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STATE OF NEW JERSEY v. GEORGE E. NORCROSS, III, PHILIP A. NORCROSS, WILLIAM M. TAMBUSSI, DANA L. REDD, SIDNEY R. BROWN, and JOHN J. O'DONNELL, Defendants.	SUPERIOR COURT OF NEW JERSEY MERCER COUNTY LAW DIVISION – CRIMINAL INDICTMENT NO.: 24-06-00111-S PROMIS/GAVEL NO.: MER-24-001988 Before: Hon. Peter E. Warshaw, Jr., P.J.Cr.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE INDICTMENT

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PRELIMINARY STATEMENT

Government is supposed to be open to all the people on neutral terms. In this Indictment, a grand jury—itself embodying the people's voice—charged George Norcross and five other defendants with, among other things, conspiring to use the instruments of public power to private ends: to cause other private individuals to surrender their property so that the Enterprise could profit. Norcross and the other defendants now ask this Court to throw out the grand jury's work, claiming the Indictment is facially invalid. It is not.

The grand jury charged thirteen counts, including racketeering conspiracy; conspiracies to commit theft by extortion, criminal coercion, and other offenses; financial facilitation of criminal activity; misconduct by a corporate official; and official misconduct. The charges center on an enterprise headed by George Norcross, which used his reputation for ruthless tactics and de facto control over local government to strong-arm private citizens and entities into relinquishing valuable property rights, so that the Enterprise could profit through a tax-credit scheme that it helped create. To achieve its goals, the Enterprise exploited victims' reasonable fear of reputational and financial harm. The instruments of that fear included the government officials to which these victims sometimes turned—only to have public servants rebuff them, confirming George Norcross's ability to wield public institutions as a private stick.

Defendants now argue that, even accepting each of the Indictment's allegations as true, this was all legal—so obviously legal, they argue, that there is no need for a trial, or even this Court's review of the evidence before the grand jury. But despite briefly acknowledging the demanding legal standard they face, their motions misapply it. Rather than claiming that there is anything palpably untenable (or unclear) about what the grand jury charged, they treat the Indictment as if it comprises the totality of the State's evidence. And rather than actually accepting each of the grand jury's allegations as true, they overlook inconvenient allegations, urge fact-specific inferences, and sometimes inject new facts—all of which may be appropriate for trying to persuade a trial jury, but are wholly out of place in asking this Court to nullify a grand jury.

Even indulging Defendants' novel argument on this posture, their facial motions fail. The grand jury properly charged Defendants with agreeing to participate in an enterprise that would achieve its goals through a pattern of racketeering activity—a charge that does not require proving that each one of them personally completed racketeering acts. It properly charged them with conspiracies to commit extortion and criminal coercion, validly alleging that they had strayed beyond the bounds of "hard bargaining" by threatening both reputational and economic harm, using the instruments of government to intimidate, and widening their extortionate and coercive tactics well past any

commercial transactions to which they had a legitimate nexus. It properly charged official misconduct and official misconduct conspiracy, validly alleging that one member used her mayoral position to advance the Enterprise's illicit goals and committed crimes directly related to her office. It properly charged financial facilitation (and conspiracy to commit it), alleging that the defendants possessed and directed transactions involving millions of dollars derived from criminal activity. And it properly charged misconduct by a corporate official (and conspiracy to commit it), alleging that defendants used corporations under their control to further their criminal conspiracies.

The charges are timely. The grand jury properly alleged that the conspiracies continued into the limitations period, and, regardless, their objectives—including receiving and selling the tax credits, punishing adversaries, and concealing illegality—had been neither accomplished nor abandoned before the cut-off date. The other charges are also timely given the ongoing use of corporations to receive and sell tax credits, for example, and Redd's and others' alleged crimes within the final six months of her term.

Defendants resist any further scrutiny of their actions, claiming that this is all just "garden-variety politics," "how deals get done," and even "a feature of democratic self-government." But the grand jury did not think so, and

nothing about its view is manifestly or palpably wrong. This Court should deny Defendants' facial motions to dismiss.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On June 13, 2024, a State Grand Jury returned Indictment No. 24-06-00111-S, charging six defendants—George E. Norcross, III, Philip A. Norcross, William M. Tambussi, Dana L. Redd, Sidney R. Brown, and John J. O'Donnell—with assorted crimes. Indict. ¶¶ 212-40. The section below breaks down the Indictment by counts and defendants.

- Count One. First-Degree Racketeering Conspiracy under N.J.S.A. 2C:41-2(d) (all defendants). Indict. ¶¶ 212-16.

