Gerald Krovatin (024351977)
KROVATIN NAU LLC
60 Park Place, Suite 111
Newark, NJ 07102
(973) 424-9777
gkrovatin@krovatin.com

Edwin J. Jacobs, Jr. (271401971)
JACOBS & BARBONE, PA
1125 Pacific Avenue
Atlantic City, NJ 08401
(609) 348-1125
ejacobs@jacobsbarbone.law

David W. Fassett (019421987)
ARSENEAULT & FASSETT, LLC
560 Main Street
Chatham, NJ 07928
(973) 635-3366
fassett@af-lawfirm.com

Attorneys for Defendant John J. O'Donnell

STATE OF NEW JERSEY v. GEORGE E. NORCROSS, III, *et al.*, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY Docket No. MER-24-001198 Indictment No. 24-06-00111-S

SUPPLEMENTAL REPLY BRIEF OF DEFENDANT JOHN J. O'DONNELL IN FURTHER SUPPORT OF MOTION TO DISMISS INDICTMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

PRELIMINARY STATEMENT

The defendants' joint reply brief resoundingly confirms that the Indictment should be dismissed – on its face, in its entirety, and against all defendants – for either of two simple reasons: (1) the "facts" alleged do not constitute the crimes charged; and (2) the crimes charged are also time-barred on their face. Defendant John J. O'Donnell respectfully submits this reply brief in further support of those arguments as they apply to the limited charges against him.

Mr. O'Donnell's moving brief established that the charges against him are facially time-barred because longstanding United States Supreme Court precedent, as uniformly construed by the U.S. Courts of Appeals, dictates that the tax credits alleged in the Indictment cannot, and do not, extend the lone sub-conspiracy in which he is charged into the SOL period. That sub-conspiracy – which concerns the allegedly "extortionate" purchase of the Triad1828 and 11 Cooper parcels charged in Count Three ("Triad/Cooper Sub-Conspiracy") – indisputably terminated when its central objective – *i.e.*, those parcels purchase – was accomplished in October 2016, almost eight (8) years before the Indictment was filed. The State's subsequent approval and payment of lawful, unilateral, and prolonged tax credits to the uncharged entities which own those now-developed properties cannot resuscitate that concluded conspiracy as a matter of law because, 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,'"[1] Thus, "simply because the fruits of the conspiratorial objective continue into the future,"[2] the conspiracy as charged cannot continue where, as here, "there is no evidence [or

[1] *Fiswick v. United States*, 329 U.S. 211, 216 (1946) (quoting *United States v. Kissel*, 218 U.S. 601 (1910)).

[2] *United States v. Colon-Munoz*, 192 F.3d 210, 228 (1st Cir. 1999), *cert. den.*, 529 U.S. 1055 (2020).

allegation] that any concerted activity posing the special societal dangers of conspiracy is still taking place," especially where, as here, those fruits as alleged "are lengthy, indefinite, ordinary, typically noncriminal and unilateral."[3]

In response, the State completely ignores that dispositive Supreme Court precedent and cursorily dismisses the Court of Appeals precedent. But the State cannot dispute what the Indictment explicitly concedes, *i.e.*, that uncharged entities, not the defendants, sought and received those tax credits; that the ministerial applications themselves – all of which the State extensively vetted and ultimately approved – did not involve any concerted, much less illegal, activity among those uncharged entities, let alone the defendants; and that those entities will remain eligible to receive additional such credits through 2030. As a matter of law, such legal, unilateral, and prolonged tax credits cannot extend the Triad/Cooper Sub-Conspiracy beyond the accomplishment of its central objective in 2016 – let alone for another 14 years. To conclude otherwise would mean that the State could have deferred filing this Indictment until 2035 – a proposition so absurd it defies any "healthy dose of common sense." (Sb52.)

Nor do the State's other grounds for extending the Triad/Cooper Sub-Conspiracy and its derivative charges against Mr. O'Donnell – *i.e.*, the Indictment's limited allegations about so-called acts of "intimidation and retaliation" and "concealment" – withstand scrutiny. Both primarily concern a civil lawsuit by Dranoff against the City which had no relation to that sub-conspiracy and in which none of the defendants was a party, as well as a routine pretrial motion filed by the City's counsel, William Tambussi. The State's reliance on such irrelevant and innocuous conduct underscores the utter absence of any viable basis for reviving those time-barred charges.

---

[3] *United States v. Silver*, 948 F.3d 538, 573 (2d Cir. 2020) (quoting *United States v. Grimm*, 738 F.3d 498, 503 (2d Cir. 2013) (quoting *United States v. Doherty*, 867 F.2d 47, 61-62 (1st Cir. 1989) (Breyer, C.J.), *cert. den.*, 141 S. Ct. 656 (2021))).

Finally, the State must concede that its limited charges against Mr. O'Donnell are based solely on a handful of cherrypicked snippets from intercepted telephone conversations quoted in the Indictment. In those snippets, Mr. O'Donnell said very little and nothing even remotely suspicious, much less inculpatory. Instead, he primarily listened passively to George Norcross recount his so-called "threatening" comments to Dranoff, and to their attorneys (Tambussi and Phil Norcross) propose a legal strategy of petitioning the City to file a declaratory judgment lawsuit that was, in fact, neither filed nor even mentioned to Dranoff, let alone used to "threaten" him.

