

ROBERT E. LEVY, ESQ. (011501976)
SCARINCI | HOLLENBECK, LLC
150 Clove Road, 9th Floor
Little Falls, NJ
Telephone: (201) 896-7163
Facsimile: (201) 896-8660
Attorneys for Amici Curiae

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DEC 20 2024
Mercer County Superior Court
CRIMINAL

STATE OF NEW JERSEY,

Plaintiff,

v.

GEORGE NORCROSS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY

DOCKET NO.: MER-24-001988
INDICTMENT NO.: 24-06-00111-S

**NOTICE OF MOTION TO
INTERVENE AS AMICI CURIAE**

To: Matthew Platkin
Attorney General
Department of Law and Public Safety
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Andrew Wellbrock
Assistant Attorney General
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

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CRIMINAL

Adam D. Klein
Deputy Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Michael D. Grillo
Assistant Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Yaakov Roth (*pro hac vice*)
Harry Graver (*pro hac vice*)
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Telephone: 202-879-7658
yroth@jonesday.com
hgraver@jonesday.com
Counsel for Defendant

Michael Critchley (251821972)
Michael Critchley, Jr. (055861994)
Amy Luria (034002005)
Critchley & Luria, LLC
75 Livingston Avenue, Suite 303
Roseland, NJ 07068
Telephone: 973-422-9200
mcritchley@critchleylaw.com
mcjr@critchleylaw.com
aluria@critchleylaw.com
Counsel for Defendant

PLEASE TAKE NOTICE that the undersigned attorney for *Amici Curiae* New Jersey NAACP State Conference, New Jersey State AFL-CIO, and the New Jersey Building and Construction Trades Council now move pursuant to R. 1:13-9 and before the Superior Court of New Jersey, Mercer County for an Order granting leave to appear in this action as *Amici Curiae*

and to file the Brief submitted herewith and, further, for an Order permitting *Amici* to appear and participate at oral argument before this Court.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, *Amici* shall rely upon the attached Brief and any supporting papers relied upon herewith.

SCARINCI & HOLLENBECK, LLC
Attorneys for Amici Curiae

By: /s/ Robert E. Levy
ROBERT E. LEVY

Dated: December 20, 2024

STATE OF NEW JERSEY,

Plaintiff,

v.

GEORGE NORCROSS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL
MERCER COUNTY

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**BRIEF OF AMICI CURIAE NEW JERSEY NAACP STATE
CONFERENCE, NEW JERSEY STATE AFL-CIO, AND NEW JERSEY
BUILDING AND CONSTRUCTION TRADES COUNCIL IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS**

SCARINCI | HOLLENBECK, LLC
Attorneys for Amici Curiae
150 Clove Road, 9th Floor
Little Falls, NJ 07424
Telephone: (201) 896-7163
Facsimile: (201) 896-8660

Donald Scarinci, Esq.
Robert Levy, Esq.
Of Counsel

On the Brief:

Donald Scarinci, Esq.
Matthew F. Mimnaugh, Esq.
Robert Levy, Esq.

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PRELIMINARY STATEMENT

Pursuant to New Jersey Court Rule 1:13-9(a), the New Jersey NAACP State Conference, New Jersey State AFL-CIO, and the New Jersey Building Trades and Construction Council (collectively “*Amici*”), respectfully request leave to appear as *amicus curiae* and file this brief in support of the Court’s prompt adjudication of George Norcross’s (“Mr. Norcross”) Motion to Dismiss the indictment filed against him on June 13, 2024 (“Indictment”).

The central questions the Motion presents are whether criminal extortion and coercion statutes can be stretched to encompass conventional negotiating tactics 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 to redevelopment in New Jersey and elsewhere. Further, the implications of the Indictment extend beyond the content of speech and implicate the association between *Amici* and present (or former) government officials and *Amici*’s right to seek lawful redress. Allowing the prosecution to proceed would create a “chilling effect” amongst *Amici* and their members.

STANDARD OF REVIEW

Under New Jersey Court Rule 1:13-9(a), an application for leave to appear as *amicus curiae* shall be granted if the court in its discretion is satisfied that the applicant’s participation will assist in the resolution of an issue of public importance.

ARGUMENT

I. THE INDICTMENT CHILLS AMICI’S ROUTINE CONDUCT

The State begins its Indictment asserting that Mr. Norcross’s threats to Carl Dranoff (“Mr. 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 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. In reality, Mr. Norcross’s alleged conduct is simply conventional hard bargaining endemic to the give and take of economic redevelopment. Such “hard bargaining” was precipitated by Mr. Dranoff leveraging a view easement, threatening the redevelopment of the Camden waterfront.

The State’s labeling of vague threats by a sophisticated businessman as criminal extortion 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]nfllict 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.*

The State acknowledges in its opposition to the Defendant’s Motion to Dismiss that the case rests on alleged threat offenses: extortion and the closely related crime of coercion. (Opp. 58). However, the rhetoric employed by Mr. Norcross was utilized only after months of negotiations in which Mr. Dranoff impeded the redevelopment of Camden’s waterfront by holding fast to a view easement. Indict. ¶¶ 117, 118, 137. Mr. Dranoff – *not* Mr. Norcross – was intending to drive a “hard bargain” by exploiting the view easement. Such statements are hallmarks of 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. *Amici’s* 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 advocate for their causes through heated rhetoric.