- Count Two (the L3 Complex Conspiracy). First-Degree Conspiracy to Commit Theft by Extortion, Criminal Coercion, Financial Facilitation of Criminal Activity, Misconduct by a Corporate Official, and Official Misconduct, under N.J.S.A. 2C:5-2, N.J.S.A. 2C:20-5, N.J.S.A. 2C:13-5, N.J.S.A. 2C:21-25(a) and (c), N.J.S.A. 2C:21-9(c), and N.J.S.A. 2C:30-2 (George and Philip Norcross, Redd, Tambussi). Indict. ¶¶ 217-18.

- Count Three (the Triad1828 Centre and 11 Cooper Conspiracy). First-Degree Conspiracy to Commit Theft by Extortion, Criminal Coercion, Financial Facilitation of Criminal Activity, Misconduct by a Corporate Official, and Official Misconduct, under N.J.S.A. 2C:5-2, N.J.S.A. 2C:20-5, N.J.S.A. 2C:13-5, N.J.S.A. 2C:21-25(a) and (c), N.J.S.A. 2C:21-9(c), and N.J.S.A. 2C:30-2 (all defendants). Indict. ¶¶ 219-20.

- Count Four (the Radio Lofts Extortion and Coercion Conspiracy). Second-Degree Conspiracy to Commit Theft by Extortion and Criminal Coercion, under N.J.S.A. 2C:5-2, N.J.S.A. 2C:20-5, and N.J.S.A. 2C:13-5 (George and Philip Norcross, Tambussi). Indict. ¶¶ 221-22.

- Count Five. First-Degree Financial Facilitation of Criminal Activity for possessing Triad1828 Centre tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(a) (all defendants). Indict. ⁋⁋ 223-24.

- Count Six. First-Degree Financial Facilitation of Criminal Activity for directing transactions in Triad1828 Centre tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(c) (all defendants). Indict. ¶¶ 225-26.

- Count Seven. First-Degree Financial Facilitation of Criminal Activity for possessing L3 Complex tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(a) (George and Philip Norcross, Tambussi, Redd). Indict. ¶¶ 227-28.

- Count Eight. First-Degree Financial Facilitation of Criminal Activity for directing transactions in L3 Complex tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(c) (George and Philip Norcross, Tambussi, Redd). Indict. ¶¶ 229-30.

- Count Nine. First-Degree Financial Facilitation of Criminal Activity for possessing 11 Cooper tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(a) (all defendants). Indict. ¶¶ 231-32.

- Count Ten. First-Degree Financial Facilitation of Criminal Activity for directing transactions in 11 Cooper tax credits, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-25(c) (all defendants). Indict. ¶¶ 233-34.

- Count Eleven. Second-Degree Misconduct by a Corporate Official for using Cooper Health to advance a criminal object, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-9(c) (George and Philip Norcross, Tambussi, Redd). Indict. ¶¶ 235-36.

- Count Twelve. Second-Degree Misconduct by a Corporate Official for using the Triad1828 Centre and 11 Cooper Companies to advance a criminal object, under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:21-9(c) (all defendants). Indict. ¶¶ 237-38.

- Count Thirteen. Second-Degree Official Misconduct under N.J.S.A. 2C:2-6 and N.J.S.A. 2C:30-2 (all defendants). Indict. ¶¶ 239-40.

Defendants moved to dismiss the indictment on September 24, 2024, alleging in George Norcross's brief—which all other defendants joined—that the Indictment does not state an offense on its face and that the charges are facially time-barred. Omnibus Br. 1. The other defendants filed supplemental briefs on October 1.

On October 8, the State filed a letter requesting a conference to discuss Defendants' motions and the boundaries of the State's response. Defendants responded by letter on October 11, conceding that defendant Tambussi's brief had exceeded the scope of the motions presented. Certification of Deputy Attorney General Adam D. Klein, at 1 n.1. This Court convened a conference on October 16. According to this Court's instructions and consistent with the acknowledgment in Defendants' October 11 letter, this brief does not respond to the arguments in defendant Tambussi's brief that require looking beyond the face of the Indictment.

COUNTERSTATEMENT OF FACTS

From 2012 until at least 2023, unelected Camden political boss George E. Norcross, III led a criminal enterprise made up of government officials, lawyers, and businesspeople. By exploiting Norcross's reputation for untrammeled control over local government and overpowering political influence across New Jersey, the Norcross Enterprise essentially took the Camden waterfront for itself.

The Enterprise systematically carried out a series of schemes to achieve their ends. They first refashioned tax-credit legislation meant to bring needed economic growth to long-struggling Camden into a law that would make Norcross and his friends richer and enhance their businesses. To cash in on the scheme, the Enterprise needed to acquire valuable waterfront property and related tax credits. To do so, it exceeded lawful business practices, using Norcross's control over Camden to extort the property and credits—from a local nonprofit, a developer, and others—by unlawfully exploiting the victims' fear of reputational and financial ruin. The Enterprise then occupied the property, received the tax credits, and sold them for over $50 million dollars.

