiracy were “rival

1. Initially, as to hard bargaining, defendants at times seem to argue that threats are lawful so long as they are intermingled with business negotiations and financial loss. E.g., (GNb58-59). But just because a case involves those features does not mean that there cannot be extortion or coercion, as precedent and common sense confirms. E.g., Monti, 260 N.J. Super. at 182; (Pb54-55). Facts still matter: an investor may threaten to walk away from a deal, but he may not threaten to spread salacious rumors about the counterparty CEO's home life. That the alleged threats are interwoven with business negotiations in no way disposes of Counts 3-4—much less Count 2 (L3 Complex).

Defendants similarly err in arguing that whatever protections exist for hard-bargaining must extend to all subsections of the extortion and threats statutes, such that threatening to “cause an official to take or withhold action,” N.J.S.A. 2C:20-5(d), is somehow permissible if it occurs at the negotiating table. That is a misreading of New Jersey law and federal precedent. As to the former, defendants misunderstand both the 1971 Commentary and Roth. (GNb60 n.2). The Commentary recognizes that the text of the extortion and coercion statutes enumerate which types of threats are “unlawful” (including in the context of

developers,” (SBb26), or “businessmen engaged in a prolonged commercial negotiation,” (GNb31). See (Pb66-67); see also (GNb36) (characterizing Philip Norcross as “bossing [CFP’s CEO] around”). So even accepting their (counterfactual) narratives about hard bargaining (and flawed facial approach) would leave eleven of the Indictment’s thirteen counts untouched.

“economic bargaining”), by “provid[ing] a list of particular harms which must be threatened in order to come within the offense of extortion.” 1971 Commentary at 227. Two of those specific harms are reputational and governmental—subsections (c) and (d)—while subsection (g), by contrast, is a catchall for other harm that does not “substantially benefit” the threatener.

Roth, which concerned this catch-all subsection (g), is in accord. This Court rejected Roth’s argument that he did not meet the “substantially benefit” element by explaining that an “economic or commercial nexus” was required to exempt “threats otherwise considered illegal under this provision,” i.e., subsection (g). 289 N.J. Super. at 161 (emphasis added). And this Court took special pains to distinguish lawful from unlawful threats both because Roth was charged only under this catchall provision, and because he was charged with doing something (threatening “to sue”) that the Commentary had acknowledged was generally lawful. See ibid. (quoting 1971 Commentary at 227); see also id. at 162 (upholding charge). So Roth reinforces what statutory text already makes clear: threats to inflict reputational and governmental harm are types the Legislature established, with (c) and (d), as threats one need not “tolerate ... as an incident to free bargaining.” 1971 Commentary at 227-28. Said otherwise, each is a “legal entitlement” that a “statute [] creates.” See (GNb28, 65).

Federal hard-bargaining caselaw gets defendants no further. Their Hobbs

Act cases involve one business wielding permissible economic leverage against another—for instance, a large buyer threatening to stop doing business with a small seller—where the recipient has no “preexisting right to be free of the economic fear that the defendant utilized.” (GNb28) (quoting United States v. Tobin, 155 F.3d 636, 640 (3d Cir. 1998)). But these cases offer “a rule only for a very narrow subset of the potential universe of extortion cases”—purely “economic fear” between two trading parties. Brokerage Concepts, Inc. v. United Healthcare, 140 F.3d 494, 503 (3d Cir. 1998) (involving “solely” economic fear in negotiation between HMO and small pharmacy over vendors). That allows large buyers to cow small sellers by threatening to stop buying, but it does not apply when some other harm is alleged, such as threats to inflict reputational or governmental harm. See id. at 526 (noting “the right of private citizens to compete for government contracts on a level playing field”); see also (GN28) (acknowledging same).⁹ So these cases fit the State’s point: if an HMO threatens a local pharmacy to use its vendor or lose access to government licensure, cf. (Pa50, 53, 61), or face “very serious accusations” about its owners, cf. (Pa57), that is extortion—as the grand jury charged here, (Pb55-58, 66-67).

⁹ Nor do defendants’ other cases involve such threats to inflict reputational or governmental harm. See, e.g., Viacom Intern. Inc. v. Icahn, 747 F. Supp. 205, 211 (S.D.N.Y. 1990) (“fear of harm to existing or potential economic opportunities”); United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep’t, AFL-CIO, 770 F.3d 834, 838-39 (9th Cir. 2014) (similar).

Though only relevant to subsection (g), Roth confirms that these charges are permissible. Defendants argue that because their threats had a “clear ‘nexus’” to the subjects of negotiation, they should fall under the category of “accepted economic bargaining” under Roth. (GNb28, 31, 37; PNb39-40); see Roth, 289 N.J. Super. at 160-62. But even for subsection (g), Roth requires “an economic or commercial nexus to exist between the actor who utters these ‘protected’ threats and the underlying transaction” for this safe harbor to apply, ibid., which explains why the threats alleged here—involving unrelated matters, like government access, reputation, and doing business in Camden in general—do not qualify. Just as “one person may not threaten to fire another’s relative from an unrelated job ... unless the second person hands over his watch,” (GNb28), one person cannot threaten to wield a city against another unless that person hands over a view easement, (Pb55-58), or accepts unfavorable terms and ultimately forfeits their property, (Pb66-67). While George Norcross has every right to argue at a later stage that his meaning was benign—as threats defendants often do, see supra at 6 & n.3—the grand jury found probable cause that he meant (and was reasonably understood) to threaten such unlawful harm.¹⁰

Defendants also claim the State is “rewrit[ing] the Indictment,” (GNb50-

¹⁰ Defendants meanwhile identify no “nexus” that would bring Philip Norcross’s threats to CFP within their version of these exceptions at all, as he was not even a party to the relevant negotiations. See (Pa25-30); supra at 13-14 n.8.

