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

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

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INTRODUCTION

The State's 111-page Indictment reads less like a legal document and more like a screenplay for a putative summer blockbuster. Except the script is missing some critical plot lines. This is supposedly a story of *extortion*—but there's no violence or unlawful threats; only ordinary economic bargaining among sophisticated businessmen. It is pitched as a tale of *official misconduct*—but there are no bribes, kickbacks, or even conflicts of interest; only routine politics. We are promised *racketeering*—but no organized criminal elements ever appear; only respected, proven civic leaders and lawyers trying to revive a long-suffering city. Plus, the storyline is stale, with nothing of consequence happening in almost a decade. No wonder other studios—including U.S. Attorney's Offices in New Jersey and Philadelphia—chose to pass on this story years ago, even when it was fresher. Simply put, this is a crime thriller with no crime.

Whatever its merit for the silver screen, this Indictment has no business in a court of law. It is both too trite and too generous to call it an indictment in search of a crime. This Indictment gives up before starting the hunt. It spends over 200 paragraphs telling a tendentious story, but then uses only conclusory boilerplate language to describe the 13 alleged crimes, never even attempting to identify how their elements match up to the (lengthy) narrative that precedes them. That is not an accident. Any effort to charge the elements with specificity would only have exposed their absence and revealed the Indictment as fatally flawed. Although the Indictment exceeds 100 pages and asserts over a dozen counts, it still fails to properly allege a single crime.

Turning to specifics, all 13 counts rest on two types of supposed wrongs: criminal threats, and official misconduct. But the only "threats" alleged are everyday economic ones—*e.g.*, to cease doing business, or to breach a contract—that are not prohibited. If it's a crime to warn of "consequences" if a deal is not reached, or to use expletives in doing so, New Jersey needs to build more prisons. As for "official misconduct," it is impossible to tell where the State thinks Camden's former mayor went off-track. All the Indictment alleges is that she solicited stakeholders' views, supported efforts to revitalize the city, and declined to meet an out-of-town developer who was standing in the way. All of that is normal conduct well within the discretion of an elected official. The Indictment seems offended that some private citizens have close connections with public officials, but that is a feature of democratic self-government—not a bug. And certainly not a crime.

The Indictment's two pillars, threats and official misconduct, thus disintegrate under legal scrutiny. The other charged offenses are all derivative and therefore collapse with them. They charge the possession of proceeds from those non-existent crimes; use of a corporation to commit them; conspiracy to commit them; and a pattern of doing so. The absence of any underlying crime brings down all of these counts too.

As if all that were not enough, the Indictment is plainly time-barred, with much of the conduct stretching back a decade. The State tries to evade the limitations periods by alleging that some Defendants received tax credits more recently. But the State approved the credits, and there is no claim of fraud. Investments were made; buildings built and occupied. The State paid the credits as the economic incentive the Legislature intended. A stream of legitimate income does not give rise to a never-ending conspiracy.

There is much more that could be said about the Indictment's headline-grabbing but patently deficient allegations. If there were a trial, Defendants would prove that they did not cross a single legal or ethical line as they worked to facilitate Camden's budding renaissance. But none of that is necessary, because the Indictment itself makes clear as a matter of law that Defendants did not commit any crime. Whatever may have inspired the embattled Office of Public Integrity and Accountability to bring this Indictment, it is well wide of the mark. This Indictment must be dismissed.

FACTUAL BACKGROUND

This case arises out of an effort by a set of civic and business leaders to revitalize Camden—once the poorest, most dangerous city in America—including its Waterfront, a previously "abandoned" part of the city. Indict. ¶ 22. The Indictment's theory is that Defendants, dubbed members of the "Norcross Enterprise," agreed to "extort and coerce" others to facilitate a series of real-estate transactions. *Id.* ¶ 2. It never alleges that any Defendant threatened anyone with violence or blackmail; nor does it allege any corruption of public officials. Rather, the Indictment rests on the notion that Defendants exerted economic pressure and political influence. The summary below is drawn entirely from the Indictment itself (without conceding its veracity).

The "Norcross Enterprise" and Camden Waterfront

George Norcross is a successful businessman and longtime chairman of Cooper Health. *Id.* ¶ 9. He is also a noted political force in New Jersey. *Id.* The other members of the ostensible enterprise include his brother Philip Norcross, CEO of a law firm; his long-time personal attorney William Tambussi, who is counsel to a number of groups in

Camden and the City itself; and John O'Donnell and Sidney Brown, CEOs respectively of a residential development company (TMO) and a trucking and logistics company (NFI). *Id.* ¶¶ 10, 11, 13, 14. George Norcross, O'Donnell, and Brown are among a group of investors that owns multiple properties in the area. *See id.* ¶¶ 9, 13, 14. The final Defendant, Dana Redd, served as Camden's mayor from 2010 to 2018. *Id.* ¶ 12.

According to the Indictment, George Norcross and others began to reimagine the Camden Waterfront in late 2013. *Id.* ¶ 93. Once a vibrant part of the city, the Waterfront had become a shell of its former self as a result of decades of "economic decline" and the departure of its "industrial and manufacturing" businesses. *Id.* ¶ 20. The basic "plan"—for George Norcross and others committed to the future of Camden—was to invest large sums of money in the Waterfront to revitalize that part of the city. *Id.* ¶ 100.

This plan required skill, coordination, and large sums of money: The Waterfront had been plagued for decades by a persistent blight that was not going to be cured with piecemeal renovations and development. Instead, "local leaders" had to "commit[]" to a total overhaul; one that involved adding "office space, a hotel, retail, and a residential component." *Id.* ¶¶ 106, 22. George Norcross led this effort. While he did not have a stake in each of the individual redevelopment projects, he and some other Defendants contemplated moving the national headquarters of their businesses into the City as part of the revitalization plan, and invested substantial personal and business assets to use or acquire some Waterfront properties for that purpose. *Id.* ¶¶ 106-07. This case concerns those transactions. And despite the Indictment's length, it really reduces to a few discrete allegations involving a few specific properties.

The Triad 1828 Centre and 11 Cooper

A major focus of the Indictment concerns George Norcross's interactions with Dranoff Properties Incorporated and its principal, Developer-1 (Dranoff), who recently filed parallel civil claims against George and Philip Norcross. As part of their initiative to revitalize Camden, Norcross and others sought to construct an office tower (the Triad1828 Centre) and a residential building (11 Cooper). *Id.* ¶ 94. As a result of his role in a development years earlier, though, Dranoff held certain rights that obstructed those projects: a view easement that would have limited the height or location of new buildings until 2022, and redevelopment options (including a right of first refusal). *Id.*

From September 2015 to October 2016, Dranoff negotiated with Liberty Property Trust (LPT)—the prominent, publicly traded entity designated as the "master developer" for the Waterfront—over releasing these rights. *Id.* ¶ 111. LPT worked closely with the Camden Partners Tower Group (Camden Partners)—which included George Norcross, Brown, and O'Donnell, and was represented by Philip Norcross—on Triad1828 and 11 Cooper. *Id.* ¶ 107. Camden Partners and Philip Norcross directly participated in LPT's well-lawyered negotiations with Dranoff. *Id.* ¶¶ 110, 116.

The Indictment alleges that, as Dranoff dragged his feet—and the fate of the Camden renaissance hung in the balance—George Norcross ratcheted up the rhetoric. In the summer of 2016, he allegedly told Dranoff, in substance: "if you f**k this up, I'll f**k you up like you've never been f**ked up before. I'll make sure you never do business in this town again." *Id.* ¶ 117. As George Norcross later explained to his business partners, he was "irritated" that Dranoff, who had originally promised that releasing his rights

would be "no problem," had later balked and kept moving the goalposts. *Id.* ¶ 121. By that point, those tactics were jeopardizing the entire project because Camden Partners would be forced to "walk away" if LPT could not buy out Dranoff's easement. *Id.* That implosion would undeniably be a "bad thing for the city." *Id.*

Dranoff, himself a sophisticated real-estate developer, did not wilt as soon as George Norcross dropped a few "f-bombs." Instead, he stuck to his hardball tactics. That fall, as Norcross later told his colleagues, Dranoff had it out with him for "an hour and a half" on the phone, during which Dranoff tried to "shake us down." *Id.* ¶ 137. To this, George Norcross pledged "there would be consequences" if Dranoff kept it up. *Id.* ¶ 136.

In parallel, the Indictment alleges that George Norcross and others discussed how to gain economic leverage over Dranoff. Camden Partners' lawyer, Philip Norcross, advised Mayor Redd to stop returning his calls. *Id.* ¶¶ 123-25. The group also talked about whether Camden could use eminent domain to condemn Dranoff's easement (*i.e.*, seize it and pay Dranoff its objective fair value). *Id.* ¶¶ 128-30. The thinking was that Dranoff would hold out "until you got a bat over his head," figuratively speaking; the prospect of having the City condemn his easement (likely at a lower value than he was being offered) was legal leverage that might finally lead to a compromise. *Id.* ¶¶ 142-46.