This section recounts the basics of the crimes the grand jury charged in its Indictment, including some of the evidence that the grand jury saw and heard.

A. The Norcross Enterprise: The Conspirators' Roles.

The Indictment charges all six defendants with racketeering conspiracy, among other crimes, for agreeing to participate in the affairs of the Norcross Enterprise through a pattern of extortionate and coercive criminal activity. Indict. ¶¶ 1, 212-16. What follows first is a brief summary of what role the grand jury charged each of the defendants with playing in the crimes alleged.

1. George E. Norcross, III.

The leader of the criminal enterprise, George Norcross, is Executive Chairman of the insurance firm Conner Strong & Buckelew (CSB) and Chair of the board of trustees of Cooper University Health Care (Cooper Health), both based in Camden. Id. ¶¶ 1, 9. His stature in state Democratic politics and his ability to instill fear stretch back decades. Id. ¶¶ 9, 53-54, 215(h)-(i).

Norcross dominates Democratic politics in South Jersey and elsewhere in many ways, and not just through fundraising. Id. ¶¶ 9, 215(b). He controls endorsements of candidates for public office and appointments to government positions. Id. ¶¶ 9, 215(b). He commands access to the local political party apparatus. Id. ¶¶ 9, 215(b). He decides which candidates the South Jersey Democratic Party will support and who will be prominently featured on voting ballots. Id. ¶¶ 9, 215(b). And he intimidates and retaliates against those who cross him, using his control over government agencies to cause those opponents to lose government contracts or jobs. Id. ¶ 215(b).

Norcross conceived, controlled, and profited from the Enterprise's many criminal schemes. From crafting the Economic Opportunity Act (EOA) for his and his friends' use and benefit, to engineering the conspiracies that saw the Enterprise extort and coerce others to unlawfully acquire property—Developer-1's waterfront property, related rights, and tax credits, as well as the

L3 building and related rights from local nonprofit Cooper's Ferry Partnership (CFP)—to illicitly cashing in on these plots for millions of dollars, to concealing their crimes, Norcross was behind all of it. Id. ¶¶ 1-9, 31-43, 47-95, 144, 147, 198-207, 215.

2. Philip A. Norcross.

Philip Norcross is managing shareholder and CEO at the Parker McCay law firm and Chair of the Board at the Cooper Foundation. Id. ¶ 10. He was also his brother's agent: he spoke for the Enterprise's leader, and helped shape and carry out his agenda. Id. ¶¶ 33, 43(a)-(b), 49, 59. For example, Philip Norcross "represented [George Norcross's] interests" in discussions about crafting the EOA to benefit the Enterprise. Id. ¶ 33. As Philip Norcross would put it during a recorded conversation in September 2013: "I try to practice as little law as possible … just for laughs and giggles I run a law firm. And for more laughs and giggles, my siblings and I get around the table and decide what [George Norcross's] agenda is in Camden." Id. ¶ 43(a). He went on to note that "what we did just a few weeks ago is, and this probably is not such a good thing, we re-wrote a tax credit law in New Jersey … that will cause real havoc, it's unlimited." Id. ¶ 43(b).

On behalf of George Norcross and the Enterprise, Philip Norcross plotted to, and did, extort and coerce Developer-1, CFP, and CFP's CEO and President.

Id. ¶¶ 59, 70, 116-18, 125-27, 140, 146, 148. Philip Norcross also plotted for the Enterprise to reap financial benefits—millions of dollars—through its extortionate and coercive conduct. Id. ¶¶ 158-72, 198-206.

3. William M. Tambussi.

Tambussi, an attorney and partner at the law firm of Brown & Connery, is the long-time personal attorney to George Norcross. Id. ¶ 11. From 1989 to the date of the Indictment, Tambussi was counsel to the Camden County Democratic Committee. Id. ¶ 11. He served as the voice of the Enterprise on the Committee. Ibid. He's also served as counsel to the City of Camden, the Camden Redevelopment Agency (CRA), Cooper Health, and CSB, and acted as the agent of the Enterprise on those bodies. Ibid.

Tambussi took part in and helped conceal the Norcross Enterprise's crimes. He plotted for Camden to bring a condemnation action to strip Developer-1 of his property interests and later engineered the concealment of that scheme. Id. ¶¶ 127-28, 155-57. He concealed the truth about the Enterprise's extortionate acquisition of the L3 Complex. Id. ¶¶ 91-92. And he participated in the conspiracy to coerce CFP's CEO to resign under threat of financial and false reputational ruin. Id. ¶ 175.