51), but the Indictment itself plainly alleges these threats. See, e.g., (Pb55-58, 66-67); (Pa39). And these facts were “repeated, realleged, and incorporated” where the Indictment charges defendants with the key elements. (Pa87-98).

Finally, Defendants’ cramped construction of the Indictment suffers from a further flaw: not every piece of evidence must itself be a threat to support the grand jury’s findings about what defendants agreed to, intended, and accomplished. Contra, e.g., (GNb60). Thus, that some of defendants’ plans were not shared with the victims neither exempts those acts from liability—because the counts are conspiracy charges, N.J.S.A. 2C:2-6—nor precludes them from serving as evidence of what the threats really meant or what the objects of the charged conspiracies were. See also supra at 13 & n.7.¹¹

2. Defendants also seek to avoid liability for conspiring to extort or coerce victims through threats to “cause an official to take or withhold action,” N.J.S.A. 2C:20-5(d); see N.J.S.A. 2C:13-5(a)(4), arguing that such conduct is protected petitioning. See (GNb33; PNb42; WTb8). This issue was not reached below, but regardless nothing about these charges implicates First Amendment rights.

¹¹ O’Donnell argues that it is odd for the existence of a threat to turn on “others’ perception,” (JOb27-28), but that is not so. When it comes to assessing threats, “context matters.” Fair, 256 N.J. at 238 (noting “prior interactions between the parties” as a factor). So when someone says, “I’d be careful crossing the street if I were you,” it is often relevant whether the hearer is speaking with a crossing guard or an emissary of Tony Soprano. Crescenzi, 224 N.J. Super. at 147-48.

Initially, defendants misunderstand Noerr-Pennington. The doctrine renders defendants immune from “antitrust liability for engaging in conduct ... aimed at influencing decisionmaking by the government.” Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 556 (2014). So it is unclear that it ever properly applies “outside the antitrust context,” since “Noerr’s first rationale for immunity—an interpretation of the Sherman Act—is not present” outside that context. Cardtoons, L.C. v. Major League Baseball Players Ass’n, 208 F.3d 885, 888-89 (10th Cir. 2000). And New Jersey courts have never extended it outside the civil context. See Main Street at Woolwich, LLC v. Ammons Supermarket, Inc., 451 N.J. Super. 135, 144 (App. Div. 2017) (collecting cases). After all, one reason Noerr-Pennington bars certain civil claims is that criminal laws already exist to police such conduct. See Columbia v. Omni Outdoor Advert., Inc., 499 U.S. 365, 378-79 (1991) (citing the Hobbs Act as an example). And just as Noerr-Pennington has never been read to immunize bribery, it likewise cannot immunize extortion. See Allied Tube & Conduit Co. v. Indian Head, Inc., 486 U.S. 492, 504 (1988).

In any event, defendants’ attempts to apply the doctrine here are confused, even if Noerr-Pennington extends into far-afield criminal settings, such as filing a wholly accurate criminal complaint, e.g., United States v. Hylton, 710 F.2d 1106, 1111 (5th Cir. 1983) (cited at GNb62). On one hand, defendants rightly

concede the permissibility of governmental-harm cases like Collins, where the defendant threatened “to use [his] spouse’s official power to revoke the victims’ ‘opportunity to compete for government contracts on a level playing field.’” (GNb65) (quoting Collins, 78 F.3d at 1030)). Yet they argue it is “incoherent” to charge someone with “having controlled the Government,” and that “[s]hort of bribery or blackmail, the only way a private citizen can cause the government to act is to ask it to act.” (GNb63); see also (PNb47) (arguing that the distinction between having “asked” and having “controlled” does not make “any sense, as private citizens can only secure government action by asking government officials to do something”); (JOb30) (similar). But Bill Collins was also a private citizen (whose apparent public power came from marriage, not bribery or blackmail), yet at least some defendants rightly accept that he could be charged with extortion for threatening to withhold access to government contracts. So it is unclear why defendants believe George Norcross has a First Amendment right to obtain property using threats “to use his control of the Camden government” against others, (Pa61), such as through funding and hiring decisions, or permitting and approvals—which, indeed, the grand jury charged him with plotting to delay as “another point of attack on” Developer-1, (Pa59).

Defendants’ attempts to distinguish Collins are especially unavailing where, as here, the grand jury charged Camden’s Mayor with joining three of

these conspiracies. (Pa30, 87, 92). By contrast, there is no indication Governor Collins was charged with joining in her husband's wrongdoing—so, if anything, defendants' no-such-thing-as-controlling-the-government-as-a-private-citizen defense, (PNb47), would have been stronger there. In any event, the defense is radical and wrong, as the Legislature and the Commentary easily recognized. N.J.S.A. 2C:20-5(d), 2C:13-5(a)(4); 1971 Commentary at 229 (“A threat to bring about adverse official action may, of course, be made by one who is not himself an official.”); see also, e.g., Collins, 78 F.3d at 1030. No “constitutional avoidance” is needed, (GNb64), because there is no issue to avoid.

Here again, after 2,000+ pages worth of testimony and 341 exhibits over the course of five months, the grand jury concluded that defendants had not merely threatened to use their soapbox, but rather threatened governmental (and reputational and unrelated economic) harm. (Pa87-98). While defendants have every right to argue the evidence shows that they did not in fact do so, the extortion and coercion conspiracy charges are facially valid.

POINT III

DEFENDANTS' COUNT- AND DEFENDANT-SPECIFIC ARGUMENTS ALSO FAIL.

A. All Charges Are Facially Timely.

Initially, defendants' arguments overlook that Counts 5-12 are timely regardless of whether Counts 2-4 are. In any event, Counts 2-4 are also timely.