No condemnation action ever happened (the City never did it); nor is there any allegation that such a suit was ever used as a threat to press Dranoff to cave. Instead, LPT agreed to sweeten the deal, and Dranoff accepted almost $2 million to "resolve the matter." *Id.* ¶¶ 151, 154. Triad1828 and 11 Cooper were built, leading to tax credits for businesses that invested and moved into those spaces. *Id.* ¶¶ 166-72.

The Radio Lofts

The Indictment also alleges that, years later, Philip Norcross petitioned the City to terminate another never-used redevelopment option held by Dranoff, this time for the nearby "Radio Lofts" building. *Id.* ¶ 181. Here too, the Indictment does not allege that anyone in the Enterprise threatened Dranoff (or anyone else) in any way. Rather, it alleges that private citizens asked city officials to "slow[] down" approvals for one of Dranoff's pending deals, as part of an effort to "take away" the redevelopment option for Radio Lofts. *Id.* ¶¶ 147, 181-86. In April 2018, the City sent a letter to Dranoff purporting to terminate the redevelopment option; soon after, Dranoff sued. *Id.* ¶¶ 191-92. The suit settled in 2023, with *Dranoff* surrendering his option and other assets and paying the *City* $3.3 million, allegedly because he feared judicial bias. *Id.* ¶ 195-96. There is no allegation that any member of the Enterprise acquired Dranoff's Radio Lofts rights.

The L3 Complex

The final allegations center around Cooper's Ferry Partnership (CFP, now Camden Community Partnership), a redevelopment nonprofit funded by local business including Cooper Health. Around 2013, CFP began looking into acquiring the L3 Complex, a pair of buildings on a large lot near the Waterfront. *Id.* ¶ 47. In approximately the summer of 2013, Mayor Redd's chief of staff allegedly advised CFP's CEO that he should start meeting regularly with Philip Norcross, who represented one of the nonprofit's major backers, in order to make sure that CFP developed and maintained the approval of the relevant stakeholders for CFP's various projects. *Id.* ¶ 49.

CFP's would-be acquisition of L3 concerned George Norcross. He worried CFP "would fail," because they "did not know what they were doing." *Id.* ¶ 58. And George did not want the L3 redevelopment to fail, including because of its potential as a future relocation site for Cooper Health offices. *See id.* ¶ 68.

Concerns spiked after CFP announced it was going to partner with a non-local firm (KPG/MC) to handle this project. *Id.* ¶¶ 59-60, 67. Philip Norcross pressed CFP to abandon that partner and enter a venture with Investor-1 instead. *Id.* ¶ 59. CFP did not want to, because KPG/MC allegedly offered better terms. *Id.* ¶ 72. But eventually, CFP relented, after Philip Norcross squarely told the CEO of CFP that they were "not allowed" to use KPG/MC, and "should only use Investor-1." *Id.* ¶ 70. The CEO allegedly "understood" this instruction to be an implicit "threat"—based not on what was said but on who said it: As the CEO allegedly saw it, the Norcrosses were powerful in New Jersey, and were not known as happily spurned men. *Id.* ¶¶ 71, 53-54.

The result was that CFP scrapped plans to partner with KPG/MC; eventually, an investor group acquired L3. *Id.* ¶ 80. Cooper Health later moved hundreds of personnel into the building, and then received incentive tax credits from New Jersey. *Id.* ¶ 88.

The Charges

The Indictment alleges that the Norcross Enterprise agreed to use threats to obtain a collection of property interests along the Camden Waterfront. *See id.* ¶¶ 198-211. Its basic assertion is that these alleged "threats" amounted to extortion and coercion. All of the charges are built atop that edifice.

Count 1 charges a racketeering conspiracy with extortion and derivative offenses as its predicates. Counts 2 through 4 charge individual conspiracies, embracing extortion, coercion, and related offenses, with respect to each transaction flagged above (Triad1828 Centre and 11 Cooper; Radio Lofts; and the L3 Complex). Counts 5 through 10 charge "financial facilitation of criminal activity," based on the possession and sale of tax credits relating to those properties. Counts 11 and 12 charge "misconduct by a corporate official," claiming that Defendants used their businesses as vehicles for the other supposed crimes. Finally, Count 13 charges "official misconduct," premised on Mayor Redd's largely unspecified and amorphous role in this conduct. *See id.* ¶¶ 212-40.

LEGAL STANDARD

"A trial court deciding a motion to dismiss an indictment determines whether, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, a grand jury could reasonably believe that a crime occurred and that the defendant committed it." *State v. Saavedra*, 222 N.J. 39, 56-57 (2015); *accord State v. Tucker*, 473 N.J. Super. 329, 344 (App. Div. 2022). It is not enough for the State to simply recite the elements of each alleged offense; it must provide at least "some evidence establishing each element of the crime to make out a prima facie case." *State v. Brady*, 452 N.J. Super. 143, 158 (App. Div. 2017); *accord Tucker*, 473 N.J. Super. at 344.

When the allegations do not "support the charges," that "render[s] the indictment palpably defective and subject to dismissal." *Brady*, 452 N.J. Super. at 158. And New Jersey courts have not hesitated to dismiss indictments that suffer from this defect. *E.g.*, *State v. Thompson*, 402 N.J. Super. 177 (App. Div. 2008) (affirming dismissal of official

misconduct charge); *State v. L.D.*, 444 N.J. Super. 45, 61 (App. Div. 2016) (affirming dismissal of "palpably defective" indictment "clearly lacking" in facts); *State v. Perry*, 439 N.J. Super. 514, 532 (App. Div. 2015) (holding that indictments should have been dismissed where allegations failed to satisfy element of crime); *State v. Talafous*, A-1838-16T1, 2017 WL 2544790, at *4 (N.J. App. Div. June 13, 2017) (affirming dismissal of money laundering charge where State failed to present evidence of each element); *State v. Meier*, No. A-1846-13T3, 2014 WL 1515884, at *4 (N.J. App. Div. Apr. 21, 2014) (affirming dismissal of indictment where "there was no evidence of an essential element").

ARGUMENT

Although the lengthy Indictment includes over a dozen counts, it asserts only two independent wrongs—threats, and official misconduct. Part I explains why the alleged threats are not criminal under the extortion or coercion statutes. Part II sets forth why the allegations about Mayor Redd do not amount to official misconduct. Part III walks, step by step, through why those two points together doom the entire Indictment. Part IV provides an independent ground for dismissal, namely the statute of limitations.

I. THE INDICTMENT DOES NOT ALLEGE CRIMINAL EXTORTION OR COERCION, ONLY ORDINARY COMMERCIAL BARGAINING AND POSTURING.

The Indictment invokes three criminal statutes that prohibit certain "threats." Under New Jersey law, theft by extortion means "purposely and unlawfully obtain[ing] property of another" by "purposely threaten[ing]" to inflict certain enumerated harms. N.J.S.A. 2C:20-5. "Criminal coercion" means threatening certain harms "with purpose unlawfully to restrict another's freedom of action." N.J.S.A. 2C:13-5. And the one federal

statute at issue, the Hobbs Act, forbids taking property "by wrongful use of actual or threatened force, violence, or fear." 18 U.S.C. § 1951(b)(2). These three statutes form the backbone of the charges in this case. *See* Indict. ¶ 1; Part III, *infra.* But the Indictment's banal allegations do not run afoul of any of them, or even come close.

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

Most extortion cases involve threats to do something *unlawful*. For example, it is unlawful to attack a person, so it is also unlawful to threaten to attack him as a way to obtain his property with his "consent." *See, e.g.*, N.J.S.A. 2C:20-5(a) (covering threats to "[i]nflict bodily injury … or commit any other criminal offense").

Extortion statutes also prohibit certain other threats, even though the threatened actions are not independently criminal. For example, they proscribe blackmail—a threat to expose an embarrassing fact about someone in exchange for a payoff. N.J.S.A. 2C:20-5(c); N.J.S.A. 2C:13-5(a)(3). That prohibition follows a long common-law tradition. *See United States v. Nardello*, 393 U.S. 286, 293-96 (1969) (discussing historical relationship between extortion and blackmail). As another example, it is unlawful for a public official to abuse power by threatening to "[t]ake or withhold action" in exchange for property. N.J.S.A. 2C:20-5(d); N.J.S.A 2C:13-5(a)(4). That type of extortion is akin to bribery. *Evans v. United States*, 504 U.S. 255, 263-66 (1992). A third example: threats to testify or withhold testimony in court are also prohibited. N.J.S.A. 2C:20-5(f); N.J.S.A. 2C:13-5(a)(6). The law presumably targets that sort of threat because treating sworn testimony so transactionally reflects "an affront to the dignity of the court and to the integrity of the judicial process." *Shammas v. Shammas*, 9 N.J. 321, 330 (1952).

