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

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

Attorneys for Defendant George Norcross, III

STATE OF NEW JERSEY, v. GEORGE NORCROSS, III, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – MERCER COUNTY DOCKET NO.: MER-24-001988 INDICTMENT NO.: 24-06-00111-S

REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE INDICTMENT

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INTRODUCTION

The State has filed a 133-page brief ("Opp.") to defend its 111-page Indictment. Yet it remains unable to identify a single crime that any Defendant committed. The State offers grandiose generalities about the importance of a "level playing field" and declares that government should be "open to all the people on neutral terms," decrying George Norcross as a "political boss" who enjoyed favored access to public officials despite never being "elected." Opp. 1, 6, 62. These are powerful talking points for a campaign speech promising to "drain the swamp." But a criminal indictment requires much more than political rhetoric. It demands factual allegations that satisfy the elements of offenses as defined by New Jersey law. That is where the State continues to fall far short.

The State's lead argument is that this Court should not even bother to ask whether the allegations state a crime, but should kick the can and let a jury make the call at trial. That fundamentally misunderstands the roles of judge and jury. A jury's task is to determine facts: Who killed the victim? Was the solicitation false? Did the defendant have a corrupt mental state? Most criminal cases turn on those factual questions. But a jury does not decide whether the alleged conduct *is a crime*. That is a legal question about the scope of the statute that the judge must resolve. Hence even the State admits that a court must dismiss an indictment if the allegations "simply do not fall within the statute invoked." Opp. 33. And that is the nature of Defendants' motion here. Even if a jury found that "every fact in the world was as the grand jury believed" (*id.*), it could conclude only that George Norcross is a hard-edged businessman with political capital he is not afraid to spend. That still does not make him (or any other Defendant) a criminal.

The State spends more than 60 pages arguing otherwise. Opp. 40-107. The brief's length, however, should not obscure that it substantially narrows the issues before the Court. Defendants argued in their motion that all of the charges ultimately hinge on two alleged wrongs: criminal threats, and official misconduct. The State acknowledges that the financial facilitation, corporate misconduct, conspiracy, and RICO counts depend on its theory of criminal threats. But it also makes clear that the official misconduct count is equally derivative; the theory is not that Mayor Redd engaged in *independent* wrongdoing, merely that she committed official misconduct by using her office to advance *other crimes*. The takeaway is that the entire Indictment rests on criminal extortion. Dismissal is thus required if the State's extortion theory misunderstands the legal bounds of that offense.

It does. The extortion charges reduce to the allegations that (i) George Norcross used fear of economic loss in negotiating to pay Dranoff $2 million to give up his view easement; (ii) Philip Norcross implicitly threatened CFP with a funding cut in directing it to work with one developer over another on L3; and (iii) CFP's CEO was induced to resign by a threat of for-cause termination. (The other Defendants are simply alleged, in conclusory terms, to have agreed.) It is telling that the State cannot cite a single case, from any court anywhere, treating even remotely analogous facts as extortion. That is because threats of economic loss in private business dealings are a routine, accepted part of our free-market system, not "wrongful" under the Hobbs Act or "unlawful" under New Jersey law. Indeed, these are exactly the threats carved out from the scope of the statutes by New Jersey's Criminal Law Revision Commission. Incredibly, the State's brief *never even cites* the Commission's authoritative (and, here, dispositive) commentary.

To try to make this seem less like the criminalization of everyday business dealings, the State alleges that George Norcross exercised substantial political influence in Camden and beyond. Merely by virtue of his "reputation" in this regard, the State says, Norcross instilled "fear" that caused others to hand over property. Opp. 1. But the notion that the politically powerful are walking extortion machines is untenable and perverse. Contrary to the State's facile allusions, a "mob boss" and a "political boss" are not the same thing. Both hold "power." But power derived from a history and practice of *committing crimes* is very different from power derived from *political influence within a lawful democracy*. As the State admits, Norcross held no public office. If he had any "control" over government, it could only have been by petitioning those who did. Yet that activity is immune under the federal and state constitutions—whether successful or not, and whether conducted for benevolent purposes or selfish ones. Foundational Supreme Court precedents make that abundantly clear; the State's only response is meaningless, circular wordplay.

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 sheer force of personality to save the City of Camden. The citizens 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 democratic government. But this is not the purpose of a criminal jury. 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 must, and should, dismiss this unprecedented and abusive Indictment as a matter of law.

ARGUMENT

I. THE COURT MUST DISMISS THE INDICTMENT IF ITS FACTUAL ALLEGATIONS DO NOT AMOUNT TO CRIMES AS A MATTER OF LAW.

The State begins its responsive argument by urging the Court not to "humor[]" the motions to dismiss; the Court should not worry now about whether the allegations state an offense, it contends, but instead defer to "the jury" after a trial. Opp. 28, 31. That is wrong. The question presented at this stage is whether the State properly construed the relevant statutes by charging the Indictment's allegations as violations. For nearly 150 years, it has been established law in New Jersey (as elsewhere) that "[w]hether an act is illegal … is a question of law, to be settled by the court." *Brown v. State*, 49 N.J.L. 61, 62 (1886). And that question should be adjudicated now: 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. And, contrary to the State's mischaracterizations, that is exactly (and exclusively) what Defendants have asked this Court to do. There is therefore no basis for the Court to bypass or defer those arguments on the merits.

The parties are largely in agreement about the applicable standards for dismissal of an indictment. As the State explains, a defendant may raise a "facial" challenge or take issue with the evidentiary "presentation to the grand jury." Opp. 30. The instant motion is facial in nature; it makes no reference whatsoever to the grand jury record, and instead assumes every factual allegation in the Indictment was adequately supported before the grand jury. (To be clear, Defendants assume as much only for this motion.)

As to facial challenges, the State correctly explains they fall into two categories. Sometimes an indictment is facially invalid because it provides "insufficient notice of the charge" and so prevents a defendant from "prepar[ing] a defense" or from later invoking double jeopardy. Opp. 30-32. That is not the challenge Defendants pursue in this joint motion. This Indictment is many things, but "insufficiently detailed" is not one of them. To the contrary, the Indictment includes extensive detail of every interaction that matters (and many that do not) to evaluating the extortion claims. The problem is not that these allegations are too vague or imprecise; the problem is that they are *not criminal*.

And that takes us to the second category of facial challenges—where the charge "rises and falls with a purely legal matter of constitutional or statutory interpretation." Opp. 32. The State admits that is fair game at the motion-to-dismiss phase: Dismissal is warranted if, "even if every fact in the world was as the grand jury believed," there was nonetheless no crime because "the statute did not cover" the alleged conduct. Opp. 33 (citing cases, including *State v. Perry*, 439 N.J. Super. 514 (App. Div. 2015)). After all, it is black-letter law that the "essential facts constituting the crime must be directly stated in the indictment." *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). It follows that if the "facts" alleged do not, as a matter of law, "constitut[e] the crime," the indictment is facially defective. To make this inquiry sound more daunting, the State calls this "legal impossibility"—a phrase it invented, since it appears in no caselaw—but nothing is unusual (let alone impossible) about it: Even the State itself cites a host of cases that dismissed indictments on such grounds, and that is just a sampling. Opp. 33-34.