1. Defendants argue that the timeliness of all charges rises or falls together, see (GNb74; Pa209), but they conflate substance with timeliness. While the substantive validity of Counts 5-12 hinges on the underlying offenses, their timeliness does not, because these counts charge defendants with knowingly transacting in and possessing criminal proceeds, and using corporate entities to do so—separate crimes plainly charged within the limitations period. (Pa99-108). That is not unusual: stealing a painting in 1980 is a different crime from fencing the painting in 2024, and another from routing the sale through a corporation one controls. The latter crimes have their own limitations periods. See United States v. Silver, 948 F.3d 538, 575-77 (2d Cir. 2020).

The tax credits are also properly facially charged as “proceeds.” Contra (GNb71-72; JOB71). The law requires they simply be “obtained directly or indirectly from” crime. See N.J.S.A. 2C:21-24, -25(d) (emphasis added). Here, the ERG tax credits were obtained directly from Developer-1, see (Pa61), so those are straightforward. And the GrowNJ credits are only one step removed, (Pa2-7, 77-80), which easily brings them within “indirectly”—or else the statutory phrase “indirectly from” crime would have no meaning. Finally, any dispute about the depth of the connection is fact-dependent.¹²

¹² That a separate agency issues the credits makes no difference. Contra (GNb71). The EDA focuses on economic development; its issuance of credits

2. The conspiracy charges in Counts 2-4 are also timely. Initially, defendants’ facial statute-of-limitations attack is fact-dependent (and thus premature), as it turns on “the element of intent[,]” which is “a question for the jury.” State v. Thomas, 76 N.J. 344, 358 (1978); see State v. Breakiron, 108 N.J. 591, 608 (1987); (Pb27 & n.4). For example, defendants agree that concealment “may extend a conspiracy when there is an ‘original agreement’” to conceal, yet insist no such agreement is alleged here. (GNb72) (quoting State v. Twiggs, 233 N.J. 513, 544 (2018)). But the grand jury expressly found otherwise, charging that “part of the conspiracy” included “concealing, ... the illegal operation of the Enterprise and acts done in furtherance ... , for the purpose of advancing the objectives of the Enterprise.” (Pa83-84). Defendants similarly dispute the import of the tax-credits objective by arguing “there is no evidence that any concerted activity posing the special societal dangers of conspiracy is still taking place,” (JOb56); see also (JOb69) (arguing applications are “simply routine paperwork”), but this too is obviously fact-dependent.¹³

does not estop a law-enforcement agency from prosecuting alleged wrongdoing—and indeed, the Indictment seeks forfeiture. (Pa111). Likewise, that the grand jury did not charge the corporations, (JOb77), presents no issue—the charges are based on defendants’ own alleged conduct and mental states.

¹³ O’Donnell also chides the grand jury for not asserting that defendants “coordinated the applications’ preparation, submission, or distribution,” (JOb70), but, in addition to being fairly implied, this creates no facial issue. Barebones indictments hardly ever include such specificity. See supra Point I.

Regardless, defendants’ attacks on the charged objectives, (Pa83-85) (tax credits, concealment, retaliation), also fail on their own terms. As to tax credits, the Grimm/Doherty principle does not vitiate this objective for two independent reasons. Contra (GNb68-71; JOB51-72). The first is based on a difference in statutes. Both (post-verdict) cases hinged on a federal statutory requirement that a conspiracy involve an “overt act” during the limitations period—whether charged as “objectives” or not, (JOB65)—and each addressed only whether specific facts (routine interest payments, paychecks) qualified. United States v. Grimm, 738 F.3d 498, 499 (2d Cir. 2013); United States v. Doherty, 867 F.2d 47, 60-62 (1st Cir. 1989); accord Fiswick v. United States, 329 U.S. 211, 216 (1946); United States v. Kissel, 218 U.S. 601, 607-08 (1910). But the state-law conspiracies charged here do not require an overt act, so the issue is whether the conspiratorial agreement itself continued into the limitations period—as the grand jury charged. See N.J.S.A. 2C:41-2(d), 2C:5-2; State v. Cagno, 211 N.J. 488, 509-11 (2012);¹⁴ (GNb69 n.3). That is conclusive at this stage.

But even if this Court imports Grimm/Doherty, the charges remain timely. Grimm/Doherty bars a charge when the only conduct in the limitations period is passive fallout from a concluded conspiracy. But the exception is inapplicable

¹⁴ O’Donnell’s arguments that Cagno and other RICO cases are inapposite because they involve the mafia run headlong into precedent. See State v. Ball, 141 N.J. 142, 161 & n.2 (1995); (Pb69-70) (discussing Ball and federal cases).

when the alleged benefits are (as alleged here) the conspirators’ main purpose. Initially, the tax credits were the scheme’s alleged object, not a byproduct. (Pa20-21). Defendants also allegedly shaped the bill that included the ten-year structure, (Pa17-21), and no case holds that a defendant can alter the statute of limitations by structuring a scheme to produce a lengthier payout. Moreover, in contrast to workaday salary or interest payments, the credits are hardly “indefinite, ordinary, typically noncriminal and unilateral,” contrast Grimm, 738 F.3d at 503—designing and repeatedly coordinating applications for millions of dollars in tax credits for ten years is not only defined and far from “the distant past,” (JO672), but also active, multilateral, and quite out of the ordinary.

Defendants’ New Jersey cases further support the State’s position. State v. Herbert, 92 N.J.L. 341 (1918), stressed that “instances of continuous conspiracies are those in restraint of trade, to extort money, and to divide the proceeds, and such acts which in their very nature carry with them continuity of action”—precisely what is alleged here. Id. at 358. State v. Cozen, 405 N.J. Super. 266 (App. Div. 2009), addressed misapplication of entrusted property (not a continuing offense) and declined to extend the limitations period for finished crimes, in contrast to the ongoing conspiracies charged here. Id. at 277.