The State cannot cite any other allegations of "fact" against Mr. O'Donnell and instead relies solely on the Indictment's naked legal conclusion that he was part of the so-called "Norcross Enterprise" as a means of holding him criminally liable under RICO for the other two alleged sub-conspiracies in which he is not charged or even referenced. Such unsupported conclusions are not only counterintuitive but legally inadequate, leaving only the Indictment's few, innocuous quotes from intercepted conversations concerning the Triad/Cooper Sub-Conspiracy. On their face, those quotes establish that Mr. O'Donnell did not suspect, much less know, that George Norcross' past "threats," or the two lawyers' proposed legal strategy, might ever be perceived as improper, let alone conspiratorial. The Indictment's barebones, almost nonexistent allegations against Mr. O'Donnell confirm that he was, at most, a passive bystander, not a co-conspirator,[4] merely listening to business negotiations recounted, and legal advice offered, by respected professionals on whom he had every reason to rely, and no reason to question.

[4] It is, of course, axiomatic that "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." *Model Criminal Jury Charge for Conspiracy*, N.J.S.A. 2C:5-2, at 2-3.

ARGUMENT

POINT ONE

THE STATE FAILS TO REBUT THAT THE INDICTMENT'S LIMITED CHARGES AGAINST MR. O'DONNELL ARE FACIALLY TIME-BARRED

The State opts to address the SOL issue through the prism of the RICO charge (Count One), (Sb108-124), even though the Indictment is devoid of any allegations of "fact" suggesting that Mr. O'Donnell had any knowledge of, much less participation in, the so-called "Norcross Enterprise" beyond the Triad/Cooper Sub-Conspiracy. As charged in Count Three, the central objective of that sub-conspiracy – *i.e.*, the allegedly "extortionate" purchase of the Triad1828 and 11 Cooper parcels from Dranoff – was fully accomplished in October 2016, almost eight years before the indictment was filed in June 2024 and three years before the five-year SOL cutoff in June 2019.[5] As detailed below, the State's arguments for resuscitating that facially time-barred charge, and all derivative charges, against Mr. O'Donnell are legally defective.[6]

1. The Indictment's naked allegations that the RICO conspiracy and the Triad/Cooper Sub-Conspiracy continued "to the present," and that Mr. O'Donnell "agreed to the entire racketeering conspiracy," are legally insufficient to sustain the time-barred charges against him.

The State first argues that the Indictment's conclusory allegations that the RICO conspiracy and two of the three alleged sub-conspiracies continued "to the present" is "determinative" and

[5] Similarly, the central objectives of the two sub-conspiracies in which O'Donnell is not charged – *i.e.*, those involving the L3 complex (Count Two) and the Radio Lofts building (Count Four) – were fully accomplished before June 2019. (Indict. ¶¶ 7, 82, 152-154.) That Dranoff later sued the City to recover his terminated redevelopment right regarding Radio Lofts – and ultimately not only abandoned that lawsuit but paid the City several million dollars for the privilege of cutting his losses, (Indict. ¶ 222) – did not extend the latter sub-conspiracy into the SOL period.

[6] Although the seven-year SOL cutoff for the official misconduct charge (Count 13) is two years earlier (June 2017), the State's brief reveals that this charge, too, is entirely derivative of the alleged "extortionate" acts underlying the three sub-conspiracies by confirming that Mayor Redd's alleged "misconduct" lay solely in her advancing the other charges. (Sb69-74.) Because those sub-conspiracies are all time-barred, so, too, is the official misconduct charge. In any event, Mr. O'Donnell is not alleged to have had any interaction whatsoever with Mayor Redd or, for that matter, with anyone else in the City's government.

that the Court "should look no further than [those barebones] allegations" to reject Mr. O'Donnell's facial SOL challenge. (Sb108-09.) The State similarly relies on the Indictment's naked allegation that Mr. "O'Donnell agreed to the entire racketeering conspiracy" to hold him criminally liable not just for the lone Triad/Cooper Sub-Conspiracy in which he is charged but also for the two sub-conspiracies in which he is not. (Sb110-111.) Not true.

Those 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 Indictment must allege facts, not mere conclusions, which are "essential" to the charges and their alleged timeliness. *State v. New Jersey Trade Waste Ass'n*, 96 N.J. 8, 19 (1984) (courts must ensure that "an indictment alleges all the essential facts of the crime."). Because Mr. O'Donnell is charged only in a single sub-conspiracy whose central objective was fully accomplished years before the SOL cutoff, any "facts" which purport to extend that sub-conspiracy into the SOL period, and/or to hold him accountable for the two other sub-conspiracies in which he is not charged, are clearly "essential." The Indictment's failure to allege any such "essential facts" against Mr. O'Donnell is fatal.

Two cases relied on by the State confirm that defect. First, in *State v. Twiggs*, 233 N.J. 513, 530 (2018), 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." However, the Supreme Court in *Twiggs* refused the State's invitation to rubber-stamp the indictment's allegations and instead 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.

Second, in *State v. Jeannotte-Rodriquez*, 469 N.J. Super. 69, 79 (App Div. 2021), the Appellate Division affirmed the pretrial dismissal of a six-count indictment by finding, among other deficiencies, that "the indictment lacked sufficient detail to give defendants a fair opportunity to mount a defense." After emphasizing that "[i]t is fundamental that 'an indictment ... must not only contain all the elements of the offense charged, but must also 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,'" *id.* at 103 (citations omitted) (emphasis supplied), the Court deemed insufficient the indictment's allegation regarding the charges' temporal scope, holding that "the State's 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 104.