While acknowledging that such a challenge is proper, the State insists Defendants' motion is different. Opp. 35. Not so. The motion does not contest the truth of the factual allegations. Or challenge their "plausibility." Opp. 36. Or debate "the sufficiency of the evidence presented to the grand jury." Opp. 37. All the motion does is explain why the allegations—accepting their truth, plausibility, and sufficiency—are *not crimes* as a matter of "constitutional or statutory interpretation." Opp. 35. The Indictment alleges that Defendants made (or agreed to make) certain threats to certain people in certain contexts. The motion argues that those threats do not violate the Hobbs Act or New Jersey law. The State is free to argue otherwise—and does (Opp. 40-107)—but these are legal disputes properly resolved by this Court. Even in criminal cases, "questions of law are for the court's determination and are not within the province of the jury," so "where no disputed question of fact material to the issue is presented," the court decides if a "given operation amounts to" the charged crime. *State v. Schneiderman*, 20 N.J. 422, 426 (1956).

To be clear, the fact that the Indictment includes extensive factual detail about the alleged offenses does not change the legal standard or, as the State describes it, confer a "windfall" on Defendants. Opp. 38. 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 facts that the State *contends* constitute the crimes, but the State is wrong on the law. The *legal theory* that emerges clearly from the Indictment is palpably deficient. The State need not make "a full proffer of evidence" in an indictment (Opp. 39), but however much "evidence" the State may offer to prove these allegations, they still would not amount to a criminal offense.

In other words, so long as the debate is over the *law* rather than the *facts*, it is ripe for resolution now. Most criminal prosecutions rise or fall on the facts. But for those that rest on novel or aggressive legal theories, the Court must test the viability of those legal theories at the threshold. *See United States v. Brewbaker*, 87 F.4th 563, 572 (4th Cir. 2023) ("[C]ourts have as much of a responsibility to police criminal indictments as they do civil complaints," and must dismiss if allegations, "even if true, would not state an offense"). This is such a case; Defendants' motion attacks the State's *legal theories*. While the State denies that the motion "accept[s] everything in the four corners of the Indictment as true," its only examples fall flat. Opp. 35. Its lead illustration is that Defendants do not accept that George Norcross "led a criminal enterprise" that engaged in "criminal offenses." *Id.* (quoting Indict. ¶ 1). True. But those are *legal conclusions*, not *factual allegations*. It is the "*facts* constituting the crime" that must be "stated in the indictment." *De Vita*, 6 N.J. Super. at 347 (emphasis added). Alleging that "Defendants committed crimes" obviously does not suffice. The question is whether the factual allegations support that charge.

The State identifies a litany of other allegations it claims Defendants deny. Opp. 35-36. But it offers no citation to the motion; the claim is false. The thrust of Defendants' motion is that the Indictment dresses up routine, lawful, and (in many respects) constitutionally protected behavior using sinister language, but none of it amounts to a crime. Once again, the State is free to maintain that "to accept <u>all</u> the facts alleged is simply to concede guilt" (Opp. 36), but that is just a claim about the merits. It is legally incorrect. That is the legal issue that this motion turns on; it is what this Court must decide at this juncture; and it is what Defendants address below.

II. THE ENTIRE INDICTMENT HINGES ON WHETHER THE ALLEGED "THREATS" WERE CRIMINALLY EXTORTIONATE.

To evaluate whether the Indictment properly alleges crimes, it is first necessary to understand how its counts fit together. On this point, the State's response brief is helpful in streamlining. While the Indictment charges 13 counts, some with separate criminal objectives or predicates, the State now acknowledges that the whole case—including the official misconduct charge—ultimately rests on the alleged "threat" offenses: extortion and the "closely related" crime of coercion (Opp. 58). All charges against all Defendants rest on the premise that there were unlawful threats, and thus fail if there were none. So all the Court needs to consider here is whether the few alleged threats rise to the level of criminal extortion or coercion. If not, the Indictment must be dismissed.

First, the State agrees that Counts 2-4 charge "extortion and coercion conspiracies." Opp. 51. It argues that the Indictment "properly charges" those offenses. *Id.*; *see also* Opp. 51-69. But it does not dispute that if the State is legally wrong about criminal extortion and coercion, these conspiracy counts fall. *See* MTD 36-37.

Second, the State agrees that the financial facilitation counts (Counts 5-10) and corporate misconduct counts (Counts 11-12) require underlying "criminal conspiracies." Opp. 82-83; *accord* MTD 35-36. The State further acknowledges that those conspiracies were to commit "criminal coercion and extortion." Opp. 83. So again, if the alleged objects of these conspiracies were *not* criminal coercion or extortion, none of these counts can survive. And again, the State does not argue otherwise; it simply sticks to its position that the Indictment *did* "adequately allege extortion or criminal coercion." *Id.*

Third, as to racketeering conspiracy (Count 1), the State admits that stating this offense requires pleading an agreement to commit "at least two predicate acts" (Opp. 44), and that the alleged predicate acts in this case were "extortion, financial facilitation, and corporate misconduct" (Opp. 47). But the State has already acknowledged that financial facilitation and corporate misconduct themselves require a predicate crime, so this charge too reduces to "extortion." The State spends pages arguing that it need not allege that particular Defendants agreed to *personally* commit predicate acts (Opp. 45-48), but that is a strawman. If the acts to which Defendants allegedly agreed were not extortion, then the racketeering conspiracy legally fails along with everything else. *See* MTD 37.

Finally, although Defendants originally understood the Indictment to rest on *two* pillars—threats and official misconduct—the State's brief now makes clear that this is a one-legged stool. Defendants' motion explained why the allegations against Mayor Redd did not come close to showing official misconduct. *See* MTD 27-35. In response, the State argues that her misconduct lay in advancing "the crimes charged in Counts 1-3 and 5-12 of the Indictment." Opp. 69; *see also id.* (statute prohibits "government officials from agreeing to use public power to *extort or criminally coerce*" (emphasis added)). Over and over, the State defends Count 13 by pointing to the *other* alleged crimes. *See, e.g.*, Opp. 70 (identifying "unauthorized acts" as "the crimes alleged in Counts 1-3" and "those alleged in Counts 5-12"); Opp. 71 (mayor "use[d] her position … to participate in a racketeering enterprise, to commit theft by extortion, [and] to commit criminal coercion"); Opp. 72 ("using one's office to commit crimes surely constitutes an unauthorized use"); Opp. 74 ("Count 13 includes charges of the use of office to commit specified crimes.").

The official misconduct count is thus also derivative of the other "crimes charged." And, as just shown, the only predicate "crimes charged" are the threat offenses: extortion and coercion. If there was no extortion and coercion, there is no independent argument that Mayor Redd engaged in any "unauthorized" acts constituting misconduct. At least, the State does not defend any freestanding theory of official misconduct.[1]

The bottom line, in light of the State's response brief, is that the threat offenses are, legally speaking, the common denominator of every count. If the threats that Defendants allegedly made (or agreed to make) were not crimes, the consequence is that there was no racketeering, no criminal conspiracy, no corporate misconduct, no official misconduct, and no financial facilitation. For all the many counts of the Indictment and pages of the State's brief, the entire case thus hinges on whether a few threats constituted crimes. With that prelude, Defendants turn to that discrete but dispositive issue.