4. Dana L. Redd.

Redd is the CEO of Camden Community Partnership (formerly CFP). Id. ¶ 12. She served as Mayor of Camden from 2010 to 2018, having previously served as a member of the Camden City Council and as a State Senator. Ibid. Before holding her current position, Redd was CEO of the Rowan University/Rutgers-Camden Board of Governors. Ibid.

Redd helped shape the L3 Complex and Triad1828 Centre & 11 Cooper extortion schemes, including by demonstrating that the Camden mayor's office supported the Enterprise's goals and threats, directing victims to deal with Enterprise members, installing co-conspirators in desired positions, and ignoring victims' requests for assistance. Id. ¶¶ 49, 77-78, 106, 124-25, 134. For her efforts on behalf of the Enterprise, Redd benefitted financially. Id. ¶¶ 173-74. When the Enterprise coerced CFP's CEO into resigning so that Redd could take his job, the Senate President—a close ally of George Norcross with whom the brothers had worked to shape the EOA tax credits—introduced an arcane legislative tweak that would significantly increase the size of Redd's pension (and only a handful of other people's). Id. ¶¶ 36-37, 173-78. This was in conjunction with the Norcross Enterprise further rewarding her by putting her in charge of the Rowan-Rutgers Joint Board, a state government position that

paid $275,000 a year, increasing her pensionable salary significantly. Id. ¶¶ 174, 178, 180.

5. Sidney R. Brown.

Brown is the CEO of trucking and logistics company NFI. Id. ¶ 13. Brown has also been a member of the board at Cooper Health and a partner in the groups that own the Triad1828 Centre, 11 Cooper, and the Ferry Terminal Building. Id. ¶ 13. Brown joined in plotting to cause the Camden government to bring court action against Developer-1 to pressure him into selling his waterfront property rights, all in service of the Enterprise and its private interests. Id. ¶¶ 127, 142, 146, 149. Brown and the company he owns and operates reaped the financial benefits of the Enterprise's extortionate conduct, receiving millions of dollars in tax credits. Id. ¶¶ 162, 169, 200-01, 211.

6. John J. O'Donnell.

O'Donnell has been an executive leader—COO, president, CEO—of The Michaels Organization (TMO), a residential development company, during all times relevant to the Indictment. Id. ¶ 14. He is also a partner in the groups that own the Triad1828 Centre, 11 Cooper, and the Ferry Terminal Building, and he was on the board of CFP at different times beginning in 2018. Id. ¶ 14. Like Brown, O'Donnell joined in plotting to cause the Camden government to bring court action against Developer-1 to pressure him into selling his property rights.

Id. ¶¶ 127, 141. And like Brown, O'Donnell and his business received millions of dollars as a result of the Enterprise's extortionate conduct. Id. ¶¶ 163, 169, 171-72, 202-03, 211.

B. The Norcross Enterprise Crafts The EOA For Its Use And Benefit.

In 2012 or 2013, George Norcross led a Trenton meeting to go over his agenda for the planned Economic Opportunity Act. Indict. ¶ 31. "This is for our friends," he said of the soon-to-be law. Ibid. George Norcross also told meeting attendees, including leaders from Cooper Health and CFP, that he wanted to use the law to build an office building for free. Ibid. The EOA would abet this aim, because whether the tax credits were used or sold, the State would lose money, and the Enterprise would gain. Id. ¶ 27.

From mid-2012 into the second half of 2013, George Norcross directed Philip Norcross and others to help implement his agenda in Camden and to secure millions of dollars through the EOA to do so. Id. ¶¶ 32-33, 43. Philip Norcross and another lawyer from his firm tailored the EOA to the Enterprise's preferences by leaning on elected officials beholden to George Norcross and providing those officials with proposed language and instructions for the legislation. Id. ¶¶ 2, 36-42. Philip Norcross communicated directly with the Senate President about what the Norcross Enterprise wanted the law to say. Id. ¶¶ 36-37. He personally emailed the Senate President a document titled

"Economic Opportunity Bill.pdf." Id. ¶ 36. Philip Norcross's colleague would later send proposed edits to the EOA to the Governor's Office and the New Jersey Economic Development Authority (NJEDA), copying Philip Norcross. Id. ¶ 40.