That *Twiggs* and *Jeannotte-Rodriquez* examined the grand jury presentations to determine whether they disclosed the facts missing from the indictments is immaterial to this facial challenge. Here, the Indictment not only charges Mr. O'Donnell in just one of the three sub-conspiracies – it also affirmatively alleges facts which establish that the central objective of that lone sub-conspiracy was fully accomplished well outside the SOL period. Under such circumstances, any "facts" purporting to extend the lone Triad/Cooper Sub-Conspiracy into the SOL period even though its central objective was fully accomplished years earlier, and/or purporting to tie Mr. O'Donnell to a far broader RICO conspiracy embracing additional sub-conspiracies in which he is not charged, are indisputably "essential" and must be explicitly plead in the Indictment. Because no grand jury presentation can salvage an indictment lacking any "essential facts" suggesting that

facially time-barred charges extended into the limitations period, the Court need not address the grand jury presentation underlying the Indictment.[7]

Indeed, the State implicitly concedes that the Indictment must allege facts establishing that the charged conspiracies extended into the SOL period by going out of its way to allege that the tax credits approved and paid by the State to uncharged entities occurred after the Triad/Cooper Sub-Conspiracy's central objective was fully accomplished – and will continue for at least another six years to 2030. That concession necessarily begs the question of whether those credits, as alleged, can extend that facially time-barred sub-conspiracy as a matter of law. That is a preliminary question of law for the Court – not an ultimate question of fact for the jury – to answer.

Both New Jersey and federal precedent hold that courts, not juries, can and must determine whether such alleged facts, if proven, can extend a conspiracy charge as a matter of law. *See, e.g., 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"); *United States v. Turner*, 548 F.3d 1094 (D.C. Cir. 2008) (citing Supreme Court precedent in 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") (citations omitted); *United States v. Coia*, 719 F.2d 1120, 1122-23

[7] Unlike the Indictment here, the conspiracy charge in *Twiggs* alleged central objectives of tampering, obstruction, and hindering offenses to coverup a homicide, *i.e.*, a conspiracy which, in the State's words, "necessitates concealment." *Id.* Here, in stark contrast, the central objective of the lone sub-conspiracy charged against Mr. O'Donnell was the allegedly "extortionate" purchase of the Triad1828 and 11 Cooper parcels, *i.e.*, commercial real estate transactions which required extensive, publicly filed documents and generated enormous media attention. Because the Indictment here – unlike that in *Twiggs* – facially establishes that the sub-conspiracy's central objective was accomplished long before the SOL cutoff, the Court need not scour the voluminous grand jury presentation for any evidence of non-existent "essential facts" missing from the Indictment.

(11th Cir. 1983) (in rejecting the government's argument that "the district court erred in resolving prior to trial the factual issue of whether the conspiracy continued into the statute of limitations period as alleged in the indictment," emphasizing that "[i]t is perfectly proper, and in fact mandated, that the district court dismiss an indictment if the indictment fails to allege facts which constitute a prosecutable offense."). The State does not cite any authority to the contrary.

Instead, the State cites *State v. W.S.B,* 453 N.J. Super. 206, 236 (App. Div. 2018), for the "cleaned up" proposition that "a factual dispute concerning the proper computation of the statute of limitations is for the jury to decide, not the judge at a pretrial testimonial motion hearing." (Sb109.) 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, this motion does not raise any "factual dispute" and instead establishes that the Indictment against Mr. O'Donnell is facially time-barred, even assuming the truth of its sparse allegations of "fact" and its explicit concessions regarding the legal, unitary, and prolonged nature of the tax credits.

The State also cites three federal trial court decisions for the proposition that the breadth and duration of an alleged conspiracy are jury issues. (Sb109-110.) But those cases all involved indictments which explicitly alleged facts which, if proven, 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 cannot and does not allege any such "facts" which, even if accepted as true, would extend the time-barred charges against Mr. O'Donnell into the SOL period. Absent such allegations of "fact," federal courts have

dismissed conspiracy charges as facially time-barred despite allegations that the economic benefits thereof 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").

In sum, the Indictment's naked allegations that the RICO conspiracy and the Triad/Cooper Sub-Conspiracy continued "to the present," and that Mr. O'Donnell "agreed to the entire racketeering conspiracy," are legally insufficient to sustain the time-barred charges against him.

2. The State's dismissal of Mr. O'Donnell's payment caselaw is wrong, and its cited difference between federal and New Jersey conspiracy law is legally immaterial.

The State next argues that the federal appellate precedent cited by Mr. O'Donnell is inapplicable because it represents an "exception" to the "ordinary rule" that conspiracies continue until their "economic objectives" are achieved, and because New Jersey conspiracy law and precedent, unlike federal conspiracy law and precedent, do not require an overt act within the limitations period. (Sb113-117.) The State is wrong as a matter of law, and for several reasons.

First, the reported decisions of the U.S. Court of Appeals cited by Mr. O'Donnell – *i.e., Doherty, Grimm, Silver*, and *Colon-Munoz* – remain controlling law in their circuits, and the State cites no contrary authority from any jurisdiction. No surprise, since each of those decisions flowed directly from the U.S. Supreme Court's decisions in *Fiswick* and *Kissel*. Those binding cases 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*, 329 U.S. at 216 (quoting *Kissel*, 218 U.S. at 601). Remarkably, the State's brief fails even to cite *Fiswick* or *Kissel* – even though Mr. O'Donnell's

moving brief quoted from them repeatedly – or to acknowledge that *Doherty* (which construed those controlling decisions) was authored by future Justice Breyer. In short, any characterization of *Doherty*, *Grimm*, and their progeny as an "exception" to the "ordinary rule" bespeaks not any split in federal authority but only how rarely federal prosecutors file time-barred indictments which wrongly purport to resuscitate concluded conspiracies by alleging that their fruits are continuing.