III. THE INDICTMENT DOES NOT ALLEGE ANY CRIMINALLY EXTORTIONATE THREATS.

Part of the State's strategy appears to be making this case seem more complex than it really is. As discussed, over a dozen charges end up reducing to extortion. (Technically extortion *and coercion*, but because those two offenses are materially indistinguishable for current purposes, this reply will just refer to extortion.) And the Indictment only alleges *two episodes* of extortion—against Dranoff (in relation to his development rights) and against CFP (in relation to L3). *See* Opp. 8-9.

[1] To be clear, the State's theory of official misconduct also fails on its own terms, because the allegations do not reflect any "use" of "public power" (Opp.69) on the part of Mayor Redd to facilitate any of the other offenses. Defendant Redd explains that point in her separate reply brief. It provides an independent ground for the dismissal of Count 13, but the Court need not reach that issue to dismiss the Indictment as a whole.

Accordingly, the only question this Court needs to answer is whether Defendants' alleged actions vis-à-vis Dranoff and CFP—again, taken as true—violate the criminal extortion statutes. (A third episode of alleged extortion, against CFP's CEO, could not support the Indictment's charges even if it did violate the statutes, which it does not.) Below, Defendants walk through why none of these episodes constitutes extortion as a matter of statutory and constitutional law. Before doing so, however, a few background legal principles about the crime of extortion are worth reiterating.

First, "not every threat … is criminal or even wrong." *State v. Monti*, 260 N.J. Super. 179, 185 (App. Div. 1992). That is why New Jersey law prohibits only the use of threats to "unlawfully" obtain property or restrict action, N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5, and why the Hobbs Act is limited to "wrongful" use of threats or fear, 18 U.S.C. § 1951(b)(2). Those are meaningful elements that narrow the scope of these offenses, and ensure that their otherwise-broad text does not sweep in conduct that is "tolerated in commercial and personal life." *State v. Roth*, 289 N.J. Super. 152, 158 n.4 (App. Div. 1996); *see also id.* at 160, 162-63. To be sure, this does not mean the statutes are limited to threats of *independently unlawful* conduct (like violence). Opp. 62-63. Defendants were clear on that. MTD 11 (discussing blackmail). But what it does mean is that not "every threat made for the purpose of obtaining property" counts as extortion. *Roth*, 289 N.J. Super. at 160; *see also Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 522 (3d Cir. 1998). The State must allege *something more*: something that makes the threat wrongful or unlawful. What suffices as that "something more" depends on context—informed by history, precedent, and what the State itself calls "a healthy dose of common sense" (Opp. 52).

Second, as relevant here, *economic* threats are not "inherently wrongful," *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989), but a normal part of "legitimate business transactions," *Brokerage Concepts*, 140 F.3d at 523. "[T]hreats of economic harm are used every day as tools in the business world." *United States v. Waters*, 850 F. Supp. 1550, 1559 (N.D. Ala. 1994). That is why courts declare, in no uncertain terms, that when parties engage in "bargaining" where "each side offers the other property, services, or rights," using "fear of economic loss" as "leverage" is "not made unlawful." *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). And it is why the Law Revision Commission clarified that New Jersey law does not prohibit threats that amount to "coercive economic bargaining," including threats "to cease doing business," "to breach [a] contract[]," or "to sue." II *Final Report of the New Jersey Criminal Law Revision Comm'n, Commentary* 227-28 (1971) ("1971 Commentary").

Third, given those principles—and as the State admits—economic threats cross the criminal line only if the victim has a "pre-existing right to pursue his business interests free of the fear he is quelling." Opp. 60 (quoting *Viacom Int'l Inc. v. Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990)). That was true in *United States v. Collins*: The victim firms were "legally entitled" to bid on government contracts, so the threat to scrap their bids unless they paid a bribe invoked a fear the firms had a right to be free of. 78 F.3d 1021, 1030 (6th Cir. 1996). By contrast, in another case the State cites, the court found no extortion where the defendant offered to drop his "legal and political opposition" to a land development in exchange for a payoff, since the developer was not "otherwise entitled" to be free of that opposition. *United States v. Albertson*, 971 F. Supp. 837, 838, 845 (D. Del. 1997).

Finally, the State suggests the line between criminal extortion and lawful threats is "a factual question" for the jury. Opp. 60-63. No. Whether a "threat … was wrongful is a question of law." *United States v. Godwin-Painter*, 2015 WL 13735432, at *5 (S.D. Ga. Aug. 18, 2015); *see also DuFort v. Aetna Life Ins. Co.*, 818 F. Supp. 578, 582 (S.D.N.Y. 1993) (whether statement "constituted a 'wrongful threat'" is "matter of law"); *United States v. Enmons*, 410 U.S. 396, 410-11 (1973) (defining legal meaning of "wrongful"); *United States v. Burhoe*, 871 F.3d 1, 16-20 (1st Cir. 2017) (reversing conviction based on overbroad interpretation of "wrongful"); MTD 13 (citing cases dismissing civil extortion claims as a matter of law). As *Roth* explained, this element goes to "the purview of the statute," with some threats "carve[d] out." 289 N.J. Super. at 161. Under the State's own test for dismissal of an indictment (Opp. 33), this issue is thus ripe to resolve at this juncture.

To be sure, if material facts are disputed, then the jury must make the call with the benefit of clear instructions on the law. *See Brown*, 49 N.J.L. at 62. That was the scenario in *United States v. Jackson*, a case cited by the State, 180 F.3d 55, 70-71 (2d Cir. 1999) (finding error where jury was improperly instructed on extortion's legal parameters, but evidence "plainly sufficient" to convict). But if the State's own theory and allegations fall outside the statutory bounds, dismissal is required. Or, put another way, the jury does not have *carte blanche* to define, *ex post*, the line between the lawful and the criminal.[2]

[2] The State also argues that an *affirmative defense* found in the New Jersey threat statutes, *see* N.J.S.A. 2C:20-5, is not a proper basis to dismiss an indictment. Opp. 63. That is irrelevant, because Defendants are not invoking an affirmative defense. Defendants' argument is that their alleged threats were not "wrongful" or "unlawful[]" within the meaning of these statutes—and those are *elements* of the offenses that the State must plead and prove. *See State v. Bowens*, 108 N.J. 622, 632 (1987) (distinguishing elements from affirmative defenses).

With those principles in mind, the Court can proceed to examine the episodes alleged in the Indictment and ask whether they amount to extortion. The answer is no. These are instances of private parties, engaged in legitimate business transactions, using economic leverage to advance their interests. Injecting criminal threat laws into these relationships is without precedent. Indeed, it is telling that in over 100+ pages of briefing, the State never even *tries* to analogize the facts here to any prior extortion case. As a matter of law, the State's theory of extortion is as unsustainable as it is unprecedented.