Philip Norcross did not only propose legislative text; he also sent "talking points" to the Senate President on the bill. Id. ¶ 39. Some points focused on slashing requirements for tax credits on Camden projects so that "everybody always gets full funding"; others focused on eliminating otherwise required certifications for Camden projects. Id. ¶ 38. "We should meet beforehand so that I can give you some details and background," Philip Norcross wrote to the Senate President before an "upcoming meeting with Admin." Id. ¶ 39. After the EOA became law in September 2013, Philip Norcross described it this way in a private meeting: "we re-wrote a tax credit law in New Jersey, that says in essence, if you come to Camden, we're going to give you one hundred percent tax credit for all capital and related costs. As long as you bring some jobs in. Over ten years, it's a hundred percent … and it will cause real havoc, it's unlimited." Id. ¶¶ 43(a)-(b).

C. The Triad1828 Centre And 11 Cooper: The Enterprise Plots To Extort A Developer's Tax Credits And Waterfront Property Rights.

While helping shape the EOA, George Norcross gathered information about the status of redevelopment rights along the water. He learned that Developer-1 held a view easement limiting the height of structures in front of Developer-1's waterfront residential building, the Victor Lofts, so that tenants' views of the Philadelphia skyline would not be blocked. Id. ¶ 34, 96-98(b). George Norcross also found out that, while the NJEDA may have had the ability to extinguish one company's right to develop a property on waterfront, it did not have the same power over Developer-1's view easement. Id. ¶ 34(a)-(b).

Developer-1's rights stood in the way of the Enterprise's plans to build what became the Triad1828 Centre—headquarters of CSB (George Norcross's company), NFI (Brown's company), and TMO (O'Donnell's company)—and an apartment building, 11 Cooper. The Defendants thus conspired to extort Developer-1 into giving up his rights so that they instead could reap the benefits of the tax-credit law that George and Philip Norcross had shaped. Id. ¶¶ 3, 93-94. The Enterprise could then obtain tax credits to offset the costs associated with the Defendants' planned construction. Id. ¶ 215(f).

The Enterprise's methods went well beyond hard bargaining. When Developer-1 resisted relinquishing his rights on George Norcross's preferred

terms, Norcross threatened him with economic and reputational harm. Id. ¶¶ 3, 95, 116. He threatened Developer-1 that he would "f**k you up like you've never been f**ked up before," and that he would "make sure" Developer-1 "never did business in Camden again." Id. ¶¶ 3, 95, 117. Norcross later, on a recorded call, admitted to threatening Developer-1: "I said, … 'this is unacceptable. If you do this, it will have enormous consequences.' [Developer-1] said, 'Are you threatening me?' I said, 'Absolutely.'" Id. ¶¶ 3, 137.

The Enterprise not only threatened harm; it also plotted to actually hurt Developer-1, both financially and reputationally. Members of the Enterprise (1) schemed to have the City of Camden initiate legal proceedings to condemn Developer-1's view easement, purely to gain leverage in the negotiations; (2) plotted for Camden officials to publicly accuse Developer-1 of being "not a reputable [business] person"; (3) caused some Camden officials, including then-Mayor Redd, to stop communicating with Developer-1; and (4) plotted to use the Camden government to force Developer-1 to forfeit an option to develop the Radio Lofts site, an unrelated project. Id. ¶¶ 4, 95. In a recorded call planning this scheme, George Norcross explained that "you can never trust [Developer-1] until you got a bat over his head," said that he wanted Developer-1 to "cry uncle," and identified Developer-1's unrelated project as "another point of attack on this putz." Id. ¶¶ 4, 127, 142-43, 147, 181.

In October 2016, "[a]s a result of these threats and actions," Developer-1 "sold tax credits and residential development rights and property he did not want to sell—forgoing his own opportunity to further develop the Camden waterfront—and extinguished his view easement, all for a price below where he valued this property." Id. ¶¶ 4, 95. The transaction enabled Enterprise-associated entities—including CSB, NFI, and TMO—to apply for tax credits that very day. Id. ¶¶ 5, 158. The EDA ultimately approved more than $240 million in tax credits for these entities. Id. ¶ 5.

The Norcross Enterprise built the Triad1828 Centre and 11 Cooper, and applied for and received tax credits for those buildings, as a direct result of successfully extorting Developer-1 and taking his interests. Id. ¶¶ 158-72. CSB, NFI, and TMO began selling the Triad1828 Centre tax credits in 2022, which together added up to more than $26 million. Id. ¶¶ 5, 161-64. Another Enterprise-owned entity that received $18 million in extorted tax credits related to Developer-1's 11 Cooper project started selling them in 2022. Id. ¶¶ 5, 171. This entity has made millions of dollars from the sale of the extorted tax credits. Id. ¶¶ 171-72.