Second, the State also ignores the fact that the "ordinary rule" decisions on which it relies were explicitly distinguished by the "exception" decisions cited by Mr. O'Donnell. Indeed, as his moving brief detailed, Justice Breyer explained that *Girard, Mennuti*, and other such "economic objective" cases 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, as Mr. O'Donnell's brief also detailed, 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 relying on those "ordinary rule" decisions, the State conveniently overlooks Justice Breyer's explanation detailing why those decisions are entirely consistent with the "exception" decisions like *Doherty*, *Grimm*, and their progeny.

Third, the State purports to dismiss *Doherty* and *Grimm* as contrary to New Jersey law by claiming that those "exception" decisions held merely 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 objectives have been accomplished or abandoned. (Sb116-117.) But the State's purported distinction between federal and state law lacks any difference because both *Doherty* and *Grimm* explicitly charged the payments as conspiratorial objectives, 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.

Fourth, and in that same regard, the State claims that *Doherty* and *Grimm* "conflict[] with" *State v. Cagno*, 211 N.J. 488 (2012), because that New Jersey decision supposedly refused "to recognize any exceptions to the rule that conspiracies continue until the accomplishment or abandonment of their objectives." (Sb116.) In truth, *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 "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, all of which "permitted the jury to infer that the enterprise was an ongoing entity and did not disappear from existence after" the SOL cutoff date. 211 N.J. at 511-12. 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 gang soldiers in La Cosa Nostra, Mr. 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. 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 lawful, unilateral, and prolonged payments – like the tax credits alleged here – could somehow extend alleged conspiracies whose central objectives – like the well documented and publicized acquisition of properties here – were fully accomplished years earlier.

Finally, the State ignores New Jersey precedent explicitly adopting the fundamental principle first articulated in *Kissel* 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, the Court 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 by quoting from *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.* (quoting *Kissel*, 218 U.S. at 607). The Court in *Herbert* added that to conclude otherwise 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 alleged in the Triad/Cooper Sub-Conspiracy, "the object to be attained by the alleged conspirators [*i.e.*, to purchase the parcels] was a lawful one but the [alleged] means [*i.e.*, to "extort" Dranoff] were unlawful and criminal. *Id.* at 355. As alleged, that sub-conspiracy was necessarily complete when the last "allegedly 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 be received. 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, the State's dismissal of Mr. O'Donnell's payment caselaw is wrong, and its cited difference between federal and New Jersey conspiracy law is legally immaterial.

3. The State's purported factual distinctions between Mr. O'Donnell's payment caselaw and this Indictment are non-existent.

The State then argues that Mr. O'Donnell's payment caselaw, even if it applies to New Jersey conspiracy law, is factually distinguishable from the "facts" alleged in the Indictment. (Sb117-120.) But the factual distinctions claimed by the State are entirely illusory.

First, the State argues that the uncharged entities' continuing receipt of tax credits is not "indefinite," as referenced in that caselaw, because those entities' eligibility for such credits "ends in 6 years." (Sb117.) But the State ignores the additional eight (8) years that have already elapsed – and the prior tax credits that were paid during those 8 years – since the lone sub-conspiracy in which Mr. O'Donnell is charged concluded in October 2016. More fundamentally, as his moving brief explained, 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 as follows:

> "Indefinite" cannot mean "without end." Even in *Doherty*, the salary payments lasted only as long as the officers' employment.[8] 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.*

[8] Indeed, the salary payments received by the defendant whose charges were held to be 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 to be sufficiently "prolonged" so as not to extend the charged conspiracy, the 14 years of tax credits – explicitly alleged and conceded in the Indictment – cannot possibly extend the lone sub-conspiracy in which Mr. O'Donnell is charged.

Here, the Indictment's explicit concession that the uncharged entities will continue to receive tax credits through 2030 – *i.e.*, 14 years after the Triad/Cooper Sub-Conspiracy concluded in 2016 – dictates that those economic benefits are "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 delay 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, were "passively received," the Indictment here alleges that "Defendants must apply annually for the tax credits [] and make specific showings []." (Sb118.) But the Indictment explicitly confirms (by affirmatively alleging) that the uncharged entities, not the defendants, filed those applications and received the resulting tax credits. 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 vetted and approved all such applications and paid all such credits. Given those conceded facts, that the uncharged entities applied for those credits, rather than passively received them, is immaterial.

Third, the State claims that those ministerial applications were not "unilateral" acts because the Indictment alleges that "Defendants coordinated in their efforts to conceal that the credits stemmed from criminal activity." (Sb118.) But the only allegation relied on by the State fails even to refer to the 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. (Indict. ¶ 215(g).) In short, the Indictment confirms, rather than undermines, that the uncharged entities' applications were "unilateral."