A. Defendants' Alleged Interactions with Dranoff Were Not Extortion.

The State's lead threat is that George Norcross told Dranoff on the phone that he would "f**k you up like you've never been f**ked up before" and "make sure" Dranoff "never d[id] business in [Camden] again." Indict. ¶¶ 3, 117. The Indictment alleges that this was a threat to Dranoff's "financial interests" if he continued his year-long hold-up of the Camden redevelopment by leveraging his view easement for even more money. *See* Indict. ¶¶ 106, 116-18. That is not a crime, for four basic and related reasons:

- A threat "to cease doing business" is not "included" within New Jersey's threat statutes. 1971 Commentary at 227. Not for lack of space, the State never even cites the Commentary, even though *Roth* followed it, 289 N.J. Super. at 161.
- Instead, this is a quintessential economic threat that is not "unlawful," because it involves using "fear of economic loss" in the context of "bargaining," where "each side offers the other property, services, or rights." *Capo*, 791 F.2d at 1062. Indeed, Dranoff was offered a seven-figure payoff. *Cf. Roth*, 289 N.J. Super. at 160 (extortion where defendant was not bargaining, because he was not going to "surrender any … economic interest … as consideration"). The State never offers a single example of a threat like this giving rise to criminal sanction.
- The State makes no argument that this case fits the narrow class of cases where the victim had a "pre-existing right" to be free of economic pressure. *Viacom*, 747 F. Supp. at 213. Rightly so: Dranoff did not have any legal right to do business with Norcross, or his associates, or others in Camden. So unlike in

Collins, which involved public bidding laws that guaranteed a level playing field, Dranoff was not "legally entitled" to any of that. 78 F.3d at 1030. For better or worse, the business world is not a "level playing field"; when a big company puts the screws on a smaller one, that is capitalistic, not criminal.

- Unlike in *Roth*, where the defendant shook down strangers by threatening to challenge sheriff's sales in which he held "no protectable interest," there is an obvious "natural economic or commercial nexus," 289 N.J. Super. at 160-62, between Norcross's threat (future business in Camden) and the "underlying transaction," *id.* at 161 (to enable a redevelopment to revive the then-blighted city). The State ignores this "common sense" reality too. Opp. 52.

Given that Norcross's only alleged explicit threat is a plainly absurd (and certainly unprecedented) basis for prosecution, the State tries to pivot. It suggests that Norcross threatened "reputational harm wholly divorced from the dispute." Opp. 64; *see also* Opp. 59. But no such threat is alleged in the Indictment. Its sole allegation is that Norcross threatened Dranoff's "ability to conduct business in Camden"—*i.e.*, his "financial interests." Indict. ¶ 118. He is not alleged to have done so through any "reputational" threats, let alone one "wholly divorced from the dispute." Norcross did not, for example, claim he would "[e]xpose" some personal "secret" about Dranoff. N.J.S.A. 2C:13-5(a)(3). Nor does the Indictment allege that Dranoff inferred, from anything Norcross ever said or did, that he was being threatened with *blackmail* to get a deal done.

The State points to a paragraph in the Indictment recounting how George Norcross told his associates that he did not "want to help" Dranoff or even "deal[] with" him any longer. Indict. ¶ 142. "[H]e'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 . . . ." *Id.* That was a statement of what Norcross heard from the City, which corroborated his negative view

of Dranoff. It was not a threat, an intended threat, or even a perceived threat. There is no allegation that Norcross ever held the City's accusations over Dranoff's head to coerce a better deal, or that Dranoff could have fairly inferred any such threat from anything Norcross said or did, or that Dranoff drew such an inference. Nor is there any allegation that Norcross and his associates planned or agreed to levy such a threat; instead, Norcross is simply predicting what the City might do. This is completely irrelevant to extortion.

More significantly, the State elevates to a theme of its brief that George Norcross held influence over "instruments of governmental power," enabling him to intimidate others. Opp. 59; *see also* Opp. 62 (citing Norcoss's "raw political power and functional control over the levers of government"). The exact theory is unclear: At times the State suggests that Defendants plotted to induce governmental action (like an action relating to using eminent domain against the view easement) that would have operated to instill fear in Dranoff. Opp. 89-90. Elsewhere the State suggests that, "given George Norcross's reputation for controlling Camden government," a threat of retribution by the City was always implicit in his requests, without any "need to directly threaten." Opp. 54-55.

Either way, the State is trying to use constitutionally protected activity as the basis for criminal liability—and that is impermissible. Exercising political influence, for good reasons or bad, *cannot be a crime*. To the contrary, under the *Noerr-Pennington* doctrine, attempts to influence government action are categorically immune from liability. 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); *see also LoBiondo v. Schwartz*, 323 N.J. Super. 391, 414 (App. Div. 1999). And it applies "even if there is an improper purpose or

motive," *A.D. Bedell Wholesale Co. v. Philip Morris Inc.*, 263 F.3d 239, 250 (3d Cir. 2001)—*i.e.*, even if government action is sought for "selfish" or "improper" private motives, *Oasis Therapeutic Life Centers, Inc. v. Wade*, 457 N.J. Super. 218, 232 (App. Div. 2018). Indeed, *Noerr* itself is about preserving the right of the people to petition "in the very instances in which that right may be of the most importance *to them*," 365 U.S. at 139 (emphasis added), whether or not that interest is aligned with the public interest.

Noerr-Pennington precludes any attempt to penalize Defendants for trying to push the City to impair Dranoff's interests. Those actions cannot be violations of the Hobbs Act or New Jersey law when they are protected by the First Amendment. The State hints that perhaps *Noerr-Pennington* cannot "bar criminal charges" (Opp. 96), but that makes no sense and is unsupported by caselaw. 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). That is why federal and state courts alike have long applied *Noerr-Pennington* principles in criminal cases.[3] The States cites nothing to the contrary.

[3] *See, 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"); *Curry v. State*, 811 So. 2d 736, 743 (Fla. Dist. Ct. App. 2002) (relying in part on *Noerr* to invalidate conviction for aggravated stalking); *Gerhart v. State*, 360 P.3d 1194, 1199 (Okla. Ct. Crim. App. 2015) (relying on *Noerr-Pennington* in reversing conviction); *Australia/E. U.S.A. Shipping Conf. v. United States*, 1981 WL 2212, at *17 (D.D.C. Dec. 23, 1981) ("The imposition of 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.").

The State's main response to *Noerr-Pennington* is this: "Defendants are not alleged to have asked municipal entities to take these actions, but rather to have directly and corruptly caused or plotted to cause those public entities to do so." Opp. 88 (emphases in original). According to the State, "private citizens have a constitutional right to request that the government do what they want," but "have no right to co-opt a government and wield it as a cudgel to serve their private ends." Opp. 93.