Defendants’ federal cases likewise do not help them. In United States v. Hitt, 249 F.3d 1010 (D.C. Cir. 2001), the grand jury never charged the objective

that would have brought the alleged overt acts (even leaving aside the statutory distinction) into the limitations period. Id. at 1016-17. In United States v. Turner, 548 F.3d 1094 (D.C. Cir. 2008), the court reviewed the “government’s evidence” at trial and concluded that the alleged overt act of concealment occurred after the conspiracy’s main objective was attained and without an original agreement to conceal. See id. at 1096-98. And United States v. Colon-Munoz, 192 F.3d 210 (1st Cir. 1999), another post-verdict appeal, similarly concluded there was “no evidence that the repayment of [a loan] was an overt act in furtherance of the conspiracy.” Id. at 228.¹⁵

Beyond the tax credits, concealment and retaliation independently suffice. The concealment objective fits within Twiggs, which permits concealment to extend conspiracies when serving “main criminal objectives” with “express original agreement,” Twiggs, 233 N.J. at 544, as was alleged here, (Pa83-85). Defendants’ entreaties to “look beyond the Indictment’s facial characterization,” (JOb74), instead underscore the prematurity of their argument. See also ibid. (acknowledging that “the Supreme Court in Twiggs reviewed the grand jury presentation” to properly address the dispute there). So too with the retaliation

¹⁵ Silver (cited at JOb58-60), is even further afield, concluding in the context of a federal bribery conviction that the quid pro quo did not extend into 2010 where the defendant (a lawyer and legislator) had ceased steering grants to a doctor in 2007, later referrals by the doctor were not part of the corrupt exchange, and there was no “evidence of an ongoing scheme.” 948 F.3d at 572-74.

objective: defendants’ claims that all alleged retaliation occurred in or before April 2018, (GNb74), cannot be squared with either the Indictment’s speaking portion, (Pa74-76), or its operative charges, (Pa85). The charges are timely.

B. The Official-Misconduct Charge Is Facially Valid And Timely.

1. Contrary to Redd’s assertion, her conspiratorial agreement is a purposeful “act relating to [her] office” under N.J.S.A. 2C:30-2(a), see (DRb34-38, 40-41), as precedent reflects. See State v. Diorio, 216 N.J. 598, 617 (2014) (confirming that if a public official makes “an agreement” to use public power toward private ends, his official misconduct is a “continuing offense”). Redd also disputes the allegations that her acts related to her office—e.g., claiming she acted “as a Board Member and co-chair of CFP,” not as mayor, (DRb6, 27-28)—but these are factual arguments, not facial ones. See (Pb73-74 & n.22).¹⁶

Nor does N.J.S.A. 2C:30-2(a) require a quid pro quo, as Redd contends. (DRb37-39). Indeed, the statute’s disjunctive language—“with purpose to obtain a benefit or to injure or deprive another of a benefit”—makes clear that self-enrichment is not an element. That distinguishes official misconduct from

¹⁶ Similarly, Redd contends that the Indictment does not allege that she “use[d] her office,” (DRb26-27), but that is a highly cramped reading of the document—even apart from the heavy deference courts give grand jury indictments at this stage, (Pb21-22), which alleges various uses of her mayoral power to advance the charged scheme, see (Pb74-75, 99) (citing Indictment paragraphs), as well as defendants’ discussing “brief[ing]” her, (Pa52).

bribery, N.J.S.A. 2C:27-2(d), as this Court has recognized. See State v. Schenkolewski, 301 N.J. Super. 115, 144 (App. Div. 1997) (“the misconduct statute states that the benefit can be obtained for the actor or ‘another’”).

2. The official-misconduct charge is also timely. Initially, the allegation that all defendants committed the offense between January 1, 2014 and December 31, 2017, (Pa109)—i.e., into the limitations period—suffices to reject this facial challenge. But the grand jury also alleged that Redd committed affirmative acts related to her office by committing the offenses in Counts 1-3 and 5-12 (which extend through December 2017, when her term ended), and that she did so during this time to obtain a benefit. (Pb98-99; Pa81-96, 99-110). Finally, defendants offer no response to State v. Weleck, 10 N.J. 355 (1952), which confirms that a deferred payout for official misconduct can indeed extend the limitations period. See id. at 368, 375; (Pb99). This charge too is timely.

C. The Indictment In No Way Targets Lawyering.

All agree that attorneys cannot be prosecuted for “routine” lawyering and zealous advocacy without corrupt intent. (WTb11-13; PNb48). The grand jury did not say otherwise; it simply charged Tambussi (and Philip Norcross) with purposely intending to advance a criminal conspiracy, which is illegal. (Pa1-7, 81-98; Pb80-82). It referenced Tambussi’s legal work as evidence of the scope of that conspiracy and its objectives, but never suggested that these acts were

criminal in and of themselves. (Pa50-60, 69-70). And it does not allege that he represented the CRA, contra (WT9-17; Pa191), but rather that the scheme was to use the CRA as an instrument of defendants’ private ends.¹⁷

Nor is the “heightened mens rea” that Tambussi seeks a basis for facial dismissal. (WTb11-20). For one, no authority requires this special mens rea—let alone as a criminal element that must be charged, as opposed to a defense. See LoBiondo v. Schwartz, 199 N.J. 62, 73 (2009) (considering mens rea for civil malicious-use-of-process suits); Mayo, Lynch & Assocs. v. Pollack, 351 N.J. Super. 486, 497 (App. Div. 2002) (confirming whether attorney acted with the requisite purpose for RICO liability is a jury question).¹⁸ In any event, unlawful purpose is required, and the grand jury alleged such purpose. See (Pa81, 87). This and Tambussi’s other unreached arguments—all dependent on disputes about what Tambussi intended and did, or what defenses he might later invoke based on those factual disputes, see (WTb21-48)—are premature.