Fourth, the State contends that, unlike the payments in *Doherty* and *Grimm*, the tax credits here were "part and parcel of the conspiracy," citing a single trial court decision from over 25 years ago which distinguished *Doherty*. (Sb118-19 (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. The trial court in *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 explicitly concedes that the tax credits themselves were "valid noncriminal payments" which did not involve, let alone require, any "concerted criminal activity." *Id.*

Fifth, the State argues that the tax credits are nevertheless unlawful because they "derived from" the allegedly "extortionate" property transactions cited in the three sub-conspiracies, going so far as to equate the uncharged entities' public acquisitions of those properties, and 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." (Sb119.) The State's absurd analogy merely underscores the dispositive defects undermining its time-barred Indictment. As established more fully in the defendants' joint reply brief, the tax credits received by the uncharged entities, and approved and paid by the State, did not "derive from" the properties' acquisition, just as a tax refund does not "derive from" a job's acquisition.[9] In any event, the SOL inquiry under *Doherty*

[9] The State cites just one unreported decision in support of its strained "derived from" theory and materially misstates that decision's holding, claiming that *State v. Lawson*, 2019 WL 4732762 (App. Div. Sept. 27,

and *Grimm* asks whether the payments themselves involved concerted illegal activity, not whether such payments "derived from" such activity in the distant past. Indeed, the fraudulently increased salary payments in *Doherty* derived from the defendants' fraud far more directly than the tax credits "derived from" the lone Triad/Cooper Sub-Conspiracy charged against Mr. O'Donnell.

Finally, the State claims that its own approval and payment of the tax credits is irrelevant to the SOL analysis because the defendants allegedly concealed the "extortion" involved in acquiring the properties,[10] mischaracterizing these motions to argue "that any time the State discovers that a defendant has received a government payment or benefit as a result of a criminal scheme, the State is powerless to bring charges because it itself has unknowingly issued the funds." (Sb120.) Of course, these motions argue no such thing. What they argue is that the State must bring such charges within the limitations period and cannot use the payments themselves to resuscitate a long-terminated conspiracy under the facts explicitly alleged in this Indictment. Any conclusion to the contrary would squarely violate the Supreme Court's longstanding holdings in

---

2019), "affirm[ed] [a] conviction under N.J.S.A. 2C:21-25(c) where payments [the] defendant received for construction project contracts were indirectly derived from the fraud he committed to obtain [a] home-improvement-contractor license." (Sb84.) In truth, the defendant in *Lawson* pled guilty to both financial facilitation and theft and admitted not merely that he obtained 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 allocution 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 claim, the court in *Lawson* did not find that those stolen funds "were indirectly derived from the fraud he committed to obtain [his] license." (Sb84.)

[10] Notably, the State cannot, and does not, allege that the tax credit applications required the uncharged entities to disclose the negotiations underlying the properties' acquisition, much less that those applications misrepresented those negotiations. Indeed, had the State believed that those applications were misleading in the slightest, it certainly would have brought additional charges based on the applications themselves.

Fiswick and *Kissel*, as confirmed and applied by the Courts of Appeals' decisions in *Doherty*, *Grimm*, *Silver*, and *Colon-Munoz*.[11]

In sum, the State's purported factual distinctions between Mr. O'Donnell's payment caselaw and this Indictment are non-existent.

4. The State's reliance on the Indictment's limited allegations about so-called acts of "intimidation and retaliation" and "concealment" cannot sustain the time-barred charges against Mr. O'Donnell.

Beyond the tax credits, the State purports to rely on the Indictment's vague allegations of "intimidation and retaliation" and "concealment" to extend the time-barred charges against O'Donnell. (Sb121-123.) Neither allegation does so.

Preliminarily, the State concedes that *Twiggs* dictates "that 'mere overt acts of concealment' are not tantamount to 'a conspiracy to conceal'" but purports to distinguish that controlling decision merely because the RICO conspiracy charged here "includes concealment of the criminal conspiratorial activity as one of the objectives." (Sb123 (quoting *Twiggs*, 233 N.J. at 543)). 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 adopted *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

[11] In a footnote, the State also purports to distinguish *Silver* and *Colon-Munoz* on equally flawed grounds. The State summarily dismisses *Silver* as involving "bribery charges" and "a breakdown in an ongoing quid-pro-quo," (Sb116 n.24), but *Silver* explicitly found that *Grimm* was "equally applicable to the ongoing bribery scheme here," which was time-barred "because the within-limitations payments ... were 'the result of a completed [scheme], and ... not in furtherance of one that [was] ongoing." 948 F.3d at 574 and n.25. Similarly, the State brushes aside *Colon-Munoz* based on its alleged conspiratorial scope, even though it relied solely on *Doherty* in holding that a fraudulent loan's repayment did not extend a bank fraud conspiracy because "[t]here is no allegation that [the] repayment was itself illegal or that it involved the type of concerted activity through which conspiracies pose 'special societal dangers.'" 192 F.3d at 228-29 (quoting *Doherty*, 867 F.2d at 61). *Silver* and *Colon-Munoz*, like *Doherty* and *Grimm*, are directly on point and confirm that the limited charges against Mr. O'Donnell are facially time-barred because the tax credits cannot extend the lone sub-conspiracy in which he is charged into the SOL period as a matter of law.

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 (quoting *Grunewald*, 353 U.S. at 401-02)). 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 (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. But rather than defer to that charging language in the indictment, the Supreme Court instead 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

[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)).

co-conspirators' roles in hindering and in the destruction of evidence." *Id.* at 545.[13] *Twiggs* thus confirms that the Indictment against Mr. O'Donnell is facially time-barred – even though the RICO conspiracy charge "includes concealment of the criminal conspiratorial activity as one of the objectives," (Sb123) – by establishing that such conclusory "objective" allegations 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).

Here, "the central criminal purposes" of the lone Triad/Cooper Sub-Conspiracy charged against Mr. O'Donnell were fully accomplished in October 2016, eight years before the Indictment was filed. Moreover, even assuming the narrow allegations of "concealment" and "intimidation and retaliation" pled in the Indictment, those allegations, at most, facially claim "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.* Accordingly, notwithstanding the Indictment's naked assertion that those allegations were conspiratorial "objectives," *Twiggs* and *Grunewald* confirm that such allegations cannot and do not extend the time-barred charges against Mr. O'Donnell.