The State cites no authority for that dichotomy—not surprising, since it is utterly incoherent. The only way a private citizen can *cause* the government to act is to *ask* it to act. Norcross did not directly wield any governmental power; the State admits he held "no elected or appointed office." Opp. 62. Instead, it says he exercised "influence and control" via candidate endorsements and other (lawful) political means. Indict. ¶¶ 9, 215. 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 word "co-opt." But there is no "well-connected" exception to the First Amendment. Indeed, the entire modern lobbying industry is built on the premise that some people are better positioned, by virtue of their network or influence, to persuade the government to advance private interests. Nor does it matter if Camden officials were in cahoots with Norcross, as the State alleges; the Supreme Court specifically considered whether there should be an exception to *Noerr-Pennington* immunity "when government officials conspire with a private party," leading to state action "infected by selfishly motivated agreement with private interests." *Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 382-83 (1991). That sums up the State's theory here. But the Court rejected it. *See id.*

The State points out that, in *Omni*, the Court did not doubt that some conspiracies between public officials and private citizens could be unlawful. Opp. 96. True—a classic example being a "bribery" conspiracy. *Omni*, 499 U.S. at 378. The State's other cited cases make the same point: *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); *see also, e.g.*, *Cent. Telecomm., Inc. v. TCI Cablevision, Inc.*, 800 F.2d 711, 725 (8th Cir. 1986) (violation of sunshine laws and prohibited *ex parte* contacts). But the Indictment never alleges bribes, kickbacks, or unlawful contacts with public officials. Instead, its thrust is that Defendants collaborated with Camden officials *for a bad reason*—to boost their private leverage vis-à-vis Dranoff. Even if that were true (it was actually to enable the beneficial redevelopment), the whole point of *Noerr-Pennington* is that the State cannot penalize petitioning based on selfish *motives*. That is why, in perhaps the most analogous case that the State cites—where a defendant made a "threat" invoking his "power and connections"—the court held that the immunity *applied*. *A Fisherman's Best, Inc. v. Rec'l Fishing All.*, 310 F.3d 183, 192-94 (4th Cir. 2002). *A fortiori* here, *Noerr-Pennington* immunity forecloses the theory that George Norcross's "power and connections" created an *implied* threat to Dranoff.[4]

[4] The other cited cases address the "sham" exception to *Noerr-Pennington*, which is when petitioning is "not genuinely aimed at procuring favorable governmental action at all." *Omni*, 499 U.S. at 380; *see also, e.g.*, *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1256 n.23 (9th Cir. 1982). The State does not invoke the sham exception here, for good reason. It is plainly inapplicable, given that, on the Indictment's own terms, Defendants genuinely *wanted* the City to act against Dranoff with respect to the view easement, holding up the Victor Lofts sale, and terminating the Radio Lofts redevelopment right.

Although the State tries to dismiss it as irrelevant (Opp. 97 n.19), the Supreme Court's decision in *Percoco v. United States*, 598 U.S. 319 (2023), is instructive. There, the government argued that Percoco—who was close to the Governor and allegedly exerted substantial political influence—committed bribery when he took money in exchange for exercising that influence. The Court unanimously rejected that theory, concluding that it would threaten to criminalize "particularly well-connected and effective lobbyists." *Id.* at 331. But the State's argument here is even more sweeping. In its view, any lobbyist with a *reputation* for being "particularly well-connected and effective" would commit *extortion* by making any demand or request, simply by virtue of that reputation and the resulting fear of potential retribution for saying no. That cannot be right.

Big-picture, the State's extortion theory trades on analogizing George Norcross (an alleged "political boss," Opp. 6) to a leader of an organized crime ring (a "mafia boss," Opp. 52), with the other Defendants in supporting roles. The State cites mob cases and even makes the analogy explicit: "like a demand for payment of a debt issued with mafia affiliates standing nearby, the implications were clear to the victims" when Defendants asked for something. Opp. 55. This is a creative theory, but profoundly misbegotten—premised on collapsing the distinction between exercises of lawful versus unlawful power. In our system of democratic government, it is untenable to treat the exercise of political influence by a private citizen as inherently unlawful or wrongful. The defining feature of organized crime is that it operates *outside the law*; the defining feature of politics is that it operates *within the law's confines*. When it comes to defining what counts as "wrongful" or "unlawful" use of fear or threats, that distinction makes all the difference.

B. Defendants' Alleged Interactions with CFP Were Not Extortion.

The State's second extortion claim is that Philip Norcross allegedly told CFP's CEO that the nonprofit "was not allowed to use KPG/MC," which the CEO "took … as a threat" in light of George Norcross's "control" over the City. Opp. 23, 55-56. This cannot be criminal extortion for two separate reasons—there was no actual or intended threat, and even the supposedly perceived threat was a perfectly lawful, legitimate one.

To start, Defendants do not quarrel with the proposition that sometimes a threat can be inferred from actions and context even if not "spoken or written" in explicit terms. Opp. 52-53. But courts are understandably cautious to criminalize someone's *reputation*. *See United States v. Abelis*, 146 F.3d 73, 83 (2d Cir. 1998) (rejecting argument that defendant "could have been convicted [of attempted extortion] solely on the basis of his reputation as a prominent Russian gangster"); *cf. United States v. Dinunzio*, 2008 WL 2148754, at *4 (D. Mass. May 20, 2008) (finding "a few scant generalized reputation allegations" to be "insufficient to meet the government's burden … as to the alleged threat"). The State's cases, drawn from the world of violent organized crime, are instructive as to what legally suffices. *United States v. Coppola* found an extortionate threat only because the mob had curated a reputation for violence "over decades," and the defendant "cultivated and used the Genovese family's reputation for violence in furtherance of extortionate endeavors" in specific analogous situations. 671 F.3d 220, 242 (2d Cir. 2012). And in *United States v. DiSalvo*, a violent mafia underboss's "intervention, standing alone" was not enough to prove an implicit threat despite the well-established "modus operandi" of the mob; it was only the underboss's "own statement that his station and reputation in the [mafia] family,

known by the [victims], relieved him from any necessity of utilizing express threats" that "save[d] th[e] case from … dismissal." 34 F.3d 1204, 1212-13 (3d Cir. 1994).[5]

Those cases have no fair application here. The Indictment alleges that CFP's CEO took Philip Norcross's directive as a threat because: (i) a decade or more earlier, George Norcross had a dispute with a prior CEO, after which Camden "had cut off or reduced funding to CFP," which some "believed" had been at Norcross's behest; and (ii) in 2001, George Norcross tried "to induce a councilman in Palmyra, New Jersey to fire a municipal employee." Indict. ¶¶ 53-54. This is patently insufficient to support treating Philip Norcross's words as an implied threat, akin to a mafia underboss silently holding a tire iron while the boss demands a cut of the rent. For one thing, two episodes over a decade earlier does not a "modus operandi" make. For another, there is no allegation in the Indictment that George Norcross was *in the wrong* about those instances, let alone acting unlawfully. Maybe the funding cut and termination were well-deserved? The Indictment does not say, and thus cannot support treating those instances as the predicate for inferring a criminal threat. For a third, perhaps most fundamental, both 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. *Supra* at 16-20. It would therefore offend the First Amendment to treat those long-ago actions as the hook for criminalizing otherwise-innocent conduct here.

[5] The other cases cited by the State (*see* Opp. 52) involved situations where violence was on the table. *E.g.*, *United States v. Boggi*, 74 F.3d 470, 476-77 (3d Cir. 1996) ("Bormann's testimony would support a finding that Boggi had used threats of physical injury."); *United States v. Goodoak*, 836 F.2d 708, 710-11 (1st Cir. 1988) (referring to threats about broken legs, among other things).