D. Radio Lofts: The Norcross Enterprise Plots To Extort A Developer's Option To Redevelop Unrelated Waterfront Property.

The Enterprise's methods did not involve simply wresting control of specific properties using extortionate and coercive means—it also included using their power over the levers of government to punish and make an example of anyone who crossed them, promoting the Enterprise's power. Id. ¶¶ 6, 53, 54 215. That group included Developer-1, and from March 2018 to September 2023, the Enterprise followed through on their plan to use Radio Lofts—an unrelated Camden waterfront project of Developer-1's—to "attack" him, as he had "real money … stranded" in that site. Id. ¶¶ 6, 181. This scheme not only followed through on the "enormous consequences" George Norcross had already threatened, id. ¶¶ 3, 137, but also caused Developer-1 to forfeit his option to redevelop the site, id. ¶¶ 6, 186.

The Enterprise identified at least two "point[s] of attack" on Developer-1. Id. ¶ 181. One was Developer-1's rights to develop the Radio Lofts site itself. Id. ¶¶ 181, 187. The second was the Victor Lofts, which Developer-1 planned to sell. Id. ¶¶ 181, 183. Because the sale of the Victor Lofts would include the existing payment-in-lieu-of-taxes (PILOT) agreement with the City to the would-be buyer, Developer-1 needed the City's approval. Id. ¶ 183. Yet when Developer-1 sought that approval, Philip Norcross, who had no financial

or legal interest in either the Radio Lofts or the Victor Lofts itself, intervened. Id. ¶¶ 5, 123, 183-86. To damage Developer-1, Philip Norcross instructed Camden officials to slow down the approval as part of a "legal strategy" to squeeze Developer-1 by hurting his other Camden interests. Id. ¶¶ 6, 186. He said that the approval Developer-1 needed to sell the Victor Lofts should be treated as a "package deal" with Developer-1's unrelated option to develop the Radio Lofts site—the other "point of attack." Id. ¶¶ 6, 181, 186.

Camden officials, in turn, did as they were instructed and followed the Norcross Enterprise's plan: the City did not grant Developer-1 his approval to sell the Victor Lofts PILOT agreement, and in April 2018, moved to terminate Developer-1's right altogether to redevelop Radio Lofts. Id. ¶¶ 6, 187-91. In response, Developer-1 filed suit, leading to litigation that lasted until a 2023 settlement in which Developer-1 forfeited his Radio Lofts development option, sold a parking lot to the City for $1, and agreed to pay the City $3.3 million in periodic installments. Id. ¶¶ 6, 192-97. Developer-1 believed he was in the right, but surrendered because he had concerns over corruption in Camden that was engulfing his interests and led him to believe he would not be treated fairly by the local courts; he had already paid large legal fees; and, even if he won, pending appeals would interfere with his ability to refinance or sell the Victor Lofts. Id. ¶ 196. The Enterprise thus "successfully caused [Developer-1] to

forfeit his Radio Lofts development option"—demonstrating that their threats were real, and that those who crossed them would indeed suffer financial pain, including at the hands of their own public servants. Id. ¶¶ 3, 6, 197, 215.

E. The L3 Complex: The Norcross Enterprise Plots To Extort The Property Of A Local Nonprofit.

The Norcross Enterprise did not only go after for-profit competitors—it also exerted unlawful pressure on CFP, a private nonprofit that had worked on redevelopment projects in Camden since 1984. Id. ¶¶ 16, 47-88.

The initial source of friction was the EOA itself. In meetings with CFP's CEO and President about the EOA legislation, the nonprofit leaders had proposed changes to the bill that were contrary to George Norcross's designs. Id. ¶¶ 32-33. Philip Norcross had resisted these proposals, citing his brother's preferences. Ibid. And after the EOA passed, CFP's CEO had been profiled in a business journal article about the law in September 2013—further stoking George Norcross's anger. Id. ¶ 55.

Apart from George Norcross's general reputation and influence, CFP's CEO had specific reasons to be afraid of George Norcross. He knew that, in the early 2000s, the nonprofit's founder had gotten into a dispute with George Norcross, leading to the Camden government slashing the nonprofit's funding, and causing the founder to give up his job and leave the City. Id. ¶ 53. The CEO also knew that in 2001, law enforcement recordings had captured George

Norcross using threats to try to force a councilman in nearby Palmyra, New Jersey to fire a town employee even though George Norcross had no official position in the town's government. Id. ¶ 54. He also knew that George Norcross was already mad at him personally—about the magazine profile. Id. ¶ 55.

CFP had begun talking about purchasing the L3 Complex—a pair of buildings and a parking lot near the Camden waterfront—in 2012. Around summer 2023, then-Mayor Redd, through her chief of staff, had instructed CFP's CEO to meet regularly with Philip Norcross, so that the Enterprise could keep an eye on the nonprofit and decide whether to approve its projects. Id. ¶¶ 7, 49-50. To an outside observer, that command might have seemed odd: neither Philip nor George Norcross had any legitimate roles with CFP or official positions in the city government. Id. ¶¶ 7, 49-51. But in a City controlled by George Norcross, it made sense.