In any event, those allegations cannot extend those charges because they fail to assert either any relationship to the Triad/Cooper Sub-Conspiracy or any involvement by Mr. O'Donnell. The "intimidation and retaliation" allegation claims that other defendants retaliated against Dranoff by

[13] Again, this Court need not review the grand jury presentation because the Indictment here – unlike that in *Twiggs* – facially establishes that the Triad/Cooper Sub-Conspiracy's central objective was accomplished long before the SOL cutoff. *See supra* n. 7.

"directing Camden officials to delay in providing an approval [Dranoff] needed to complete a business deal ... through 2023, when [Dranoff] finally caved and forfeited an unrelated property interest (his right to redevelop the Radio Lofts parcel) ...." (Sb121.) But that allegation exclusively concerns an alleged sub-conspiracy in which Mr. O'Donnell is not charged and asserts no relationship to the Triad/Cooper Sub-Conspiracy, whose central objective was fully accomplished years earlier (by Dranoff's sale of the Triad1828 and 11 Cooper parcels in October 2016). Additionally, the Indictment cannot, and does not, allege that Mr. O'Donnell had any involvement in the "intimidation and retaliation" allegation, failing even to mention him in any of its sixteen (16) paragraphs purporting to detail the alleged "use of Radio Lofts as a 'point of attack' on [Dranoff].'" (Indict. ¶¶ 181-197.) Thus, even as plead in the Indictment, the "intimidation and retaliation" allegation cannot extend the limited, time-barred charges against Mr. O'Donnell.

The "concealment" allegation fares no better. That allegation has two components: (1) "misleading statements to the media regarding the L3 Complex deal" in October 2019, and (2) "Tambussi's motion to preclude reference to the Norcross brothers in the Radio Lofts litigation and misleading statements in court" in August and September 2023. (Sb122.) But neither component has anything to do with Mr. O'Donnell or the lone sub-conspiracy in which he is charged. Regarding the former, the Indictment alleges three sporadic media statements made by an unnamed "spokesperson for" George and Phil Norcross on October 3, 2019, unnamed "Cooper Health officials" on October 17, 2019, and Tambussi in May 2022, all of which concern only the L3 complex, and none of which mentions Mr. O'Donnell or the Triad1828 or 11 Cooper parcels. (Indict. ¶¶ 91-92.) Regarding the latter, the Indictment alleges that Tambussi, as counsel for the City, filed and argued a routine pretrial motion in Dranoff's unsuccessful lawsuit against the City concerning Radio Lofts, again without mentioning Mr. O'Donnell or the Triad1828 or 11 Cooper

parcels. (Indict. ¶¶ 156-157.) Thus, the "concealment" allegation, too, cannot extend the time-barred charges against Mr. O'Donnell.

Finally, both the "intimidation and retaliation" allegation and the "concealment" allegation are inherently suspect on their face. The "intimidation" allegation bizarrely concerns Dranoff's attempt to intimidate the City by filing a lawsuit against the City – but not against any of the defendants. After the City refused to capitulate and counterclaimed, Dranoff ultimately abandoned his attempt to regain his previously terminated right to redevelop the blighted Radio Lofts building and paid the City several million dollars. 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 innocuous nature of those allegations – separate and apart from their utter lack of any relationship to Mr. O'Donnell or the lone Triad/Cooper Sub-Conspiracy in which he is charged – underscore the absurdity of the State's position that they somehow resuscitated the time-barred charges against him.

In sum, the State's reliance on the Indictment's limited allegations about so-called acts of "intimidation and retaliation" and "concealment" cannot sustain the time-barred charges against Mr. O'Donnell.

POINT TWO

THE STATE FAILS TO REBUT THAT THE INDICTMENT'S VIRTUALLY NONEXISTENT ALLEGATIONS OF "FACT" AGAINST MR. O'DONNELL FAIL TO SUSTAIN THE CHARGES AGAINST HIM.

Mr. O'Donnell's moving brief summarized, in painstaking detail, the Indictment's allegations of "fact" concerning the lone Triad/Cooper Sub-Conspiracy charged against him and established that those "facts" establish that he did not suspect, much less know, that George

Norcross' past "threats," or the two lawyers' proposed legal strategy, might ever be perceived as improper, let alone conspiratorial. More specifically, he established that he is not alleged to have said anything to – much less to have "threatened" – Dranoff, or even to have known beforehand of any of George Norcross's alleged "threats" against Dranoff. Nor is he alleged to have communicated with the City, let alone participated in the attorneys' petitioning efforts regarding the never-filed, never-threatened declaratory judgment lawsuit against Dranoff. Indeed, the cherrypicked snippets of intercepted communications among the defendants, as quoted in the Indictment, confirm that he merely listened passively to George Norcross recount his few conversations with Dranoff and to the attorneys describe their legal strategy with the City, adding just a few innocuous remarks of his own.