D. The Indictment Validly Alleges A Racketeering Enterprise.

The trial court’s ruling that no “enterprise” existed was likewise error. An

¹⁷ The Indictment mentions hardly any legal work by Philip Norcross, contra (PNb48), so it cannot raise any such issue as applied to him.

¹⁸ Likewise, none of Tambussi’s cases extend the privilege immunizing litigation statements from civil liability to criminal prosecutions, see Hawkins v. Harris, 141 N.J. 207, 215-21 (1995), and courts have held otherwise, see State v. Brown, 217 N.E.3d 767, 774 (Ohio 2022); Silberg v. Anderson, 786 P.2d 365, 373 (Cal. 1990) (cited at Hawkins, 141 N.J. at 216).

indictment need not allege that a defendant has knowledge of all “aspects of the enterprise,” (SBb34), as racketeering conspiracy requires only “some minimal knowledge of the extent of enterprise,” State v. Ball, 141 N.J. 142, 176 (1996). That requirement is met: the grand jury alleged that the defendants, as “members or associates of the Enterprise,” “function[ed] as a continuing unit for the common purpose of achieving [their] objectives,” (Pa82), and agreed to not just one but a pattern of distinct offenses—including tax-credits offenses, see (Pa50, 85-86). That “apprise[s] [Brown] of ‘that against which he must defend,’” Lisa, 391 N.J. Super. at 578, and alleges more than a single act, see (SBb41-43 & n.9). Brown’s mental-state and “relatedness” arguments, (SBb28, 47), are meanwhile fact-dependent and premature. See supra Point I. Similarly, while the State agrees that an enterprise requires more than mere association, the Indictment alleges more—an organized, continuing unit with defined roles. (Pb69-72). Brown’s disagreement, (SBb38-39), is again fact-dependent and premature.

CONCLUSION

This Court should reverse the facial dismissal order in full.

Respectfully submitted,

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STATE OF NEW JERSEY,

Plaintiff-Appellant,

vs.

GEORGE E. NORCROSS, III,
PHILIP A. NORCROSS, WILLIAM
M. TAMBUSSI, 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
DISMISSING INDICTMENT WITH
PREJUDICE

ON APPEAL FROM SUPERIOR COURT
OF NEW JERSEY
CRIMINAL DIVISION, MERCER
COUNTY

INDICTMENT NO.: 21-05-73-S

SAT BELOW:

HON. PETER E. WARSHAW, P.J.Cr.

BRIEF OF *AMICUS CURIAE*
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PRELIMINARY STATEMENT

As a matter of seeming first impression in New Jersey, this appeal presents a vital question for lawyers practicing law in New Jersey: May an attorney engaged in the provision of bona fide legal services to a client be subject to criminal prosecution absent a pleading requirement compelling demonstration of a conscious effort by the attorney to further the charged criminal enterprise? For multiple reasons, the answer is: No. The mens rea for an attorney's criminal conduct should require more than proof of the lawyer's good faith provision of legal services to a client; it should require a showing that the attorney's prime intent was to further the criminal purpose when the charged conduct arises during the delivery of legal services to a client.

It is axiomatic that a lawyer's representation of a client does not constitute endorsement of the client's views or activities. New Jersey Rules of Professional Conduct ("RPC") 1.2(b). That understanding is a hallmark of the modern RPCs. Of equal, and balancing, import is the RPCs' plain direction that an attorney's counselling or assistance to a client in conduct that the lawyer knows is criminal or fraudulent is anathema. RPC 1.2 (d) (a "lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent . . . but a lawyer may counsel or assist a client in a good faith effort to determine the validity, scope, meaning or application of the law"). Complementary rules advance the expectation

that non-frivolous advancement of law and facts are within expected ethical bounds of diligent advocacy, while balancing larger public policy demands.

The New Jersey Constitution vests the state Supreme Court with exclusive jurisdiction over the regulation of attorney conduct in the practice of law. NJ Const. art. VI, § 2, ¶ 3. The RPCs provide the framework and guidance for determining whether an attorney is acting within the good faith practice of law and meeting known ethical bounds and obligations, or acting with an individual purpose to further a criminal enterprise. When considering how the mens rea element in New Jersey's Criminal Code should apply in circumstances involving an attorney's delivery of legal services to a client, special proofs should be required to ensure lawyers are able to act in good faith fulfillment of their professional duties without fear of criminal prosecution curtailing the provision of zealous advocacy and sound advice.

In the civil context, heightened proof of intentionality is already required before an attorney providing legal services to a client may be responsible for damages to a third party. How could a lesser mens rea standard be justified in the criminal setting? To ask the question suggests its answer. It cannot be allowed while still ensuring that lawyers can adequately represent their clients without fear of inadvertently risking criminal liability or steering so far from it that the client's entitlement to rigorous advocacy and good-faith testing of the law would be curtailed. Similarly, lawyers acting in good faith can still be deceived by the

duplicity of clients but should not be indicted for it without the lawyer's own purposeful intent to further the criminal enterprise. It cannot be that civil liability requires a higher mens rea showing than does a criminal proceeding when the setting for the conduct charged involves a lawyer engaged in the bona fide delivery of legal services to a client. Issuance of an indictment should require demonstration of a conscious effort—purposeful intentionality—by the attorney to further a criminal enterprise, otherwise the attorney's good faith delivery of legal services to a client should not subject the attorney to criminal charges.