CFP entered into an agreement to buy the L3 Complex from NJEDA in January 2014. Id. ¶¶ 7, 56. Because CFP was a nonprofit, it could buy the property at a discounted price. Id. ¶ 56. Meanwhile, George Norcross and other Cooper Health leaders had been looking for a place to relocate Cooper Health's offices and, by April 2014, they viewed the L3 Complex as the only workable alternative. Id. ¶¶ 64, 68.

CFP had planned to partner with two well-known local real-estate development companies, Keystone Property Group and Mack-Cali Realty Corporation (KPG/MC), selected without input from George Norcross or his associates, on the L3 Complex deal. Id. ¶ 57. The deal further angered George Norcross, who wanted either the nonprofit's CEO or its president fired as punishment for this act of independence. Id. ¶ 58.

Because George Norcross was angry, the CEO of Cooper Health—who, along with then-Mayor Redd, was also co-chair of CFP, id. ¶¶ 31, 77, told CFP's CEO and president that they had to go meet with Philip Norcross about the deal. Id. ¶ 59. At and after the meeting, Philip Norcross told CFP's CEO to partner with an investor selected by George Norcross, with whom the political boss was already part of an investment group. Id. ¶¶ 60-62. While CFP agreed to talk with George Norcross's hand-picked investor, id. ¶ 63, the nonprofit ultimately reached an agreement in principle with KPG/MC, the developers with whom the nonprofit had originally wanted to work, on April 21, 2014, id. ¶¶ 65-66.

The next day, Cooper Health's CEO emailed CFP's CEO and president to let the CEO know that Philip Norcross was "torqued" about CFP "blowing off" George Norcross's preferred developer, urging the nonprofit's leaders to "[h]andle that gingerly." Id. ¶ 67. Roughly two days later, Cooper Health's CEO spoke with George Norcross; the day after that, Philip Norcross and

another person met with CFP's CEO and told him that the nonprofit was not allowed to use KPG/MC and could only use George Norcross's preferred developer (the one with whom he had a preexisting financial relationship). Id. ¶¶ 69-70. Understanding who he was dealing with, the nonprofit leader took this as a threat, delivered on George Norcross's behalf, and the nonprofit leader thus agreed to partner with Norcross-preferred investors. Id. ¶¶ 62, 67, 69-71.

That was an obviously disadvantageous decision for the nonprofit. The Norcross-preferred investors' offers were "very very light" compared to what KPG/MC had offered. Id. ¶ 72. And indeed, because of the Enterprise's conduct, CFP—rather than partnering with its chosen developer, earning millions from the transaction, and sharing in future profits from owning the L3 Complex—received just $125,000 for its rights (far less than it stood to earn through the partnership with KPG/MC that it had wanted), and became a mere pass-through for the Enterprise's chosen developer. Id. ¶¶ 7, 71, 73, 82-83; see also id. ¶ 76 (when costs arose for replacing windows on the complex, Philip Norcross simply told the nonprofit that it would have to foot the $1.5 million bill). But as CFP's president observed in an email at the time, it was a "false choice as it doesn't seem like we will be able to close the KPG[/MC] deal given the opposition." Id. ¶ 72. The "opposition," of course, was George Norcross and his Enterprise.

During the L3 complex deal, realizing the financial harm that the Enterprise's strong-arming was causing to CFP, the nonprofit's CEO reached out to then-Mayor Redd (who was also one of the non-profit's co-chairs) for help. Id. ¶ 77. Redd did not just refuse to help, or even just ignore the request. Ibid. Instead, she reaffirmed the Enterprise's dominance: telling the nonprofit's CEO that he had to deal with Philip Norcross—who had no role with either CFP or the City—to resolve the issue and telling him at various times that his job was in danger. Ibid. Ultimately, the Enterprise's chosen developer managed to purchase the L3 Complex at a discounted price (available only because of CFP's nonprofit status), and Cooper Health—which George Norcross (and other Enterprise members) helped lead—came to own 49 percent of the entity that owned the complex and raked in over $27 million in tax credits from 2016 to 2022. Id. ¶¶ 7, 80-87; see also id. ¶¶ 207 (alleging that George Norcross "exercised significant control over Cooper Health in his position as Chairman of the Board … and frequently utilized that position to increase his profile as a civic leader").

F. The Norcross Enterprise Plots To Force CFP's CEO To Resign Under Threat Of Financial And False Reputational Harm.

After successfully extorting CFP out of its beneficial deal with KPG/MC to buy the L3 Complex, the Enterprise sought in December 2017 to remove the nonprofit's CEO from his job through more threats of financial and false

reputational harm. Id. ¶¶ 8, 173-80. The Enterprise did so in part because George Norcross "wanted to move people around in Camden" and to financially reward one of its members, defendant Redd, whose mayoral term was nearly over. Id. ¶¶ 173-74, 178.