At the same time, it is obvious that "not every threat . . . is criminal or even wrong." *State v. Monti*, 260 N.J. Super. 179, 185 (App. Div. 1992). Many "benign threats" are facts of life. *Id*. Imagine a guest bitten by bed bugs who warns a hotel manager he will post a bad review if his room charge is not refunded. Or an activist investor who demands a seat on the board or else he will initiate a hostile takeover. Or a customer who threatens to walk away from a purchase. The Legislature specifically added the word "unlawfully" to N.J.S.A. 2C:20-5 to caution that the statute should not be construed "to cover situations," like these, "in which people are acting in ways tolerated in commercial and personal life." *State v. Roth*, 289 N.J. Super. 152, 158 n.4, 160, 162-63 (App. Div. 1996) (agreeing that extortion statute cannot cover "every threat made for the purpose of obtaining property"). Nor are such threats "wrongful" under the Hobbs Act. *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 522 (3d Cir. 1998) (agreeing that not all threats of harm are "wrongful"); *United States v. Jackson*, 180 F.3d 55, 70-71 (2d Cir. 1999) (same).

As particularly relevant here, threats in the commercial sphere—meaning those among private parties negotiating economic deals in a free-market system—generally are neither "wrongful" nor "unlawful." That is because "there is nothing inherently wrongful about the use of economic fear to obtain property." *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989). Indeed, "fear of economic loss is a driving force of our economy that plays an important role in many legitimate business transactions." *Brokerage Concepts*, 140 F.3d at 523. *Cf. Continental Bank of Pa. v. Barclay Riding Acad., Inc.*, 93 N.J. 153, 177 (1983) (distinguishing "driving a hard bargain" from duress). "This economic reality" has led courts to appreciate "that the reach of the Hobbs Act is limited

in cases … which involve the use of economic fear in a transaction between two private parties." *Brokerage Concepts*, 140 F.3d at 523. As one federal court summarized, using "fear of economic loss … as leverage in bargaining, in which each side offers the other property, services, or rights it legitimately owns or controls, is not made unlawful by the Hobbs Act." *United States v. Capo*, 791 F.2d 1054, 1062 (2d Cir. 1986).

Courts therefore uniformly hold that, in a transactional setting, "exploitation of an alleged victim's fear is 'hard-bargaining' rather than extortion." *Viacom Int'l Inc. v. Icahn*, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), *aff'd*, 946 F.2d 998 (2d Cir. 1991); *see also Brokerage Concepts*, 140 F.3d at 526 ("this case provides an example of hard bargaining rather than extortion"); *George Lussier Enters., Inc. v. Subaru of New Eng.*, 393 F.3d 36, 51 (1st Cir. 2004) (rejecting civil RICO claim because conduct was "lawful hard-bargaining, not unlawful extortion"); *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't, AFL-CIO*, 770 F.3d 834, 838-39 (9th Cir. 2014) (same). Threats in this arena only cross the line if the victim held a "preexisting right to be free of the economic fear that the defendant utilized." *United States v. Tobin*, 155 F.3d 636, 640 (3d Cir. 1998) (Alito, J.).

That is a high bar, one that can be hurdled only when another source of law takes a bargaining chip off the table. *See Brokerage Concepts*, 140 F.3d at 526 (finding dispositive that Pennsylvania had not made it unlawful for insurer to exclude provider from network unless it accepted certain terms). Indeed, "[a]ny less stringent standard would transform a wide variety of legally acceptable business dealings into extortion." *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1133 (9th Cir. 2014). That is why there are no successful criminal extortion prosecutions premised on inducing economic fear in a transactional setting.

Although the body of federal law is more developed, New Jersey law is in accord. When it drafted the Penal Code, the Criminal Law Revision Committee acknowledged, in a passage of special note here, that prohibiting "*all* threats made for the purpose of obtaining property would embrace a large portion of accepted economic bargaining." II *Final Report of the New Jersey Criminal Law Revision Comm'n, Commentary* 227 (1971) ("1971 Commentary"). Yet that would be untenable: "a private property economy must tolerate considerable 'economic coercion' as an incident to free bargaining," and "theft penalties would be quite inappropriate" for "coercive economic bargaining." *Id.* at 227-28. Indeed, the 1971 Commentary specifically flagged threats "to refuse to do business or to cease doing business," "to breach a contract," and "to sue" as among those "which ought not to be included" in the statute's reach. *Id.* at 227. The Appellate Division has treated that guidance as authoritative. *See Roth*, 289 N.J. Super. at 161 (citing 1971 Commentary and recognizing that these "commercial or economic menaces have been excluded from the purview of the statute"). So long as there is some "natural economic or commercial nexus" between the threats and the subject of the negotiations, *Roth* explained, using "hardball" tactics is "accepted economic bargaining," and thus "carve[d] out." *Id.* at 162.

While the outer bounds of criminal threats may be difficult to pin down, *see generally* Duncan Weinstein, *The Limits of Wrongfulness: What Exactly Is Prohibited by Hobbs Act Extortion?*, 18 Nw. J. L. & Soc. Pol'y 147 (2023), one proposition is clear: When private parties are negotiating an exchange of property, it is perfectly appropriate—and neither "wrongful" nor "unlawful"—to leverage fear of related economic loss as a way to get a deal done. That is hard bargaining, not criminal extortion or coercion.

B. The Indictment Fails To Allege Any Unlawful Threats.

Applying these established principles here shows that this Indictment, shorn of its labels and sweeping conclusions, involves no criminal threats at all.

1. ***Threats to Dranoff.*** The only express "threats" by any Defendant alleged in the Indictment were those made by George Norcross to Dranoff. *See* Indict. ¶¶ 117, 137. But context is important. As the Indictment itself details, all of Norcross's alleged "threats" were made in response to Dranoff using hardball tactics of his own in a commercial negotiation. In particular, Dranoff was leveraging his view easement to block much of the planned (and highly beneficial) redevelopment until he obtained a payout. *See id.* ¶¶ 106, 116-17. As George Norcross told others at the time, it would be a "bad thing for the city" if the redevelopment plan fell apart, and he was "irritated" that Dranoff was standing in the way, after pledging "all along" there would be "no problem." *Id.* ¶ 121. Dranoff was trying to "shake us down," George Norcross told his business partners. *Id.* ¶ 137. This followed an "hour and a half"-long phone call between him and Dranoff, as the two continued to try to reach an accord. *Id.*

In that context, after months of negotiations, George Norcross allegedly lost his patience and told Dranoff in the summer of 2016: "if you f**ck this up, I'll f**ck you up like you've never been f**cked up before. I'll make sure you never do business in this town again." *Id.* ¶ 117. And in the fall, after months of further negotiations, he warned that holding up the project with ever-growing demands was "unacceptable" and would "have enormous consequences." *Id.* ¶ 137. According to the Indictment, Dranoff understood these to be threats to harm his "financial interests." *Id.* ¶ 118.

Those allegations do not amount to criminal extortion or coercion. They are classic hard bargaining. Norcross and Dranoff were sophisticated businessmen engaged in a commercial negotiation, with both trying to extract better terms. They spent, in one case, an hour and a half on the phone, which clearly bespeaks a genuine bargaining session between equals. And the contemplated exchange was to be mutually beneficial: Dranoff would terminate his easement, allowing redevelopment to proceed, and be paid a large sum in consideration. Indeed, Dranoff ultimately reaped nearly $2 million to extinguish his rights. *Id.* ¶ 151. Importantly, the Indictment admits that only fear of *economic* loss was at play, with Dranoff allegedly concerned about his "ability to conduct business in Camden" if he tanked the plan and alienated Norcross. *Id.* ¶ 118. But using "fear of economic loss" as "leverage" in bargaining, where "each side offers the other property, services, or rights it legitimately owns," is "not … unlawful." *Capo*, 791 F.2d at 1062.

Indeed, the only specific threat—to stop Dranoff from "do[ing] business in this town" (Indict. ¶ 117)—is one that is specifically "carve[d] out" from the statutes. *Roth*, 289 N.J. Super. at 161. This was a threat "to cease doing business"—the sort of "coercive economic bargaining" that is unavoidable in a free-market economy and for which "theft penalties would be quite inappropriate." 1971 Commentary, at 227-28. That threat was not unrelated to the matters being negotiated, either (like, hypothetically, a threat to get Dranoff's child expelled from college). Rather, it had a clear "nexus" to the subject at hand, *Roth*, 289 N.J. Super. at 162: If Dranoff single-handedly torpedoed the project heralding Camden's rebirth, of course he would become toxic "in th[at] town." And he certainly had no "preexisting right to be free of the fear" that Camden leaders would shun

him if he upended the plan. *Brokerage Concepts*, 140 F.3d at 525. Sure, Norcross's language may have gotten heated, but using expletives in business negotiations is not a crime either. *Cf. Cohen v. California*, 403 U.S. 15, 26 (1971) (noting that words, such as the f-word, are "often chosen as much for their emotive as their cognitive force").