PROCEDURAL HISTORY/STATEMENT OF FACTS

The NJSBA respectfully refers the Court to the parties' briefs for a fulsome procedural history and recitation of the facts. In this brief, the NJSBA addresses the pleading standard that should apply when courts consider criminal charges brought against an attorney engaged in the good faith practice of law. The NJSBA takes no position on the Court's application of that standard to the facts of this case.

ARGUMENT

- A. The New Jersey Rules of Professional Conduct, which guide and restrain lawyers' conduct, provide the relevant yardstick for assessing a lawyer's intent to engage in the good faith delivery of services in the practice of law, as opposed to acting with conscious intent to further an unlawful enterprise.**

Supervision over the practice of law is the bailiwick of the New Jersey Supreme Court as decreed by the state Constitution. Application of LiVolsi, 85 N.J.

576, 585 (1981). In discharging that function, the Court regulates the practice of law, from attorney entry through discipline of a licensed attorney's conduct and practice. NJ Const. art. VI, § 2, ¶ 3; see McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 556 (1993).

Pursuant to its constitutional authority, the Court adopted the RPCs. See Borteck v. Riker, Danzig, Scherer, Hyland & Perretti LLP, 179 N.J. 246, 251 (2004). The RPCs create the profession's ethical framework guiding an attorney's representation of clients, enunciating the duties that ensure protection of clients, and establishing appropriate behavior with the courts and among counsel. The attorney-client relationship, "is governed both by the Rules of Professional Conduct and the Supreme Court's exclusive jurisdiction to regulate the conduct of attorneys." Kamaratos v. Palias, 360 N.J. Super. 76, 84 (App. Div. 2003) (citing NJ Const. art. VI, § 2, ¶ 3). The system of attorney discipline enforces attorney obligations through control over licensure.¹

The RPCs guard against attorney misconduct. Basic principles are made express so lawyers know what must be done or may not be done. Naming a few is illustrative of the point. Lawyers shall not "assist a client in conduct that the lawyer

¹ "New Jersey's disciplinary system serves as an effective deterrent to unethical behavior" and "has been recognized as 'one of the most demanding disciplinary systems in the nation.'" Baxt v. Liloia, 155 N.J. 190, 203 (1998) (citing James R. Zazzali, Disciplining Attorneys: The New Jersey Experience, 1 Geo. J. Legal Ethics 659, 661 (1988)).

knows is illegal, criminal, or fraudulent.” RPC 1.2(d). Lawyers shall not knowingly make false or misleading statements to the Court. RPC 3.3(a). Lawyers shall not destroy or conceal evidence, counsel a witness to falsely testify, or knowingly disobey an RPC obligation. RPC 3.4. Lawyers shall not knowingly make a false statement to a third person or fail to disclose a fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. RPC 4.1(a).

Any violation of the RPCs constitutes “professional misconduct,” RPC 8.4, and can trigger potential discipline. See, e.g., Matter of Legato, 229 N.J. 173, 189 (2017) (disbarment); Matter of Rinaldo, 155 N.J. 541, 542 (1998) (suspension from practice); In re Giannini, 212 N.J. 479, 484 (2012) (lesser discipline can include censure, reprimands, and monetary sanctions). The Court imposes disciplinary sanctions and penalties where necessary to “preserve the confidence of the public in the bar,” In re Cohen, 220 N.J. 7, 11 (2014), and “foster continued faith in the legal profession as a whole,” In re Torre, 223 N.J. 538, 549 (2015).

Of particular relevance is the recognition that the State’s RPC framework “provides the courts and parties with powerful and effective tools for ensuring that attorneys file and pursue litigation in good faith and for its proper purposes.” LoBiondo v. Schwartz, 199 N.J. 62, 100 (2009). When dismissing civil claims asserted against lawyers, the courts have consistently held that New Jersey’s RPCs are the appropriate vehicle to hold lawyers accountable for their misconduct. See id.

at 97 (“Our principal means of regulating the behavior of attorneys are found in our [RPCs]) and the disciplinary system that we use to enforce them.”); Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566, 586–87 (2006) (“The litigation privilege does not immunize an attorney from disciplinary sanctions under the New Jersey [RPCs].” (citing Hawkins v. Harris, 141 N.J. 207, 215 (1995))); see also Heffernan v. Hunter, 189 F.3d 405, 413 (3d Cir. 1999) (“Counsels’ conduct within the scope of representation is regulated and enforced by disciplinary bodies established by the courts. Abuses in litigation are punishable by sanctions administered by the courts in which the litigation occurs.”).

Thus, the RPCs provide the relevant measure of good faith performance of legal services while protecting the public and the courts from attorneys who run afoul of ethical standards. Present enforcement of the ethics code through the attorney discipline system is an effective tool to regulate attorney conduct. It is the immediate and logical yardstick for any assessment of an attorney’s wrongful intent when acting in the capacity of an attorney servicing a client.

B. Lawyers may not be held civilly liable for actions taken as an attorney when engaged in the good faith provision of legal services and acting within the bounds of diligent advocacy, and neither should they be held to a lesser mens rea standard and charged criminally for engaging the same good faith licensed activity.