Even if Philip Norcross's instruction could permissibly be treated as a threat—presumably, by analogy, a threat to cut CFP's funding or replace its CEO—such a threat would not be "wrongful" or "unlawful." Both threats are purely economic in nature and, as the State concedes, economic threats are permissible so long as there is no "pre-existing right" to be "free" of the threatened action. Opp. 60; *Viacom*, 747 F. Supp. at 213. Yet the State cannot and does not argue that CFP, a private nonprofit, had any pre-existing right to public funding, or that its CEO had any right to keep his job. Nor, of course, did CFP have any pre-existing right to George Norcross's ongoing political or financial support. *Albertson*, 971 F. Supp. at 838, 845 (rejecting extortion claim where defendant threatened "legal and political opposition," since nobody was "entitled" to be free of that).

The State says there was no "economic or commercial nexus" between the threat and the demand, because Defendants' objection related to "a specific deal" yet the threat of retribution was not "cabined" to that project. Opp. 66. That is a ridiculous approach to the "nexus" inquiry. In *Roth*, there was no nexus because the defendant had literally "no protectable interest, legal or otherwise," in the sheriff sale he threatened to challenge. *Roth*, 289 N.J. Super. at 160. Here, however, Defendants had an obvious and legitimate interest in how CFP was proceeding on a major project; it is perfectly appropriate in those circumstances to hinge financial support for the nonprofit or its leadership on a course correction. On the State's theory, it would be criminal extortion to tell a contractor: "don't screw up this renovation project, or we'll never hire you for any other work," since that threat would not be "cabined" to the project at issue. A "healthy dose of common sense" (Opp. 52) tells us it is neither wrongful nor unlawful to threaten to stop funding an

organization that declines to follow direction. And the complete absence of any caselaw supporting the State's theory is all the confirmation that this Court should need of that intuitive result. As a matter of law, this is nowhere close to criminal extortion.

C. Defendants' Alleged Interactions with CFP's CEO Were Not Extortion Either, and Cannot Support the Charges Regardless.

The Indictment refers to a third episode of alleged extortion—relating to a threat to fire the CEO of CFP in December 2017 (*see* Indict. ¶¶ 8, 173-80)—but the State appears to admit that this incident cannot actually support any charges on its own. It identifies the two victims of extortion as Dranoff and CFP itself, not the CEO. *See* Opp. 8-9. And it otherwise barely mentions the CEO episode in defending the extortion charges, limiting the discussion to a "see also" citation (Opp. 56) and as "confirm[ing]" the prior incidents (Opp. 60, 66)—but not as independently constituting any charged offense.

This afterthought treatment makes sense considering how this episode fits into—or, more precisely, does *not* fit into—the Indictment's charges. The conspiracy counts (Counts 2-4) each relate to a particular "scheme" (the L3 complex, Triad1828 Center and 11 Cooper, and Radio Lofts "schemes" respectively), but the resignation of the CFP CEO did not relate to, or advance, any of those specific extortion schemes. It had nothing to do with Dranoff and, as the State acknowleges, occurred three years "[a]fter [Defendants] successfully extort[ed] CFP out of its beneficial deal with KPG/MC to buy the L3 Complex." Opp. 24. Indeed, it appears in an independent part of the Indictment, distinct from the allegations constituting the other schemes. The resignation did not produce any tax credits, so it is irrelevant to the financial facilitation counts, which assert possession

of and transactions with tax credits that were the "proceeds" of crime (Counts 5-10). Nor does the Indictment allege that any corporate entity played any role in extorting the CEO; the corporate misconduct counts (Counts 11-12) therefore cannot rest on this episode. As for the racketeering conspiracy (Count 1), it requires agreement to commit "*two or more* predicate acts." *State v. Ball*, 268 N.J. Super. 72, 107 (App. Div. 1993) (emphasis added)—so the CEO resignation could not independently support that charge either.[6] In short, the Indictment's story about the CEO thus appears to be color only; to dismiss, it is sufficient for the Court to conclude that neither the Dranoff allegations nor the CFP allegations amount to criminal extortion under the applicable statutes.

In all events, the allegations about the CEO are not any more legally sound when it comes to charging extortion. The threat was that if he did not resign, Defendants would "have him terminated for cause," even if no good cause existed. Opp. 25. That is not extortion: As the Criminal Law Revision Commission expressly provided, threats "to breach [a] contract[]" are carved out, as the type of "coercive economic barganining" for which "theft penalties would be quite inappropriate." 1971 Commentary at 227-28. Once more, the State completely ignores the authoritative Commentary, and declines to defend the incredible position that "quit or be fired" is a crime in New Jersey. The States cites no authority for that theory, which courts have widely rejected. *See, e.g.*, *Mariani v. Nocco*, 2022 WL 912093, at *7 (M.D. Fla. Mar. 29, 2022) (finding "nothing unlawful, much less

[6] As discussed already, the State's theory of official misconduct is that Dana Redd used her mayoral office to advance "the crimes charged in Counts 1-3 and 5-12 of the Indictment." Opp. 69. Because the CEO resignation cannot support those counts, it also cannot support Count 13 (charging official misconduct). *See supra* at 9-10.

extortionate, about the choice" between resigning or being fired); *Young v. Annarino*, 123 F. Supp. 2d 915, 930 (W.D.N.C. 2000) (concluding "no extortion could have occurred" where police officers resigned in lieu of termination); *Earle v. Clayton*, 2020 WL 95812, at *10 (D.D.C. Jan. 8, 2020) (dismissing civil RICO claim alleging that employee was told "to quit or to face termination," and describing this as an attempt "to transfigure what is essentially an employment termination claim into a RICO claim").

Instead, in its fleeting discussions of this incident, the State describes the threat as involving "false reputational" harm. Opp. 10, 24, 26. That once again mischaracterizes the Indictment. The alleged threat was to *fire* the CEO, not to spread rumors that he had embezzled or committed misconduct. The CEO was told that "'they' would just make something up about him, *which would lead to him being terminated for cause*." Indict. ¶ 177 (emphasis added). The threatened harm was the italicized part—since "termination for cause would result in the loss of his anticipated approximately $50,000 bonus and any severance package." *Id.* In other words, the CEO was threatened by the financial impact of the *termination*—not the specific ground invoked to justify it. Sure, the CEO also worried that a termination would "harm him reputationally" (*id.*), just as termination would be bad for anyone's reputation, but that was just a downstream effect of the threat. The direct harm that Defendants allegedly threatened was the termination and breach of contract—an everyday business matter, not the stuff of criminal extortion.[7]

[7] As Defendants explained, because a resignation is not "property," a threat to force such a resignation could at most be criminal coercion, not extortion. *See* MTD 20. The State responds by citing cases holding that "a job and a salary" can constitute property. Opp. 67 n.11. But those were all cases where a victim was coerced to *hire* someone—the object was thus to obtain a salary

* * *

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. It is not extortion for the politically influential to use that influence for their own private ends. And it is not extortion to tell someone to quit or else be fired. The State's novel theories would revolutionize the law, upend long-held understandings about the reach of these statutes, and cast a pall over constitutionally protected conduct. This theory belongs on the campaign trail—not in a courtroom.