Norcross's only other alleged threat—the pledge that unspecified "consequences" would follow Dranoff blowing up the deal—is even more obviously insufficient. The Indictment's only allegation about how that threat was objectively understood is that Dranoff took it as going to his "ability to conduct business in Camden." Indict. ¶ 118. Even if Dranoff's understanding is what matters, that renders it indistinguishable from the (lawful) economic "threat" just discussed. If anything, its vagueness makes it even harder (if not impossible) to squeeze into the statute. The criminal statutes forbid only certain types of threats. *See* N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5. Warning of "consequences," without more, is too generalized to allow a fair inference that the threat is forbidden, as opposed to lawful (or mere bluster). After all, *every* action has some consequences.

At bottom, "threats" about the *business* consequences of refusing to reach *business* deals in *business* contexts are ubiquitous—and there is no precedent for criminalizing them. For good reason. Such tactics are not a "wrongful" or "unlawful" use of economic fear; they come with the territory. Dranoff's recent civil suit against George and Philip Norcross, frivolous as it may be, further underscores that this is a private business dispute at most. And if New Jersey wished to criminalize such ubiquitous business behavior, it would need to do so more clearly. *Cf. Perry*, 439 N.J. Super. at 527 (rule of lenity). This segment of the Indictment therefore fails to allege a crime.

2. ***Perceived Threat to CFP.*** Although the above covers the waterfront of *actual* threats allegedly made by any Defendant, the Indictment says that Philip Norcross made a remark in 2014 that someone "*took* as a threat." Indict. ¶ 70 (emphasis added). Not surprisingly, this fares no better as a source of criminal liability.

Here, the context was the effort by CFP (the private nonprofit) to redevelop the L3 building. According to the Indictment, CFP originally intended to partner with KPG/MC, but faced pushback because KPG/MC was "not a 'local firm.'" *Id.* ¶¶ 57, 67. Philip Norcross allegedly told CFP's CEO that CFP should not work with KPG/MC, but instead "should only use Investor-1" as a partner. *Id.* ¶ 70. The CEO allegedly "took" that direction "as a threat" of some sort; to avoid conflict, he "agreed to partner with Investor-1 and another real estate investor," even though the terms were supposedly less favorable. *Id.* ¶ 71.

The first obvious problem is that this was *not*, in fact, a "threat," however it may have been perceived. The Indictment says only that Philip Norcross "told" CFP what to do. But bossing someone around is not extortion. At minimum, there must be allegations that the speaker had a "subjective understanding of the threatening nature of his statements." *Counterman v. Colorado*, 600 U.S. 66, 69 (2023). Indeed, without a culpable mental state, prosecuting threats would create an unconstitutional "chilling effect"; a speaker's "fear of mistaking whether a statement is a threat; his fear of the legal system getting that judgment wrong; his fear, in any event, of incurring legal costs—all those may lead him to swallow words that are in fact not true threats." *Id.* at 78; *see also State v. Fair*, 256 N.J. 213, 234 (2024) (explaining that a high *mens rea* standard for threat statute is

necessary to "avoid chilling protected speech"). To avoid that outcome, both the U.S. and New Jersey Constitutions require a culpable *mens rea* for threats. Yet the Indictment alleges *nothing* about what Philip Norcross knew, meant, or intended by his comments at this meeting.

The more fundamental problem is that even if Philip Norcross's statements were objectively threatening and subjectively intended as such, the question would be: threats of *what*? Again, "not every threat … is criminal or even wrong," *Monti*, 260 N.J. Super. at 185; most are not. Imagine that Philip Norcross did intend a threat: If CFP persists in partnering with an untrusted developer, the Cooper Foundation will cease funding CFP's endeavors. Or imagine that the intended threat was to object to CFP's Board of Directors about how the CEO was steering the nonprofit. Philip Norcross would have every right to make those threats. After all, as the Indictment alleges, CFP is a private organization supported financially by the Cooper Foundation (the charitable arm of Cooper Health) in exchange for a seat on the Board of Directors and a voice in the management of its affairs. Indict. ¶¶ 16, 31, 90. As such, the little the Indictment does allege about this "perceived" economic threat simply cannot amount to criminal conduct.

3. ***Threat To Terminate CFP's CEO.*** The Indictment mentions one last threat, but it was not made by any Defendant, and it is not clear whether it forms part of any of the charged counts. Regardless, it does not constitute criminal activity either.

In late 2017, CC-1 allegedly told the then-CEO of CFP that if he did not resign as part of a reshuffling of roles in the Camden nonprofit world, then he would be terminated for cause on pretextual grounds: "if he did not resign, 'they' would just make something

up about him, which would lead to him being terminated for cause." Indict. ¶ 177. The Indictment does not include any allegations even suggesting that any Defendant agreed to that threat, or that it foreseeably advanced the goals of any unlawful conspiracy. Nor does this vignette appear in (or relate to) any of the conspiracy counts (Counts 2, 3, and 4); each of those is centered around a particular property development, and terminating the CEO happened later and had nothing to do with any of those three projects.

In all events, this alleged threat was not a crime. At the outset, the extortion laws prohibit threats to "obtain[] property." N.J.S.A. 2C:20-5; *see also* 18 U.S.C. § 1951(b)(2) (extortion is "the obtaining of property from another"). To be obtainable property under these laws, something must be "capable of passing from one person to another." *Sekhar v. United States*, 570 U.S. 729, 734 (2013). A resignation does not fit that description. *Young v. Schultz*, No. 22-cv-05203, 2023 U.S. Dist. LEXIS 80249, at *22 (N.D. Cal. May 8, 2023) (holding that plaintiff failed to plead Hobbs Act violation where his "property interest in the Board of Directors position would not be transferrable to [defendant]," as he "could only resign" rather than transfer position). In fact, the consequence of the resignation here was that the CEO *kept* his severance pay and bonus. *See* Indict. ¶¶ 176, 177, 180. So the threat was actually the opposite of extortion—it was designed to induce the CEO to resign voluntarily even though that would cost CFP *more* money.[1]

[1] This may be why Count 1—the all-encompassing racketeering conspiracy—does not mention this episode either. New Jersey's racketeering statute includes theft by extortion as a predicate act, but it does not include criminal coercion. *See* N.J.S.A. 2C:41-1(a); Indict. ¶ 216. Because inducing the CEO to resign did not cause Defendants, or the "Enterprise," or anyone else to obtain property, this threat cannot be squeezed into the extortion statutes. The Indictment appears to acknowledge as much.

The coercion statute forbids certain threats made to "restrict another's freedom of action" more generally, but this alleged threat is not among them. N.J.S.A. 2C:13-5(a). The Indictment asserts that CC-1 threatened to harm the CEO's "reputation." Indict. ¶ 8. That characterization, however, is not supported by the factual allegations. According to the Indictment, CC-1 threatened that, if the CEO did not resign, he would be "terminated for cause." Indict. ¶ 177. To justify that, there might be a need to "make something up about him." *Id.* But, on the Indictment's own telling, the threat was just to invoke that contractual right to terminate the CEO (in bad faith, using a pretext)—but not to spread rumors about him. So at most, this was a threat "to breach a contract," which is *carved out* from the universe of criminal threats. *See* 1971 Commentary, at 227. For good reason: It is routine to tell an executive to "resign or be fired." That may be grounds for a civil constructive termination or breach of contract suit, but it is certainly not a crime.

It does not matter that being fired would "also harm [the CEO] reputationally." Indict. ¶ 177. Termination always has downstream reputational effects, but that does not transform threatening to fire someone into blackmail. The statute proscribes threats to "[e]xpose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute." N.J.S.A. 2C:13-5(a). Firing someone may well impair his "business repute"—as would many things in the business world—but it is not the same thing as "exposing" a "secret" about the person. A contrary rule would prove far too much, criminalizing "a wide variety of legally acceptable business dealings." *Levitt*, 765 F.3d at 1133. That is why, here too, no caselaw or other legal authority supports the Indictment's unprecedented theory.

4. ***Non-Threat Efforts To Gain Leverage Through Petitioning Activity.*** The above exhausts the Indictment's threats, actual and perceived. In various spots, however, it seems to contemplate that efforts by Defendants to gain leverage vis-à-vis negotiating partners could constitute extortion or coercion, even though they did not take the form of threats. That is groundless. The statutes prohibit *making threats*—not *taking actions* to improve one's negotiating posture. Plus, these actions were constitutionally protected.

The most apparent example of this theory relates to Defendants' discussions about the possibility of the Camden Redevelopment Agency (CRA) suing to condemn Dranoff's view easement before its 2022 expiration. Indict. ¶¶ 126-51. Again, Dranoff was wielding this right to extract a payoff from those seeking to revive the Waterfront. The parties spent over a year negotiating without success; George Norcross believed Dranoff was trying to "shake us down." *Id.* ¶ 137. At that point, some Defendants allegedly discussed an alternative path—pushing the CRA to explore its rights to use eminent domain to condemn the easement and pay Dranoff its appraised value. *Id.* ¶¶ 128-30. Eminent domain made good sense, to stop a holdout from blocking a redevelopment beneficial to the public. Defendants also allegedly believed that an action by the CRA would give them "leverage," because an objective appraisal would likely assess the easement's value at "virtually nothing," which could lead Dranoff to agree to the (better) terms that he had already been offered. *Id.* ¶¶ 144-46. Moreover, the City's putative suit would expose Dranoff as "not a reputable person" who was "try[ing] to impede the progress of the city" for his own personal gain. *Id.* ¶ 142. Nonetheless, in the end, no court action occurred; Dranoff instead agreed on his own to a (sweetened) deal. *Id.* ¶ 151.