That an attorney is expected to engage in diligent advocacy for a client is well recognized in civil and disciplinary settings. LoBiondo, 199 N.J. at 73 (stating that

“attorney’s primary duty is to be a zealous advocate for his or her own client”); In re Simon, 206 N.J. 306, 318 (2011) (by violating RPC 1.7(a)(2), attorney “jeopardiz[ed] his duty to represent [his client] with the utmost zeal”).²

The adversarial justice system relies upon representation that permits lawyers to advocate for their clients with vigor such that judges can make informed and reasoned decisions that vindicate the rule of law. See Legal Services Corp. v. Velazquez, 531 U.S. 533, 545 (2001) (“An informed, independent judiciary presumes an informed, independent bar.”). And, the RPCs appropriately constrain and curb potential lawyer misconduct, eliminating risk that lawyers who engage in unethical conduct will go unchecked. The framework created in the RPCs and the mechanisms for discipline created by the Supreme Court in the regulation of the

² In numerous respects the RPCs recognize the paramountcy of the lawyer’s duty to their client and permit actions in the good faith provision of services that fulfill that obligation. See, e.g., Balducci v. Cige, 240 N.J. 574, 593 (2020) (RPC 1.4(c) imposes upon a lawyer a duty to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); In re Supreme Ct. Advisory Comm. on Pro. Ethics Opinion No. 697, 188 N.J. 549, 560 (2006) (RPC 1.7 imposes upon a lawyer a duty not to represent a client when there exists a conflict of interest); A. v. B., 158 N.J. 51, 56 (1999) (the RPCs establish “fundamental obligations of lawyers,” including a duty of confidentiality (RPC 1.6(a)) and a duty to inform clients of material facts (RPC 1.4(b))); see also DeShields v. Shannon, 338 F. App’x 120, 125 (3d Cir. 2009) (attorneys are “required to think creatively, act resourcefully, and advocate their client's causes with zeal and ethical sensitivity”).

practice of law provide comfort that the protection of the public will not be lessened. See LoBiondo, 199 N.J. at 108.

If an attorney is forced to operate under the threat of criminal liability in the good faith provision of legal services to their client, that threat operates as a deterrent to attorneys meeting their ethical obligations. Concern about chilling the attorney's role as advisor and advocate for the client has been a foremost motivation for the Court. In the civil context, the Court determined that if attorneys are forced to operate under the threat of civil liability for providing good faith legal services that advance their clients' interests, the attorney will not "be able to faithfully, fully and zealously represent his or her client without fear of reprisal from others." Id. at 100. Presciently, the Court warned of the real risk that if liability can flow from the routine provision of legal services that "will become a weapon used to chill the entirely appropriate zealous advocacy on which our system of justice depends." Id. at 101. It is for that reason when a "lawyer who merely in good faith and without any evil motive assists his client's cause" the lawyer cannot be held civilly liable for the provision of legal services. Id. at 110. Conversely, where a nonclient can demonstrate "that the attorney's primary purpose [for pursuing an action] was an improper one" civil liability may flow to the attorney. Id. at 113. Accordingly, a heightened wrongful intentionality standard already permeates the ability to bring

civil liability actions against attorneys engaged in the good faith representation of clients.³

Although articulated and adopted by the State Supreme Court in the civil context, those principles fit with even greater force when the cudgel being wielded is the threat of possible criminal charges for providing legal services in good faith to a client. It is illogical and would lead to an absurd result if any lesser mens rea standard than a purposeful intentionality was applied when assessing an attorney's mens rea for conduct in furtherance of a criminal enterprise when a similarly purposeful intentionality standard—a conscious effort to further an improper purpose in litigation—is required in the civil context. Application of the principles and reasoning set forth in LoBiondo compels the legal conclusion that a purposeful criminal mens rea standard should apply when the context again is the delivery of legal services to a client.

To that end, the NJSBA asks the Court to apply that heightened mens rea standard and require the State to allege and prove an attorney engaged in some conscious effort to further the criminal enterprise when bringing criminal conspiracy

³ See, e.g., LoBiondo, 199 N.J. at 113 (non-client litigant must prove the “primary purpose” of the attorney’s challenged conduct was “improper” when pursuing a malicious use of process claim); Mayo, Lynch & Assocs., Inc. v. Pollack, 351 N.J. Super. 486, 497 (App. Div. 2002) (to bring a claim against a lawyer under New Jersey’s civil RICO statute, State must allege that the legal advice provided by the lawyer “was so egregiously wrong that a jury could find that it surpassed negligence or recklessness.”).

charges against an attorney in connection with the delivery of legal services to a client. This mens rea pleading standard aligns with LoBiondo and is not unfamiliar for assessing criminal intent where context must be assessed with care. Indeed, the Criminal Code includes a “purposeful” culpability standard and can serve to guide the search for an attorney’s alleged conscious effort to further a criminal endeavor when that must be identified and separated from the attorney’s performance of otherwise ordinary legal services. See N.J.S.A. 2C:2-2(b)(1) (“a person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result”).

It is axiomatic that “every constituent element of the crime charged must be set forth in the indictment and not left to intendment.” State v. Algor, 26 N.J. Super. 527, 531 (App. Div. 1953) (citing State v. Bleichner, 11 N.J. Super. 542, 547 (App. Div. 1951)). To properly demonstrate, for example, criminal conspiratorial intent by an attorney who is providing legal services to a client, the attorney’s individual intent must be demonstrated. It cannot be presumed that the attorney’s services to a client cements the intent of the two, rendering the attorney’s personal intent indiscernible. LoBiondo, 199 N.J. at 109 (“the court must look to the motivation of the attorney, rather than to the motivation of the client” when evaluating claims against attorneys); see also RPC 1.2 (b). It is the State’s charging burden to show the requisite purpose by the attorney. Using the RPCs as the foundational standard, they demand that

attorneys act with no known knowledge of illegality, fraud, or criminality. So when an attorney is engaged in the good faith delivery of legal services to a client within those bounds, no indictment should issue without proof of conscious effort by the attorney to further the criminal enterprise.