IV. THE INDICTMENT ALSO FAILS BECAUSE THE CHARGES ARE TIME-BARRED.

Although the Court need not reach the issue, the Indictment is also time-barred. The State agrees that, to be timely, the offenses must have continued beyond June 13, 2017 (or, for official misconduct, June 13, 2019). Opp. 108. The State insists the offenses *did* continue past those dates, but the Indictment's allegations show otherwise.

At the outset, the State argues that the inquiry ends, at least for present purposes, with the Indictment's bare claim that the conspiracies "continued" to the present. Opp. 108, 127 n.29. That cannot be correct. Those statements are not *factual allegations*; they are *legal conclusions*. *See State v. Herbert*, 92 N.J.L. 341, 354 (1918) (describing question "as to the time when a conspiracy may be said to have been brought to an end" as "purely a

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or wages from the victim. *See United States v. Brissette*, 919 F.3d 670, 672-73, 682 (1st Cir. 2019); *United States v. Kirsch*, 903 F.3d 213, 227 (2d Cir. 2018); *United States v. Fitzgerald*, 514 F. Supp. 3d 721, 762 (D. Md. 2021). Here, by contrast, the Indictment alleges that the CEO was coerced to *quit* his job, so no money left his hands. Coercing a resignation does not count as obtaining "property." *See, e.g.*, *Wilson v. Ridgeway*, 2020 WL 4590241, at *3 (N.D. Cal. Aug. 7, 2020) (rejecting extortion claim based on coerced "resignation" because "plaintiff's loss of payment … is not the same as that payment then being transferred to defendants").

legal one" in that case). The Indictment must allege facts showing the conspiracy continued into the relevant period. The bare minimum, as one court put it, is for the indictment to "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).[8] When one looks for those facts in this Indictment, one comes up empty.

Respecting the conspiracy counts, the State admits that they are time-barred if the conspiratorial objectives were "accomplished" before June 2019. Opp. 111-12. By that point, the targeted property rights (the L3 complex, view easement, and the Radio Lofts redevelopment option) had already been secured. *See* Indict. ¶¶ 7, 82, 152-54, 191; Opp. 17, 22-23. That is the thrust of Defendants' limitations challenge—this case is supposedly about extortion, yet all of the supposedly extorted property changed hands *before* the limitations period. *See* MTD 39. The State responds that the conspiracies also embraced "three objectives that continued into the present." Opp. 112. But none holds up.

First, the State argues that some Defendants used the allegedly extorted property rights to take actions that later allowed them to seek tax credits, which they can continue to do "through 2030." Opp. 113. If that sufficed, the conspiracy would continue *forever*, because Defendants will indefinitely continue to enjoy the property they extorted, in one

[8] The State's cited cases (Opp. 109-110) are not to the contrary. Read in context, they say only that if an indictment's factual allegations support an ongoing conspiracy, it must fall to the jury to evaluate the truth of the allegations—not that a bare assertion of an ongoing conspiracy is itself sufficient. *See, e.g.*, *United States v. Kozeny*, 493 F. Supp. 2d 693, 714-15 (S.D.N.Y. 2007) (indictment alleged that payments within limitations period were bribes); *State v. W.S.B.*, 453 N.J. Super. 206, 236 (App. Div. 2018) (discussing a "factual dispute concerning the defendant's fugitive status that would extend the limitations period").

form or another. "To accept the government's argument, no conspiracy would end until every conspirator no longer retained any economic benefit no matter how residual." *United States v. Kang*, 715 F. Supp. 2d 657, 679-80 (D.S.C. 2010). That is not the law. *See id.* After all, obtaining property is almost never an end in itself: The purpose is 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, which defeats the very purpose of having a statute of limitations. *See Krulewitch v. United States* 336 U.S. 440, 456 (1949) (Jackson, J., concurring). The State offers no sound response to this absurd result of its legal theory.

To be sure, if the object of a conspiracy is to obtain specific money or property—like proceeds from a fraud, or awards from a rigged bid—the conspiracy is not completed until that payoff is consummated. That is all the State's cases say. *See, e.g.*, *United States v. Salmonese*, 352 F.3d 608, 614-15 (2d Cir. 2003) (conspiracy extended until sale of stripped warrants); *United States v. Girard*, 744 F.2d 1170, 1173 (5th Cir. 1984) (conspiracy ran until defendant received "balance due under the contract" secured by bid-rigging). Here, though, the immediate object of each alleged scheme was to extort a particular property right—all accomplished before 2019. The fact that Defendants then allegedly used those property rights *to do other things*—*e.g.*, build a new office tower, move jobs into Camden, and ultimately apply for tax credits, all perfectly legal in its own right—does not extend the alleged conspiracy. Just like, if the defendant in *Girard* had planned to use the bid-rigging contract proceeds to start a deli, the revenue from that deli would not indefinitely extend the statute of limitations. Indeed, one of the State's own cited cases implicitly recognized as much: It accepted the government's theory only because it did *not* suggest

the defendant would "be subject to liability indefinitely," as it only extended the scope of the conspiracy through the scheme's immediate "payoff," not downstream benefits such as a property "resale." *United States v. Mennuti*, 679 F.2d 1032, 1035 (2d Cir. 1982).

For the same reasons, the tax credits cannot qualify as "proceeds" of crime for the financial facilitation counts. It is true that property obtained "indirectly" from crime falls within the statutory definition (Opp. 84), but that cannot mean prosecutors may pursue an endless chain of but-for causation. Someone "who steals a Rembrandt" and "sell[s] the painting to a fence" (Opp. 85) has obtained money "indirectly" from his theft. That is presumably what the Legislature meant to capture. But if the thief then uses the money to lease a car, and uses the car to drive to work, his salary from that lawful job does not become tainted as the proceeds of crime. That takes the principle too far. *Cf. Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202 (2017) (observing that illegal acts always "cause ripples" but that liability has never followed "wherever those ripples travel").

The allegations here are much closer to the latter hypothetical. For example, the Indictment alleges that Defendants extorted Dranoff into surrendering his easement; that in turn made it possible to build the Triad Center; some of Defendants' companies leased space in the Triad Center once built; and that enabled the companies to receive tax credits under New Jersey law. *See* Indict. ¶¶ 152-54 , 158-65. Likewise, the Indictment alleges that Defendants extorted CFP into switching developers for L3; CFP conveyed the complex to the developer group; Cooper Health later acquired a (minority) interest in that entity, and leased space in the building; and ultimately Cooper Health received tax credits as a result of the jobs in Camden made possible by the lease. *See id.* ¶¶ 7, 57, 59-

67 , 70-77, 80-83, 85-88. This is not merely "one transaction removed from the crime." Opp. 85. It is attenuated to a ludicrous, unprecedented, untenable degree.