This entire story goes nowhere, since it did not involve any *threats*. Had the plan been to threaten Dranoff to agree to the offered terms, *or else* Defendants would cause the CRA to initiate a condemnation action, then the State would at least be able to argue that the conspiracy contemplated "threaten[ing] to . . . cause an official to take . . . action." N.J.S.A. 2C:20-5(d); N.J.S.A. 2C:13-5(a)(4).[2] But the Indictment does not allege that (nor could it). The alleged scheme was never to use a condemnation action as a threat; rather, Defendants allegedly discussed persuading the CRA to actually file a legitimate action. To repeat, there is no allegation that any plan to bring a judicial action was conveyed to Dranoff during discussions. With no threat (either actual or even contemplated), there can be no extortion or coercion under the plain text of the New Jersey statutes.

Nor could filing a condemnation action qualify as "wrongful" use of "fear" under the Hobbs Act. Courts have uniformly recognized "that the adjective 'wrongful' in the extortion statute was not intended to apply to litigation." *Deck v. Engineered Laminates*, 349 F.3d 1253, 1258 (10th Cir. 2003); *see also* 1971 Commentary, at 227 (including "to sue" in list of "[e]xamples of menaces which ought not to be included" in extortion statute). The law *wants* parties to resolve disputes in court; doing so is therefore not "wrongful," much less criminal. *See id.* Put another way, using legal tools does not *violate* the law; it *invokes* the law. *Accord FindTheBest.com, Inc. v. Lumen View Tech. LLC*, 20 F. Supp. 3d 451,

[2] That still would not be a crime: It is an affirmative defense if the defendant "believed . . . the proposed official action justified" and intended only to "compel[] the other to behave in a way reasonably related to the circumstances which were the subject . . . of the proposed official action." N.J.S.A. 2C:13-5(a). Even the Indictment's own allegations make clear that is true here: Defendants believed Dranoff was engaged in an unreasonable holdup, and that they had "a very strong argument" that the CRA could exercise eminent domain powers. Indict. ¶ 145.

457 (S.D.N.Y. 2014) (citing cases for proposition that "the instigation of meritless litigation cannot constitute extortion under the Hobbs Act"). As one court exclaimed, it would be "absurd to think that Congress intended for courts to count filing lawsuits or sending demand letters as wrongful acts within the meaning of the Hobbs Act." *Neal v. Second Sole of Youngstown, Inc.*, No. 17-cv-1625, 2018 U.S. Dist. LEXIS 4031, at *6 (N.D. Ohio Jan. 9, 2018). And that is even more obviously true where the party believes the lawsuit has merit—which the Indictment acknowledges was the case here. *See* Indict. ¶ 145.

To be sure, the Indictment alleges that Defendants believed a suit by the CRA would "pressure" Dranoff to reach a deal over his view easement, to avoid the risk of a loss in court or related bad press. *E.g.*, *id.* ¶ 149. But actions to improve one's negotiating position, or put "pressure" on the other side, are not extortionate. That is how business works. It is how deals get done. And lawsuits are often filed to "pressure" an opponent; if they are frivolous, the recourse is a civil motion for sanctions, not criminal prosecution. Again, "a private property economy must tolerate considerable 'economic coercion' as an incident to free bargaining." 1971 Commentary, at 227-28. It is untenable to contend that taking lawful actions to "pressure" a counterparty is a crime in New Jersey.

It is especially untenable here, where the alleged source of pressure was an effort to persuade a *government entity* to file a *lawsuit* on the merits. *See* Indict. ¶ 139 (alleging that Defendants sought to "encourage" City to bring suit); *id.* ¶ 141 ("I would hope the City would protect their rights"). That is not only lawful, but protected as part of the constitutional right to petition for redress of grievances. *See* U.S. Const. amend. I; N.J. Const., art. I, § 18. Defendants were entitled to petition the CRA to exercise its eminent

domain powers. *See Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11 (1972) (holding that "right to petition" protects use of "state and federal agencies and courts to advocate … business and economic interests"); *see also, e.g.*, *Zemenco, Inc. v. Developers Diversified Realty Corp.*, No. 03-175, 2005 U.S. Dist. LEXIS 23011, at *31 (W.D. Pa. Oct. 7, 2005) ("efforts to induce or facilitate a municipal body's condemnation of property are protected by the *Noerr-Pennington* doctrine"). And it does not matter if their objective was to undercut Dranoff. As the Supreme Court explained: "The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so." *E. R.R. Conf. v. Noerr Motors*, 365 U.S. 127, 139 (1961). "It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors." *Id.*

Those principles gave rise to the so-called *Noerr-Pennington* doctrine, which "New Jersey recognizes" and which holds that "those who petition the government for redress are afforded immunity for their action." *Structure Bldg. Corp. v. Abella*, 377 N.J. Super. 467, 471 (App. Div. 2005); *accord Main Street at Woolwich, LLC v. Ammons Supermarket, Inc.*, 451 N.J. Super. 135, 144 (App. Div. 2017). In light of that immunity, the United States Supreme Court in *Noerr* itself refused to construe the antitrust laws to bar the "solicitation of governmental action," even if its "sole purpose" was "to destroy . . . competitors." 365 U.S. at 138. By the same token, construing the extortion laws to prohibit this conduct—pushing the CRA to file what Defendants believed to be a meritorious action—would violate the U.S. and New Jersey Constitutions. *See Sosa v. DirecTV, Inc.*, 437 F.3d 923, 939-

40 (9th Cir. 2006) (applying *Noerr-Pennington* to construe extortion laws as not "impos[ing] liability for threats of litigation," at least "where the asserted claims do not rise to the level of a sham"); *see also, e.g.*, *Borough of Englewood Cliffs v. Trautner*, 478 N.J. Super. 426, 446 n.11 (App. Div. 2024) (explaining that, under *Noerr-Pennington*, "those who engage in conduct aimed at influencing the government, including litigation, are shielded from retaliation provided their conduct is not a sham" (cleaned up)).

It does not matter that Camden's then-mayor is named as a Defendant (albeit one with no alleged involvement in the CRA condemnation discussions), or that Defendants allegedly exercised political influence over the City. The Supreme Court has held that *Noerr-Pennington* immunity admits of no "conspiracy exception" for cases where private citizens enter a "selfishly motivated agreement with public officials." *Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 383 (1991). Plus, for courts to attempt to distinguish legitimate political influence from "too much" would be both futile and dangerous. *See Percoco v. United States*, 598 U.S. 319, 330 (2023) (rejecting bribery theory that treated those who "dominated and controlled any governmental business" as public officials, since the line between that and "very strong influence over government decisions" was "too vague" to survive Due Process scrutiny); *Boone v. Redevelopment Agency of San Jose*, 841 F.2d 886, 894 (9th Cir. 1988) ("[C]ultivating close ties with government officials is the essence of lobbying" and "falls within the ambit of the *Noerr-Pennington* doctrine."). Accordingly, the extortion statutes cannot constitutionally be employed to punish petitioning the government—whether the defendants are ordinary private citizens or, as was allegedly the case here, "particularly well-connected" ones. *Percoco*, 598 U.S at 331.

For all the same reasons, the Indictment does not state an offense by alleging that Defendants discussed "having the CRA take away" Dranoff's Radio Lofts redevelopment option, or urged the city to "slow[] down" approval of a Dranoff agreement. Indict. ¶¶ 147, 181-86. There are no allegations that any of this was ever used, or intended to be used, as a *threat*—much less a threat to obtain property. Nor can the State argue that the *actions themselves* were criminal, as Defendants held a constitutional right to petition the City to do something about the blighted Radio Lofts site, for good reasons or bad ones.

* * *

Extortion is ostensibly the heart of this Indictment. But it fails to grasp the key distinction between unlawful threats and ordinary hard bargaining. The Indictment tells a story of Defendants hustling, cajoling, lobbying, and networking—all in an effort to push Camden's Waterfront redevelopment past those who would stymie it. But all of that arm-twisting and maneuvering is routine in both business and politics. Much of it is constitutionally protected. None of it is *remotely* criminal.

II. THE INDICTMENT DOES NOT ALLEGE OFFICIAL MISCONDUCT, ONLY ORDINARY POLITICAL INTERACTIONS WITH CONSTITUENTS AND STAKEHOLDERS.