In response, the State cites nothing to the contrary, substantively referencing Mr. O'Donnell just three (3) times in its 133-page brief. First, the State identifies him as "an executive leader" of The Michaels Organization ("TMO") and "a partner in the groups that own" Triad1828 and 11 Cooper; alleges that he "joined in the plotting to cause the Camden government to bring court action against" Dranoff regarding his view easement rights – a "court action" which was never filed against, and never mentioned to, Dranoff; and states that he and TMO "received millions of dollars" by virtue of the tax credits paid and sold for those properties.[14] (Sb12-13.) Second, the State claims that he "and Brown were businessmen, who, among other [unidentified] things, participated directly in plotting to use a municipal entity to file a condemnation action to gain leverage against or punish [Dranoff], supplied financial capital and in turn used their various

[14] In truth, the Indictment does not even attempt to link Mr. O'Donnell's compensation from TMO to the tax credits received and sold by TMO, alleging only that his compensation during the 11 years between 2013 and 2023 totaled approximately $11.2 million and that TMO's proceeds for selling its tax credits received through 2023 totaled approximately $11.5 million. (Indict. ¶¶ 202-203.) The Indictment fails to allege any "facts" suggesting any correlation between his compensation and TMO's tax credits.

entities to collect the tax credits at the heart of their conspiracy." (Sb43.) Finally, the State reiterates that he and Brown "participated in recorded discussions about using public power to achieve their private ends." (Sb66 n.10.) That's it – the State's brief alleges no other "facts" against Mr. O'Donnell beyond his allegedly "plotting" to cause the City to pursue a declaratory judgment lawsuit which it never filed and allegedly benefiting indirectly from the tax credits some of the uncharged entities later received for successfully developing the Triad1828 and 11 Cooper parcels.

Even then, the State concedes that the Indictment's allegations regarding Mr. O'Donnell's "plotting" are extremely limited and entirely innocuous. Specifically, the Indictment quotes a few select lines from an intercepted telephone conversation on October 22, 2016, during which George Norcross told the other defendants that he wanted the City to pursue a declaratory judgment lawsuit against Dranoff as a means of persuading him to accept the deal on which he had just reneged after accepting it two days earlier. (Indict. ¶¶ 142-143.) Tambussi then explained the legal strategy that, should the City's prospective declaratory judgment lawsuit succeed, the view easement's value would be reduced, in the ordinary legal course, to "virtually nothing," and any such court ruling would put Dranoff "in a drastically different negotiating position." (*Id.* ¶145.) When Phil Norcross agreed with Tambussi's strategy, Mr. O'Donnell said that he, too, "agreed on both ends" with the two attorneys' advice to bring Dranoff and LPT to the table. (*Id.* ¶146.)

This alleged exchange represents the first, and only, occasion on which the Indictment alleges that Mr. O'Donnell – who is a layperson, not an attorney – endorsed anything said or done by another defendant in advance, and even then, he endorsed only the two attorneys' litigation recommendation that they petition the City to file the declaratory judgment lawsuit against Dranoff. Nothing in what the two attorneys conveyed to him suggested there was anything improper, much less illegal, with their proposed petitioning activity – which was not only entirely

legal but constitutionally protected. Nor was there any suggestion about "threatening" Dranoff with the prospect of such a lawsuit – which, again, was never even mentioned to Dranoff.[15]

Similarly, nothing in the State's brief or the Indictment alleges that Mr. O'Donnell had any prior knowledge of, or involvement in, the prior negotiations between George Norcross and Dranoff during the summer of 2016, let alone that he endorsed any "threat" by Norcross. Indeed, the Indictment does not allege that, even after the fact, Norcross ever told Mr. O'Donnell he had "threatened" Dranoff, instead alleging that Norcross told him only that he (Norcross), like many others, "detest[ed]" dealing with Dranoff.

Thus, even were the Indictment's allegations of "threats" by George Norcross against Dranoff sufficient to support a legitimate inference that Norcross "extorted" or "criminally coerced" Dranoff – which they are not[16] – those allegations cannot support extending culpability

---

[15] In response to defendant Sidney Brown's argument – in which Mr. O'Donnell explicitly joined – that the RICO charge is facially defective because the Indictment fails to allege any facts suggesting that Brown – who, like Mr. O'Donnell, is charged only in the sub-conspiracy concerning the Triad1828 and 11 Cooper parcels – agreed that someone would commit at least two predicate acts, the State argues that "Brown ignores the Indictment's allegations that he agreed, among other things, not to a single phone call, ... but to a scheme to take out [Dranoff's] rights through extortion and coercion, and then to cash out on the scheme using Brown's own capital and company through obtaining and selling tax credits." (Sb48 n.7.) But the State ignores the reality that this "single phone call" represents the Indictment's only allegation of fact by which Brown – and Mr. O'Donnell – agreed in advance to anything proposed by another defendant, and that lone agreement was to legal advice and strategy proposed by Tambussi and Phil Norcross. The Indictment cannot, and does not, allege any "facts" suggesting that either Mr. O'Donnell or Brown even knew about, much less shared any intent to promote, the two sub-conspiracies in which they are not charged, let alone an overarching RICO conspiracy based on a so-called "enterprise" consisting of a few respected businessmen and their attorneys pursuing legitimate commercial transactions.