In arguing otherwise, the State's only cited authority is to a single unpublished case that upheld a *guilty plea* where the defendant admitted not only that he obtained a contractor license by fraud, but also that he "he performed only some work on some jobs and no work on others." *State v. Lawson*, No. A-5545-17T2, 2019 WL 4732762, at *2 (App. Div. Sept. 27, 2019). The revenues from those jobs were thus *doubly* the proceeds of fraud, with no lawful intervening acts. Here, the tax credits were a lawful product of investing and creating jobs in Camden, consistent with (and encouraged by) New Jersey law. The reality is that the tax credits are not proceeds of crime in any meaningful sense, and that defeats the conspiracy counts and financial facilitation counts alike.[9]

Second, the State devotes a single paragraph to an argument that the conspiracy's unlawful "retaliation" objective "continued through 2023." Opp. 121. But the timeline does not work. The State's sole example of retaliation is that Defendants allegedly caused the City of Camden to terminate Dranoff's redevelopment right for Radio Lofts, while blocking a regulatory approval relating to sale of the Victor Lofts. *See* Opp. 121; Indict. ¶¶ 186-91. But all of that occurred *in April 2018*—more than a year too early. *See id.* ¶¶ 190-91. The only thing that allegedly happened thereafter was that *Dranoff sued the City*. *Id.* ¶ 192. That is not an act by any Defendant, or in furtherance of any conspiracy

[9] It also defeats the corporate misconduct counts, which are premised on using corporate vehicles for "receipt and sale of the criminally derived tax credits." Opp. 126-27. Since the receipt and sale of the tax credits was *not* criminal, these counts are equally time-barred.

by Defendants—quite the opposite. That Dranoff's lawsuit dragged until 2023 (when he "settled" it by *paying the City* millions of dollars, *id.* ¶ 195) cannot somehow mean that Defendants' conspiracy extended for those five years. Any "retaliation objective" was fully accomplished when Defendants allegedly convinced Camden officials to block the Victor Lofts deal while terminating Dranoff's Radio Lofts rights. That was April 2018.

Finally, the State argues that the conspiracy embraced "concealment" within the limitations period (specifically, a defense of the L3 deal to the media some five years after its consummation, and Tambussi's motion in limine in Dranoff's suit against the City). Opp. 122. But the State has no good answer to *State v. Twiggs*, which squarely held that "prosecutors cannot 'extend the life of a conspiracy indefinitely'" by pointing to "mere overt acts of concealment." 233 N.J. 513, 543 (2018) (quoting *Grunewald v. United States*, 353 U.S. 391, 402 (1957)). One Defendant's statement to the media five years later, and another's legitimate pre-trial motion still more years thereafter, are (*at best*) just that—"mere overt acts of concealment." They cannot extend the alleged conspiracy.

Reverting back to its arguments about the standard of review, the State cites the Indictment's conclusory assertion that concealment was one of the conspiracy's objectives from the outset. Opp. 123 (citing Indict. ¶ 215(g)). As already explained (twice, in fact), an Indictment cannot incant legal conclusions to ward off judicial scrunity; the "essential facts constituting the crime must be directly stated" therein. *De Vita*, 6 N.J. Super. at 347; *see supra* at 5-7, 27-28. The State is thus "quite mistaken" to suggest "that one need look only at the indictment to determine the duration of the conspiracy." *United States v. Turner*, 548 F.3d 1094, 1097 (D.C. Cir. 2008).

Here, the Indictment includes no *facts* remotely suggesting that George Norcross's spokesman's 2019 statement, or Tambussi's 2023 motion, were in any way pursuant to an unlawful agreement among Defendants, dating back to 2013, "to keep the conspiracy alive after accomplishment of its central objects." *Id.* at 1097. If this were enough to avoid the time bar, *Twiggs* and *Grunewald* would have no application. Indeed, the State's theory here would let every conspiracy extend forever, since no conspirator wants his offense to be revealed. *See id.* at 1097-98; *Kang*, 715 F. Supp. 2d at 675-76 (government's theory means "there would never be an end to this conspiracy absent withdrawal, a confession by one, or death of all alleged coconspirators"). "The Supreme Court has clearly rejected such a limitless approach to conspiracy prosecutions." *Kang*, 715 F. Supp. 2d at 675.[10]

In stretching not only the meaning of the extortion statutes, but also basic statute of limitations principles, the Indictment further exposes its true nature.

CONCLUSION

For these reasons, the Court should dismiss the Indictment.

[10] A pre-trial motion petitioning the courts is also a constitutionally protected activity under *Noerr-Pennington*. *See supra* at 16-20. Additionally, as Tambussi argues, the routine practice of law seeking to exclude evidence at a trial cannot be criminal concealment.

December 19, 2024

Respectfully submitted,

/s/ Yaakov Roth
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

Attorneys for Defendant George Norcross, III

/s/ Michael Critchley
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

Attorneys for Defendant George Norcross, III

/s/ Kevin H. Marino
Kevin H. Marino, Esq.
John D. Tortorella, Esq.
MARINO, TORTORELLA & BOYLE P.C.
437 Southern Boulevard
Chatham Township, NJ 07928
(973) 824-9300 (tel.)

Attorneys for Defendant Philip A. Norcross, Esq.

/s/ Jeffrey S. Chiesa
Jeffrey S. Chiesa, Esq.
Lee Vartan, Esq.
CHIESA SHAHINIAN & GIANTOMASI PC
105 Eisenhower Parkway
Roseland, New Jersey 07068
(973) 325-1500 (tel.)

Attorneys for Defendant William M. Tambussi, Esq.

/s/ Thomas J. Gosse
Thomas J. Gosse, Esq.
LAW OFFICES OF THOMAS J. GOSSE
126 White Horse Pike
Haddon Heights, New Jersey 08035
(856) 546-6600 (tel.)

Attorneys for Defendant William M. Tambussi, Esq.

/s/ Henry E. Klingeman
Henry E. Klingeman, Esq. (039081994)
Ernesto Cerimele, Esq. (034962010)
KLINGEMAN CERIMELE, ATTORNEYS
100 Southgate Parkway, Suite 150
Morristown, New Jersey 07960
Telephone: 973-792-8822
henry@klingemanlaw.com
ernesto@klingemanlaw.com

Attorneys for Defendant Dana L. Redd

/s/ Thomas R. Ashley
Thomas R. Ashley, Esq. (242391967)
THE LAW OFFICES OF THOMAS R. ASHLEY
50 Park Place, Suite 1400
Newark, New Jersey 07102
Telephone: 973-623-0501
ashleylaw@traesq.com

Attorneys for Defendant Dana L. Redd

/s/ Lawrence S. Lustberg
Lawrence S. Lustberg, Esq.
Noel L. Hillman
GIBBONS P.C.
1 Gateway Center
Newark, NJ 07102
(973) 596-4500

Attorneys for Defendant Sidney R. Brown

/s/ Edwin J. Jacobs
Edwin J. Jacobs, Esq.
JACOBS & BARBONE, P.A.
1125 Pacific Avenue
Atlantic City, New Jersey 08401
(609) 348-1125 (tel.)

Attorneys for Defendant John J. O'Donnell

/s/ Gerald Krovatin
Gerald Krovatin, Esq.
KROVATIN NAU, LLC
60 Park Place, Ste. 1100
Newark, New Jersey 07102
(973) 424-9777 (tel.)

Attorneys for Defendant John J. O'Donnell

/s/ David Fassett
David Fassett, Esq.
ARESENEAULT & FASSETT, LLC
560 Main Street
Chatham, New Jersey 07928
(973) 635-3366 (tel.)

Attorneys for Defendant John J. O'Donnell