The other type of wrong the Indictment purports to allege is official misconduct. But this theory fares no better. The only public official named in the Indictment is former Camden mayor Dana Redd, and it is hard to even glean what the Attorney General thinks she did wrong. The Indictment barely mentions her; where it does, it depicts garden-variety politics—not anything ethically untoward, much less unlawful. When it gets to Count 13 (the official misconduct count), the Indictment does not even try to specify any

excess of office, or identify any binding legal authority Mayor Redd allegedly violated. It simply asserts that the Mayor (somehow) fell below the "highest ethical standards of public service" and failed to "devote her best efforts to the interests of the city." Indict. ¶ 240. Actually, the Indictment does not allege even that. But even if it did, New Jersey law does not subject public officials to a "best efforts" standard, punishable by prison. The Indictment thus falls chasms away from alleging any criminal offense involving the mayor.

A. Official Misconduct Requires Official Action or Inaction in Violation of a Concrete Legal Duty.

The relevant New Jersey statute provides as follows: "A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or deprive another of a benefit: (a) He commits *an act relating to his office but constituting an unauthorized exercise of his official functions*, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or (b) He knowingly *refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office*." N.J.S.A. 2C:30-2 (emphases added).

As the italicized text makes plain, *official* misconduct requires a misuse of *office*; it does not include every bad or self-interested act performed by someone who happens to be a public official. *See State v. Kueny*, 411 N.J. Super. 392, 404-07 (App. Div. 2010); *accord State v. Hupka*, 407 N.J. Super. 489, 511 (App. Div. 2009). The self-interested behavior must either be official action in violation of some legal limit (per subsection (a)), or inaction in the face of some legal duty (per subsection (b)). *See Thompson*, 402 N.J. Super.

at 191. That is not to say the conduct must be independently criminal; nor must the legal limit or duty be expressly enumerated in a statute, rule, or regulation. *Id.* But the official must use her office in a way that crosses an "unmistakabl[e]" legal line—that is, she must contravene a concrete legal command that squarely regulates some aspect of her position. *Brady*, 452 N.J. Super. at 164; *see also, e.g.*, *Thompson*, 402 N.J. Super. at 198 (describing a law enforcement officer's "duty to report or act against an individual committing a crime" as a textbook example of an unenumerated "inherent duty").

The flipside is that New Jersey's official misconduct statute is not a roving license for prosecutors to combat every act they deem a "breach of good judgment," *Brady*, 452 N.J. Super. at 164, or to enforce the "general [ethical] standards" of public office, *Thompson*, 402 N.J. Super. at 200. Rather, the statute distinguishes between an official contravening a "moral or ethical" obligation, and that official using her office to breach a "specific legal duty." Cannel, *New Jersey Criminal Code Annotated*, at 583. Only the latter is criminal. *See id.*; *see also State v. Tolotti*, 2019 WL 692300, at *5 (N.J. App. Div. Feb. 20, 2019) (affirming dismissal of official misconduct charge where office did not impose duty to act).

Courts have consistently policed this line. In *Brady*, the court held that a judge did not commit criminal misconduct when she violated the "general [ethical] statements" of the Judicial Code. 452 N.J. Super. at 170. In *Thompson*, the court dismissed misconduct counts premised on local officials accepting gifts in violation of general conflicts of interest rules. 402 N.J. Super. at 201. And in *Kueny*, the court overturned a misconduct conviction because the State failed to muster any binding law, rule, or other source of legal authority that a police officer contravened when he withdrew money from someone

else's ATM account while off-duty. 411 N.J. Super. at 406-07. In each instance, the court held that "general and generic" ethical rules—those that "apply across-the-board" to virtually all public officials—are not sufficiently specific to give rise to "criminal liability." *Thompson*, 402 N.J. Super. at 202. While the basic expectations that officials behave in good faith and honorably are no doubt important (and may give rise to disciplinary, administrative, and civil sanctions, as well as political repercussions), violating those general edicts is not a basis for criminal prosecution. *Brady*, 452 N.J. Super. at 173.

Other states have drawn the same distinction. *See id.* at 567. Of particular note, New York—whose misconduct statute was the basis for New Jersey's, *see Thompson*, 402 N.J. Super. at 499—holds that "ethical impropriety, although unquestionably to be condemned, provide[s] no predicate for the imposition of criminal penalties." *People v. La Carrubba*, 389 N.E.2d 799, 802 (N.Y. 1979); *see also, e.g.*, *State v. Green*, 376 A.2d 424, 428 (Del. Super. Ct. 1977) (similar statute "does not include the duty of avoiding violation of unspecified conflict-of-interest or other ethical standards").

Any other rule would thrust the official misconduct law into serious constitutional doubt. All citizens (even politicians) need to be on fair notice about what is "prohibited" by law. *Thompson*, 402 N.J. Super. at 203. So "when the law is unclear as to the nature and scope of an official's duties, he cannot be convicted of misconduct." Cannel, *supra*, at 582. By those lights, lofty ethical precepts are simply too "amorphous" to bind an officeholder. *State v. Grimes*, 235 N.J. Super. 75, 90 (App. Div. 1989). To commit a crime, an official must cross a "non-discretionary" line—a law, regulation, inherent duty, or the like—that is "so clear" it holds the force of law. *See* 1971 Commentary, at 291.

The upshot is that the official misconduct statute is not an attempt to "criminalize any ethics violation." Cannel, *supra*, at 584. It has a far narrower ambit: *misuse* of office—*i.e.*, official action or inaction in violation of a concrete legal command binding that particular officeholder. Consequently, courts have acknowledged that "an indictment charging official misconduct must" (at minimum) identify the legal command violated, as well as allege "facts constituting a breach thereof." *State v. Schenkolewski*, 301 N.J. Super 115, 144 (App. Div. 1997); *see also Brady*, 452 N.J. Super. at 165 (holding that the State must "specifically define" the legal limit transgressed). Failure to do so compels dismissal.

B. The Indictment Fails to Allege Any Official Misconduct.

Against these principles, the Indictment is plainly deficient. To start, Count 13 never tries to identify any legal authority Mayor Redd allegedly exceeded, or any clear legal duty she failed to carry out. It never says she used her office to violate any law, rule, or regulation. Instead, it rests entirely on vague, grade-school-civics-type "duties"—like the duty to "display good faith, honesty and integrity." Indict. ¶ 240. Those are the kinds of "generic" duties courts have rejected as bases for criminal liability, as just discussed. *Thompson*, 402 N.J. Super. at 202; *see also Brady*, 452 N.J. Super. at 172; *Kueny*, 411 N.J. Super. at 405-06. Here as there, the Indictment fails to "specifically define" any legal line that was crossed. *Brady*, 452 N.J. Super. at 165. That alone compels dismissal.

But even excusing this defect, the Indictment's factual allegations do not bridge the gap. They barely say anything about Mayor Redd at all. And what they do say does not come close to depicting a crime. What the Indictment describes is routine politics at most, without a whiff of wrongdoing.

1. ***Telling CFP CEO-1 to Meet with Philip Norcross.*** The Indictment says that Mayor Redd's staff told CFP CEO-1 to meet with Philip Norcross and others to ensure that CFP's "projects"—including acquisition of the L3 Complex—enjoyed the "approval" of important "stakeholder[s]." Indict. ¶¶ 49-50. Also, when CFP CEO-1 reached out "for help on the deal"—as L3 negotiations continued—the Mayor allegedly "told him that he had to deal with" Philip Norcross to "resolve it." *Id.* ¶ 77.

So what? The Indictment suggests these acts were nefarious because George and Philip Norcross had no "formal role with CFP or the City." *Id.* But that makes no sense. The L3 acquisition was a real-estate deal involving private entities and developers. As the Indictment makes clear, CFP itself was a private nonprofit; it had no "formal role" with the City either. Even assuming that Mayor Redd was acting in her official capacity as mayor—rather than as a co-chair of CFP—in encouraging all interested parties to come to a mutual solution, that conduct is perfectly natural and appropriate. It is exceedingly common for officials to "arrange meetings" among "constituents" to help resolve local disputes. *McDonnell v. United States*, 579 U.S. 550, 575 (2016). That is not misconduct; it is commendable and, indeed, part of the job description. No binding legal duty instructs a mayor when she can (or cannot) suggest or facilitate meetings or try to build consensus among local civic stakeholders. None exists. Nor would it make sense in a representative and participatory democracy to so limit public officials.

Brass tacks: In telling CFP CEO-1 to meet with Philip Norcross and resolve their differences internally, Mayor Redd obviously did not commit a crime. Those actions are a daily fare of local officials, not "unauthorized" in any way. N.J.S.A. 2C:30-2(a).

2. ***Not Returning Dranoff's Calls.*** The only other relevant allegation is that Mayor Redd—allegedly at some Defendants' behest—refused to call Dranoff back when he reached out about some zoning matters. Indict. ¶¶ 124-25. To be clear, the Indictment does not allege that Mayor Redd iced out Dranoff from all local services. In fact, just a few pages earlier, it acknowledges she signed a letter in support of Dranoff's application for tax credits. *Id.* ¶ 113. The exclusive charge is that Mayor Redd failed to take a given action: For a period in time, she allegedly refused to return Dranoff's calls.