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.

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 (including threats of legitimate economic coercion), 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 grant the Motion to Dismiss the Indictment because it creates doubt about the ability of *Amici's* members to engage in routine conduct. The risk of criminalizing the "art of the deal" 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 even 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.

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

The Indictment characterizes persuading a governmental entity to initiate a valid legal action as criminal coercion and 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 of 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 as pled would encompass the lobbying and legislative activities of *Amici*.

The actions the Indictment describes directly implicate constitutional liberties, including the right to counsel, and to petition for public grievances. These actions include Mr. Norcross and his legal counsel discussing potential ways to (1) 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 U.S. 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 what is most troubling is that by prosecuting the act of petitioning a public entity to file suit as a criminal violation, the State is reserving for itself the right to distinguish between legitimate from egregious political influence –precisely the action federal courts have 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, since the line between corruption and strong influence was 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 since 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)).

In addition, 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 place *Amici* on specific 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 but 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 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, meeting 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 in educational campaigns and lobbying on policy issues. To place public officials (including former 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 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.*

To believe that former Mayor Redd should be expected to ignore her relationships with stakeholders that share her same interests to pursue what they believe is the public good is unrealistic. *Amici* hold a vested interest because it is the development of relationships over a long period of time with public officials – and former public officials – that allows multiple stakeholders to seek the legal redress that they are legally entitled to.

In short, the Motion to Dismiss should also be granted to avoid the inevitable “chilling effect” over 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, whether or not they hold a political office.

CONCLUSION

Amici respectfully request the Court grant the Defendants’ Motion to Dismiss.

Respectfully submitted,

By: /s/ Robert E. Levy
Robert E. Levy, Esq. (011501976)
Donald Scarinci, Esq.
Matthew F. Mimnaugh, Esq.
150 Clove Road
Little Falls, NJ 07424
Attorneys for Amici Curiae

Dated: December 20, 2024

ROBERT E. LEVY, ESQ. (011501976)
SCARINCI HOLLENBECK, LLC
Attorneys at Law
150 Clove Road, 9th Floor
Little Falls, New Jersey 07424
Tel: 201-896-4100
Fax: 201-896-8660
Attorneys for Amici Curiae

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MERCER COUNTY

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PROPOSED ORDER

This matter having come before the Court by motion of proposed *Amici Curiae* the New Jersey NAACP State Conference, the New Jersey State AFL-CIO, and the New Jersey Building and Construction Trades Council, seeking leave to file a brief as *Amici Curiae* in the above captioned matter, and the Court having considered the motion, the supporting brief, and any opposition or other response filed by the parties, and good cause having been found:

IT IS HEREBY ORDERED:

ON THIS _____ day of December, 2024;

The Motion to File an *Amicus Curiae* Brief on behalf of appearing *Amici* is GRANTED, the brief shall be deemed filed, and counsel for *Amici* may appear and participate at oral argument.

HON. PETER E. WARSHAW, J.S.C.

Opposed _____

Unopposed _____

ROBERT E. LEVY, ESQ. (011501976)
SCARINCI HOLLENBECK, LLC
Attorneys at Law
150 Clove Road, 9th Floor
Little Falls, New Jersey 07424
Tel: 201-896-4100
Fax: 201-896-8660
Attorneys for Amici Curiae

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SUPERIOR COURT OF NEW JERSEY
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CERTIFICATION OF SERVICE

I hereby certify that, on this date, *Amici* New Jersey NAACP State Conference, New Jersey AFL-CIO, and the New Jersey Building and Construction Trades Council caused a copy of a Notice of Motion to Intervene as *Amici Curiae*, Brief of *Amici Curiae* New Jersey NAACP State Conference, New Jersey State AFL-CIO, and New Jersey Building and Construction Trades Council in Support of Defendants' Motion to Dismiss, and proposed Order, via hand-delivery to the following:

Superior Court of New Jersey
Mercer County Criminal Case Management Office
400 South Warren Street, Room 109
Trenton, NJ 08608

Matthew Platkin, Esq.
Attorney General
Department of Law and Public Safety
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Andrew Wellbrock, Esq.
Assistant Attorney General
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Adam D. Klein, Esq.
Deputy Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625
Counsel for State of New Jersey

Michael D. Grillo, Esq.
Assistant Attorney General
Division of Criminal Justice
Office of Public Integrity & Accountability
25 Market Street
Trenton, NJ 08625

I further certify that I caused a copy of these documents to be served upon the following parties via
e-mail and First Class U.S. Mail:

Yaakov Roth (*pro hac vice*)
Harry Graver (*pro hac vice*)
Jones Day
51 Louisiana Ave., N.W.
Washington, D.C. 20001
Telephone: 202-879-7658
yroth@jonesday.com
hgraver@jonesday.com
Counsel for Defendant

Michael Critchley (251821972)
Michael Critchley, Jr. (055861994)
Amy Luria (034002005)
Critchley & Luria, LLC
75 Livingston Avenue, Suite 303
Roseland, NJ 07068
Telephone: 973-422-9200
mcritchley@critchleylaw.com
mcjr@critchleylaw.com
aluria@critchleylaw.com
Counsel for Defendant

SCARINCI & HOLLENBECK, LLC
Attorneys for Amici Curiae

By: /s/ Robert E. Levy
 ROBERT E. LEVY

Dated: December 20, 2024