Any different mens rea proof requirement for such criminal conspiratorial activity by an attorney providing legal services to a client would represent the unlikely legislative intent to automatically indict lawyers of clients charged with conspiratorial conduct. Viewed through that lens, it would approach encroachment of the regulation of the practice of law constitutionally relegated to the Supreme Court. That construction is to be avoided.⁴

All reasoning supports that, as to criminal charges pursued against attorneys, the State should be required to allege that the attorney's conduct transgresses the good faith provision of legal services. Absent such a standard, vigorous

⁴ As noted, the State Constitution provides that the Supreme Court has exclusive jurisdiction over the regulation of attorney conduct. NJ Const. art. VI, § 2, ¶ 3. If the Supreme Court adopted an RPC and the Legislature enacted a statute making it a crime for an attorney to abide by that RPC, that would give rise to a violation of the separation of powers between the Legislative branch and the Judicial branch. In construing statutes it is assumed that the Legislature would not violate the Constitution. In re Commitment of W.Z., 173 N.J. 109, 126 (2002) (courts “assum[e] that the Legislature intended to act in a constitutional manner.” (quoting Right to Choose v. Byrne, 91 N.J. 287, 311, (1982))). In this case, the Court need not reach the constitutional separation of powers issue because it is plain that the Legislature intended for a higher mens rea to apply contextually where attorneys are charged with crimes when they engage in the good faith practice of law.

representation of criminal defendants will be chilled because attorneys would be forced to operate under the threat of criminal liability for engaging in routine legal work.

C. The law recognizes, in a variety of contexts, that attorneys must be treated differently than other litigants to advance the public policy goal of diligent representation.

The law in New Jersey recognizes and adjusts to the need to assess attorney behavior under unique rules that take into account the role attorneys play for clients. It is not novel or unique to adjust for the attorney-client relationship for public policy reasons.

1. Lawyers enjoy absolute privilege against civil liability for false and defamatory statements made during judicial proceedings.

Lawyers enjoy an absolute privilege against civil liability for statements “made in the course of judicial proceedings before a court of justice” even if those statements are “defamatory and malicious.” Hawkins, 141 N.J. at 214 (quoting Fenning v. S.G. Holding Corp., 47 N.J. Super. 110 (App. Div. 1957)).

This well-established privilege against liability is premised on public policy concerns. Attorneys must be “permitted to speak and write freely without the restraint of fear of an ensuing defamation action, this sense of freedom being indispensable to the due administration of justice.” Hawkins, 141 N.J. at 214 (quoting Fenning, 47 N.J. Super at 135). “Such application of the privilege affords litigants and witnesses ‘the utmost freedom of access to the courts without fear of

being harassed subsequently by derivative tort actions.” Ibid. (quoting Silberg v. Anderson, 50 Cal. 3d 205, 213 (1990), as modified (Mar. 12, 1990)); see also Loigman, 185 N.J. at 580 (“[I]t is, on the whole, for the public interest, and best calculated to subserve the purposes of justice, to allow counsel full freedom of speech, in conducting the causes, and advocating and sustaining the rights, of their constituents; and this freedom of discussion ought not to be impaired by numerous and refined distinctions.” (quoting Hoar v. Wood, 44 Mass. 193, 197–98 (1841))).

The absolute privilege against civil liability afforded to attorneys for statements made in the course of judicial proceedings is a judicially enforced “trade-off” that “may protect the few unethical and negligent attorneys from a merited civil judgment and damages award,” but is nonetheless necessary to “ensure that the many honest and competent lawyers can perform their professional duties while furthering the administration of justice.” Loigman, 185 N.J. at 587. “That trade-off is the necessary price that must be paid for the proper functioning of our judicial system, a system that requires attorneys to vigorously and fearlessly represent their clients’ interests.” Ibid. Courts are willing to make the trade-off because it is mitigated by sanctions available via the disciplinary system. Ibid. (citations omitted).

2. The crime fraud exception to the Rules of Evidence serves an important role in balancing the public and private interests at stake in this matter.

New Jersey Rule of Evidence 504 establishes that communications made between a lawyer and client in the course of their legal relationship and in

professional confidence are privileged. N.J.R.E. 504(1). However, the attorney-client privilege is waived where a communication is made “in the course of legal service sought or obtained in aid of the commission of a crime or fraud.” N.J.R.E. 504(2). The privilege will be lost if a communication is made in furtherance of a crime even if the lawyer was unaware of his client’s criminal or fraudulent intent. In re Selser, 15 N.J. 393, 412 (1954). Thus, by its operation, N.J.R.E. 504’s crime/fraud exception strips away the attorney-client privilege eliminating the shielding of otherwise normally protected communications and allowing for their use in criminal and civil proceedings.

RPC 1.6 requires an attorney to provide otherwise privileged information to appropriate authorities if an attorney reasonably believes that information learned in confidence through the attorney’s representation of a client will result in the client or another person committing a criminal, illegal, or fraudulent act that will result in substantial bodily harm or substantial injury to the financial interest or property of another. See RPC 1.6(b). And, a violation of RPC 1.6 may result in the court imposing discipline on an attorney through sanctions or penalties. See RPC 8.4. But rendering the communication no longer protected does not equate to a basis to indict the attorney. Separate considerations must pertain to the discernment of requisite criminal intent by the attorney.

When the routine, good-faith provision of legal services is involved, the RPCs provide sufficient guardrails to discipline an attorney if the attorney fails to report information about potential criminal activity learned through the course of their representation to the proper authorities. An attorney's actions in the good faith practice of law do not bespeak criminal intent. To pursue an indictment against an attorney for action in connection with representation of a client, the State ought be required to demonstrate for the mens rea element that the attorney engaged in some conscious effort to further the criminal activity.

CONCLUSION

For the reasons stated herein, the Court should apply a heightened mens rea standard for criminal conspiracy charges asserted against an attorney who is engaged in the good faith provision of legal services to a client and require the demonstration of a conscious effort by the attorney to further the criminal enterprise.

Respectfully submitted,
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