Refusal to return a call cannot possibly give rise to criminal liability. The statute proscribes inaction only in the face of a "non-discretionary duty to act" that is "either one that is imposed by law, or one that is unmistakably inherent in the nature of the public servant's office." 1971 Commentary, at 291; *see also Brady*, 425 N.J. Super. at 173. There is obviously no "non-discretionary duty" to return a call. Again, the Indictment does not even try to identify one. Nor could it. How a mayor chooses to interact with civic stakeholders, community leaders, and businessmen is a paradigmatic matter of discretion; the stuff of everyday politics, not binding legal norm. Because Mayor Redd had no duty to call Dranoff—let alone a duty "so clear" that it could support a criminal indictment, *see* 1971 Commentary, at 291—there is no offense alleged here either.

3. ***Remaining Allegations.*** Outside of the above, there is nothing—*zero*—that could even colorably support a misconduct charge. There is an allegation that the Mayor let CFP CEO-1 know his "job was in jeopardy." Indict. ¶ 77. But CFP is not a public body; while the spot she held was reserved for the "Mayor of Camden," Mayor Redd did not exercise a public function but rather sat on its board in her personal capacity. Her

nonbinding counseling and advice to the CEO thus did not constitute *official* conduct at all (let alone *unauthorized* conduct). Likewise, the Indictment says she was "told" to add CC-1 as co-chair. *Id.* ¶ 78. But again, one (private) nonprofit co-chair adding another does not involve *official* conduct and so cannot be official *misconduct*. *See Kueny*, 411 N.J. Super. at 405-07 (off-duty conduct beyond scope). The Indictment's other references to the Mayor concern either rote political activities (*e.g.*, attending a press conference), or irrelevant details about her life *after* office (*e.g.*, receiving a pension). Indict. ¶¶ 106, 178, 180. Ultimately, the Indictment seems to bristle at the fact that the Mayor was especially responsive to the wishes of certain constituents. But that is politics, not a crime.

Importantly, in light of the Indictment's failure to allege any concrete breach of duty, the Mayor's alleged motivations are irrelevant. The statute prohibits certain actions if taken "with purpose to obtain a benefit … or to injure or deprive another," N.J.S.A. 2C:30-2, but that is an *additional* element of the offense, not an *alternative* one. In other words, the public official must take the prohibited action (violating binding legal norms or duties) *and* must do so for prohibited reasons. Subjective *mens rea* cannot overcome a lack of objective *actus reus*. *See State v. Sexton*, 160 N.J. 93, 98 (1999) (crimes "require a voluntary act *and* a culpable state of mind" (emphasis added)). That is true for all crimes but especially this one, given that political decisions can so readily be recharacterized as "self-interested." *See United States v. Thompson*, 484 F.3d 877, 883 (7th Cir. 2007) (calling it "preposterous" to treat "tak[ing] account of political considerations" as a crime). In the absence of any objective abuse of office, the Indictment therefore cannot skate by on (bare) allegations about the Mayor's subjective motives.

* * *

Accusations of official misconduct are very, very serious. But this is not a serious indictment. In all its 100-plus-pages, the Indictment does not allege a single instance of even colloquial misconduct by the Mayor (or any other official); it levies a career-ending charge without a shred of support. One might expect this from a tabloid newspaper, but it is beneath the dignity of the State's Office of Public Integrity and Accountability to levy charges so lacking in legal and factual support.

III. WITHOUT THOSE PREDICATE OFFENSES, THE ENTIRE INDICTMENT COLLAPSES.

The Indictment charges 13 counts, some of which purport to be conspiracies that embrace multiple underlying offenses. But the Indictment's complex architecture turns out to be a house of cards. Without unlawful threats or official misconduct, nothing is left to support any count. For ease, take the charges in reverse order:

The final count (Count 13) charges official misconduct (and facilitating the same). *See* Indict. ¶ 240. As just explained, that count fails as a matter of law. *Supra*, Part II.

Counts 11 and 12 are for "misconduct by a corporate official." In particular, the Indictment charges Defendants with using, controlling, or operating a corporation "for the furtherance or promotion of any criminal object." N.J.S.A. 2C:21-9(c). This is a derivative offense; there must be a "criminal object" furthered or promoted through the corporation. The Indictment identifies three such predicate offenses: theft by extortion, criminal coercion, and financial facilitation of criminal activity. *See* Indict. ¶¶ 236, 238. As explained in Part I, however, the Indictment does not state any extortion or coercion offenses, so these counts hinge on financial facilitation, addressed next.

Six counts (Counts 5 to 10) are for "financial facilitation of criminal activity," a form of money laundering involving proceeds of a separate offense. N.J.S.A. 2C:21-25. As the statute indicates and the Indictment confirms, this too is a derivative offense—there must be "criminal activity" from which the property has been "derived." *Id.*; Indict. ¶¶ 224, 226, 228, 230, 232, 234 (alleging possession or transactions involving property "derived from criminal activity"). So these charges cannot survive—either as substantive offenses, or as the predicate for corporate misconduct charges—unless there is some other criminal activity. *State v. Harris*, 373 N.J. Super. 253, 266 (App. Div. 2004) (explaining that statute requires "underlying criminal activity" that "generat[es] the property"); *State v. Diorio,* 216 N.J. 598, 622 (2014) (similar); *State v. Eisemann*, A-0186-22, 2023 WL 3673282, at *5 (App. Div. May 26, 2023) ("To establish money laundering . . . the State must prove an underlying criminal activity . . . ."). The Indictment alleges none. Again, the only separate "crimes" that it identifies—extortion, coercion, and official misconduct—have not been properly alleged. Without them, there can be no post-offense money laundering.

Next are Counts 2 through 4, the conspiracy counts. A conspiracy is only unlawful if it involves agreeing to conduct that "constitutes" a "crime." N.J.S.A. 2C:5-2; *see also State v. Campione*, 462 N.J. Super. 466, 493 (App. Div. 2020). "No underlying offense, no conspiracy to commit one." *Giovinazzo v. Deangelo*, 2022 WL 795713, at *8 (D.N.J. Mar. 16, 2022). The Indictment identifies the underlying crimes as: theft by extortion, criminal coercion, official misconduct, financial facilitation, and corporate misconduct. Indict. ¶¶ 218, 220, 222. The first three of those offenses are not properly alleged. *Supra*, Parts I & II. The latter two, as just shown, require a predicate offense. None has yet turned up.

Finally, Count 1 is the racketeering conspiracy—Defendants allegedly agreed to engage in a "pattern of racketeering activity." Indict. ¶ 216. The New Jersey racketeering statute defines certain predicate offenses as racketeering acts. N.J.S.A. 2C:41-1(a). The Indictment claims that the racketeering predicates here were: Hobbs Act extortion, theft by extortion, financial facilitation, corporate misconduct, and conspiracy to commit the same. Indict. ¶ 216. Once again, the Indictment does not properly allege extortion under federal or state law. *Supra*, Part I. And corporate misconduct, financial facilitation, and conspiracy all require an underlying crime; they cannot stand alone. *See Karo Mktg. Corp., Inc. v. Playdrome America*, 331 N.J. Super. 430, 444 (App. Div. 2000) (holding that claims brought under the New Jersey RICO statute "fail in the absence of predicate criminal activity"). Yet no underlying crime has been shown.

Put simply, this Indictment is turtles all the way down. Its foundational operative acts are the alleged threats and alleged abuses of official power. Once extortion, coercion, and official misconduct are struck, as they must be, all that remains is a set of derivative offenses that rest on nothing at all: Racketeering with no predicates; conspiracy to commit no crimes; transactions with lawfully generated property; and operating a corporation for legitimate ends. Parts I and II together thus compel dismissal of the entire Indictment.

IV. IN ANY EVENT, THE CHARGES ARE FACIALLY TIME-BARRED.

For the reasons explained above, the alleged threats and official misconduct that form the foundation of this Indictment were not criminal. There is no need to go further. But dismissal is also appropriate on an independent ground, because all of the charged conduct occurred far too long ago to be prosecuted now.

Once again, it helps to start with count 13: official misconduct. The limitations period for that offense is seven years. N.J.S.A. 2C:1-6(b)(3). So official misconduct must have occurred after June 2017 to be timely. Yet the only allegations about Mayor Redd, thin and inadequate as they are, are from years earlier: Her alleged advice to CFP to work with Philip Norcross dates back to 2013 and 2014 (Indict. ¶ 49, 77); her alleged refusal to return Dranoff's phone call took place in 2016 (*id.* ¶ 124). All of that is time-barred.