[16] The State's brief acknowledges that George Norcross's alleged "threats" against Dranoff facially constituted nothing beyond perfectly legal "hard bargaining" and claims only that those "threats" became "extortionate" simply because Norcross's perceived "political power and functional control over the levers of [City] government" supposedly "deprived [Dranoff] of a level playing field." (Sb61-62 [citations omitted].) In other words, the State concedes that, but for Dranoff's perception of Norcross's alleged influence over the City, those alleged "threats" would fail to state a viable predicate of extortion or criminal coercion. As the defendants' joint reply brief establishes, the legal defects undermining that theory of criminality are as fundamental as they are numerous. Put simply, citizens have constitutional rights to petition and influence governmental institutions, and their success in doing so – and others' perception of their resulting "power" – cannot magically transform legal bargaining into criminality. For all its length and sanctimonious pronouncements, the State's brief cannot cite any support for the premise underlying

for any such charge to Mr. O'Donnell. Similarly, even were the Indictment's allegations regarding the never-filed, never-threatened declaratory judgment lawsuit sufficient to support a legitimate inference that Tambussi and Phil Norcross crossed some imaginary line between advocacy and criminality – which they do not[17] – those allegations cannot support the State's naked assertions that Mr. O'Donnell is somehow criminally culpable for "plotting" with the two attorneys who were advising him of their legal strategy. The Indictment's barebones, virtually nonexistent allegations against him confirm that he was, at most, a passive bystander to – not a co-conspirator in – negotiating conduct of, and attorney advice from, respected professionals which was, on its face, perfectly legal and on which he had every reason to rely, and no reason to question, as a layperson. *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.").

Finally, the State repeatedly implies, without asserting, that it possesses more evidence against Mr. O'Donnell beyond the Indictment's limited allegations of "fact" against him, and that those limited allegations can be assessed only by a jury, not by this Court. (Sb32 ["an indictment

---

this ill-conceived prosecution, *i.e.*, that the law prohibits – and, indeed, criminalizes – a citizen from using his perceived influence with government entities to advance his personal interests. To the contrary, controlling precedent mandates that the First Amendment protects and insulates such activities.

[17] The State's brief also acknowledges that the defendants had a First Amendment right to petition the City to pursue the declaratory judgment lawsuit but claims that their efforts became criminal simply because they "are not alleged to have asked," but rather to have "caused or plotted to cause," the City to do so. (Sb88 [emphasis in original].) The State's purported distinction between constitutionally protected "asking" and criminally proscribed "causing" fails of its own weight. As the defendants' joint reply brief establishes, the law cannot, and does not, prescribe any point at which an individual's perceived "power or control" over government transforms First Amendment petitioning activities into crimes. And even if such a line between constitutionally protected conduct and illegal conduct could be drawn, no notice of any such line was even remotely provided to these defendants. In short, the State's purported distinction between "asking" and "causing" the City to pursue the declaratory judgment lawsuit regarding Dranoff's view easement is legally defective.

need not walk through the majority of the State's evidence"]; Sb34 [implying that the State "ha[s] more evidence waiting in the wings" and that only "a jury [can] find certain acts to be either malign or business-as-usual"]; Sb37 ["[a] speaking indictment is not a 'full proffer' of the State's case."] But whatever merit the State's hints about having "more evidence" behind the curtain might have in a normal case, they carry no weight where, as here, the Indictment spans 111 pages and 242 paragraphs, and its "fact" allegations of criminality rely exclusively on select portions of intercepted telephone conversations. If one thing in this misguided prosecution is clear, it is that the legal viability of the lone Triad/Cooper Sub-Conspiracy charged against Mr. O'Donnell turns entirely on the Indictment's cherry-picked snippets from George Norcross's retrospective accounts of his few calls with Dranoff which the State characterizes as "threats," as well as the few calls among the defendants regarding the two lawyers' petitioning activities with the City concerning the never-filed, never-threatened declaratory judgment lawsuit. At least from the State's perspective, the substance of those transcribed conversations – as explicitly plead in the Indictment – cannot, and will never, change, and the State fails to proffer any reason why the Court cannot, and should not, determine now whether those transcribed conversations do, or do not, support the offenses charged as a matter of law. This Court can and should consider the adequacy or inadequacy of the Indictment's sparse allegations of "fact" against Mr. O'Donnell without having to delve into the voluminous grand jury transcripts, which span 22 days and well over 3,000 pages.

CONCLUSION

As Mr. O'Donnell's moving brief anticipated, the State's opposition to his SOL argument relies almost exclusively on the Indictment's allegations regarding the ministerial applications for, and awards of, tax credits after the SOL cutoff. But the State cannot, and does not, dispute that the Indictment explicitly concedes that uncharged entities – not the defendants – sought and

received those tax credits; that the applications themselves – all of which the State vetted and approved, and thereafter annually audited and certified – did not involve any improper conduct by, or any concerted activity among, those uncharged entities, let alone the defendants; and that those entities will remain eligible to seek and receive additional such credits through 2030 – six years from now and 14 years after the lone sub-conspiracy charged against Mr. O'Donnell concluded with Dranoff's sale of the Triad1828 and 11 Cooper parcels – such that, under the State's absurd SOL theory, it could have deferred filing this Indictment until 2035, almost two decades after that sale. Longstanding U.S. Supreme Court precedent, as uniformly construed by the U.S. Courts of Appeals, flatly prohibits the State from using such legal, unilateral, and prolonged credits to extend a long-concluded conspiracy. Nothing in the State's brief warrants, or even permits, the Court to defer recognizing those facial defects in the Indictment and dismissing its facially time-barred charges against Mr. O'Donnell.

For the foregoing reasons, as well as those established in Mr. O'Donnell's moving brief and in the defendants' joint moving and reply briefs, Mr. O'Donnell respectfully submits that all charges against him are facially defective as a matter of law and should be dismissed.

Respectfully submitted,

KROVATIN NAU LLC

By: /s/ Gerald Krovatin

JACOBS & BARBONE, PA

By: /s/ Edwin J. Jacobs, Jr.

ARSENEAULT & FASSETT, LLC

By: /s/ David W. Fassett

Attorneys for Defendant John J. O'Donnell

Dated: December 19, 2024