The Indictment tries to surmount this hurdle by alleging that, in December 2017, CC-1 helped Mayor Redd secure a new job. *Id.* ¶ 174. That is irrelevant: The offense occurs when the *official* "commits an act" or "refrains from performing a duty" for certain illicit purposes. N.J.S.A. 2C:30-2. At that point, the offense is complete; the limitations period is not restarted by acts taken by others. *See State v. Diorio*, 216 N.J. 598, 617 (N.J. 2014) ("In the typical case, the offense is complete as soon as every element of the offense occurs."). Even if one assumes the new job was the personal "benefit" motivating Mayor Redd—which is never alleged, and which makes no sense temporally, since it happened long after her relevant acts—the *receipt* of that benefit is not an element of the offense, since the statute "does not require that the defendant actually gain a benefit." *Saavedra*, 222 N.J. at 60. Since it is not part of the offense, provision of the benefit cannot extend the limitations clock. Nor does it matter that official misconduct can, in some cases, rise to the level of a "continuing course of conduct"; even then, an indictment is only timely if "any of the [official's] acts fall within" the relevant period. *Diorio*, 216 N.J. at 615 (quoting *State v. Weleck*, 10 N.J. 355, 374 (N.J. 1952)). Here, no acts by Mayor Redd after June 2017—the only acts that could matter—are alleged.

Turning from misconduct to threats, the extortion and coercion offenses are subject to a five-year limitations period. N.J.S.A. 2C:1-6(b)(1). So threats could be charged only if they occurred after June 2019. Yet consider the Indictment's "threat" allegations:

- Philip Norcross's "implied" threat to CFP's CEO regarding the L3 project occurred in 2014. *See* Indict. ¶ 70.
- George Norcross's threats to Dranoff occurred in the summer and fall of 2016. *See id.* ¶¶ 117, 137.
- Defendants' discussions about the possibility of a condemnation suit by the CRA occurred in the fall of 2016, and the discussions regarding Radio Lofts were in early 2018. *See id.* ¶¶ 128, 185-86.
- CC-1's alleged threat to induce the CFP CEO's resignation allegedly occurred in late 2017. *See id.* ¶ 177.

To circumvent the obvious time bar, the Attorney General does not charge these threats as substantive crimes, but instead tries to launder them through "continuing offenses" like conspiracy, facilitation, and corporate misconduct, and says those courses of conduct extended into the last five years. But, even on the face of the Indictment, this cynical exercise does not work. The easiest way to see why is to search the Indictment for references to events in or after 2019. There are only a handful and, on examination, it is clear that none of them legally suffices to extend any earlier, time-barred conduct.

First, the Indictment alleges that, between 2019 and 2022, Defendants "made statements to members of the media in order to conceal the true facts"—specifically, by defending Cooper Health's role in the L3 project back in 2014. Indict. ¶ 91. But the law is clear that "prosecutors cannot 'extend the life of a conspiracy indefinitely' by inferring a conspiracy to conceal 'from mere overt acts of concealment.'" *State v. Twiggs*, 233 N.J. 513, 543 (N.J. 2018) (quoting *Grunewald v. United States*, 353 U.S. 391, 402 (1957)); *see also*

United States v. Bornman, 559 F.3d 150, 153 (3d Cir. 2009) (vacating conviction on this basis). Here, the Indictment makes obvious that the supposed "central criminal purposes of [the] conspiracy" as to L3 had been "attained" by the end of 2014, when the deal closed (Indict. ¶ 82), or at latest by 2015, when Cooper Health "moved personnel into the L3 complex" (*id.* ¶ 85). *Grunewald*, 353 U.S. at 401-02. Nothing in the Indictment suggests that there was an "original agreement among the conspirators to continue to act in concert in order to cover up . . . the crime," *id.* at 404—let alone by talking to reporters *five years later*.

Second, the Indictment alleges that, in 2023, during Dranoff's litigation against the City relating to Radio Lofts, William Tambussi "filed a pre-trial motion" to preclude reference at trial to the Norcross brothers. Indict. ¶¶ 156-57. Tambussi was representing clients (the City and CRA) in that proceeding. *Id.* ¶ 155. Statements made in the course of judicial proceedings are absolutely immune from civil liability, *see Ruberton v. Gabage*, 280 N.J. Super. 125, 132-33 (App. Div. 1995), and, as demonstrated above, constitute constitutionally protected petitioning conduct. To treat them as a hook for sweeping criminal liability would be extraordinary, unprecedented, and an impediment to the administration of justice and the rule of law. *Cf. Hawkins v. Harris*, 141 N.J. 207, 213 (1995) (holding that statement made in course of a judicial proceeding is absolutely privileged and immune from liability due to "need for unfettered expression critical to advancing the underlying government interest at stake in those settings"); *Williams v. Kenney*, 379 N.J. Super. 118, 133–34 (App. Div. 2005) ("The privilege [of absolute immunity] is responsive to the public policy that jurors, witnesses, parties, and their representatives be permitted to speak and write freely without fear of liability.").

In all events, Tambussi's motion had nothing to do with any of the "schemes" alleged in the Indictment: None of the supposed conspirators was a party to the litigation, and the motion did not even arguably advance any criminal objectives. It thus cannot revive the limitations periods for supposed offenses completed years earlier. Insofar as the Indictment characterizes this motion as more "concealment," that fails for the same reasons discussed above. *See Twiggs*, 233 N.J. at 543. And if the Attorney General thinks Tambussi, acting as an attorney, somehow misled the Superior Court of Camden County, that should be taken up with the presiding judge there—whom the Indictment, incredibly, insinuates is corrupt (Indict. ¶ 196)—not through a criminal prosecution next door.

Finally, the Indictment includes a series of allegations about how some Defendants' companies applied for and received Grow NJ tax credits during the last five years. *See* Indict. ¶ 87 (L3), ¶¶ 161-65 (Triad1828 Centre), ¶¶ 171-72 (11 Cooper). The Grow NJ program, enacted in 2012, uses tax credits as an incentive to spur development and job creation in certain areas, especially long-suffering Camden. *Id.* ¶¶ 26-30. The Indictment asserts that possession of these tax credits, and transactions with them, was facilitation of criminal activity, and thus extended the "conspiracies" into the last five years. *See id.* ¶¶ 215, 218, 220, 224, 226, 228, 230, 232, 234, 236, 238. That gimmick fails too, because the facilitation counts do not state offenses on their own terms. Criminal facilitation requires the possession or use of property "derived from" some other crime. N.J.S.A. 2C:21-25(3). These tax credits cannot be characterized as proceeds of any crime. Holding otherwise would open the door to perpetual statutes of limitations for criminal offenses—a result that courts resist and reject as untenable.

Property is "derived from" crime if it "represents proceeds" of a crime. N.J.S.A. 2C:21-25(3)(d). The tax credits do not fit that bill. As the Indictment relates, New Jersey provides those credits if a business "made a minimum capital investment" in a qualified area (such as Camden), "created or retained at least 100 full-time employees," and the credits were "a material factor" in causing the investment or job creation. Indict. ¶¶ 26, 29. Nowhere does the Indictment allege that any Defendant's business sought or received tax credits for which it was not eligible, or committed fraud in connection with the awards. They have not been charged, here or elsewhere, with defrauding the Grow NJ program. So the credits cannot be recast as "proceeds" of criminal activity. They flowed by virtue of eligible applications repeatedly approved under New Jersey law—not any crime.

Indeed, the State willingly and voluntarily paid the credits, because Defendants were entitled to them as a matter of law and contract, having met the statutory requisites. It is absurd and even frightening that the Legislature could pass a tax incentive bill; invite participants and investors to meet the transparent standards; receive, evaluate, and pay out the claimed benefit to a qualifying company; and then have the same government allege that the receipt of such benefits constitutes a crime. Kafka would be proud.

Stated differently, the Indictment lacks any valid legal theory of "proceeds" under state law. Its theory seems to be as follows: Defendants were motivated by tax credits; the tax credit applications were contingent on making capital investments in Camden; those investments (in L3, Triad1828, and 11 Cooper) became possible because of threats that facilitated the projects (by ensuring the right partner for CFP, and negotiating away Dranoff's view easement and right of first refusal); and thus the tax credits are "proceeds"

of extortion. That attenuated theory stretches the statutory element of "proceeds" far beyond its breaking point. On the Indictment's theory, even if there were no tax credits, Defendants would commit criminal facilitation *continuously and forever* if they rented out the properties (generating rental income) or operated businesses from those locations (generating sales revenues). But, as the Second Circuit has held, treating the receipt of otherwise-lawful payments as indefinitely extending the limitations period would clearly "prove[] too much." *United States v. Grimm*, 738 F.3d 498, 503 (2d Cir. 2013).

At some point, "a money laundering charge presents a vagueness problem due to attenuation." *United States v. Mayfield*, 2019 WL 485959, at *1-2 (E.D. La. Feb. 7, 2019). If that is true anywhere, it is true here. Whatever alleged threats nearly a decade ago may have facilitated certain real-estate deals, and in turn Camden's redevelopment, and in turn the creation of jobs, and in turn the provision of tax credits, they cannot properly be prosecuted now. Those supposed crimes are not revived in perpetuity just because the redevelopment continues to generate income, in the form of tax credits or otherwise. And without the tax credits, there is nothing left to render any of these charges timely.

CONCLUSION

The Indictment palpably fails to state an offense. Because there is no crime alleged here, it is this Court's role to dismiss the Indictment, which it can and should do with confidence in the outcome. The rule of law demands it—because of, not merely in spite of, the high-profile nature of this novel prosecution.

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