After the Norcross Enterprise caused an unindicted co-conspirator who was the CEO of the Cooper Foundation (chaired by Philip Norcross) to be installed as co-chair of CFP, the unindicted co-conspirator "threatened the nonprofit CEO victim with harm to his reputation and termination for cause if he did not resign." Id. ¶¶ 8, 173-75. When the nonprofit CEO first protested that he had an employment contract, the co-conspirator told him that defendant Tambussi had looked at the CEO's contract and said they could "drive a truck through it." Id. ¶ 175. The co-conspirator later told the CEO that if he did not resign, "they" would just make something up about him and have him terminated for cause. Id. ¶¶ 176-77. The CEO knew that if he were fired for cause, he would lose his $50,000 bonus as well as any severance and would suffer even more reputational harm. Id. ¶ 177.

The CEO asked the co-conspirator to restructure his severance package by going to the nonprofit's compensation committee, as that would provide the co-conspirator "cover." Id. ¶ 179. But the co-conspirator responded, "It doesn't give me cover with [George Norcross] … You can't go there. You don't want

that fight. Believe me when I tell you. If you don't think he can get to anybody he wants to, you're kidding yourself … He has been relentless with me for the last year about why we pay you so much money … I'm not saying it's rational." Id. ¶ 179. George Norcross, the co-conspirator continued, "feels that he can make a decision about everything." Id. ¶ 179. While the CEO wound up receiving his anticipated bonus, he resigned from the nonprofit under these threats of financial and false reputational harm at the end of 2017, leaving a job he was happy in, at financial disadvantage to himself. Id. ¶¶ 8, 173, 180.

After the Enterprise threatened CFP's CEO into resigning, it placed the person who had been serving as CEO of the Rowan-Rutgers Board at the helm of CFP. Id. ¶¶ 8, 180. Redd then replaced the new CFP CEO as CEO of the Rowan-Rutgers Board—a significant financial benefit to her, particularly in light of the arcane tweak to the State's pension system that George Norcross's close ally in the Senate had just pushed through. Id. ¶¶ 8, 179-80. She held that position until 2022. Id. ¶ 12.

G. The Other Defendants And Their Companies Also Reap The Benefits Of The Norcross Enterprise's Crimes.

As of 2023, CSB—which was owned by holding companies controlled by, or trusts for the benefit of, George Norcross—has received more than $8.6 million in tax credits, which the company later sold for almost $8 million. Id. ¶ 198. Philip Norcross held a small share of the holding company that controlled

CSB. Id. ¶ 198. CSB paid George Norcross $29 million between 2012 and 2023. Id. ¶ 199.

As of 2023, NFI—which Brown and his family have owned and operated for years—has received $7.8 million in tax credits, which it sold for $7.1 million. Id. ¶ 200. NFI paid Brown $60 million between 2012 and 2023. Id. ¶ 201.

As of 2023, TMO—which O'Donnell has helped lead, most recently as CEO—has received $12.5 million in tax credits, which it sold for $11.5 million. Id. ¶ 202. TMO paid O'Donnell $11.2 million between 2013 and 2023. Id. ¶ 203.

Between 2016 and 2022, Cooper Health has received $27.1 million in tax credits, which it sold for $25 million. Id. ¶ 204. The receipt and later sale of the credits offset Cooper Health's tenancy in the L3 Complex, which by then Cooper Health partially owned. Id. ¶ 204. Cooper Health also received millions in profits through owning nearly half of the corporate entity formed to buy the L3 Complex. Id. ¶¶ 204-05. George Norcross chaired Cooper Health's board of trustees during that span, exercised significant control over Cooper Health at all relevant times, and used the hospital corporation to enhance his prestige and dominance within the Camden area. Id. ¶¶ 204, 207.

Between 2022 and 2023, 11 Cooper—owned in part by George Norcross, Brown, and O'Donnell—received almost $3.5 million in tax credits, which it

sold for $4.2 million as part of an agreement to sell ten years' worth of tax credits over eight payments. Id. ¶ 211.

ARGUMENT

POINT I

THE INDICTMENT IS FACIALLY VALID.

In asking this Court to throw out the grand jury's Indictment based only on the four-corners of its allegations, Defendants face an impossibly uphill climb. They largely do not try to meet this burden, instead effectively treating the Indictment as the totality of the State's case-in-chief and offering what amounts to a request for a directed verdict at the close of evidence, based on Defendants' own inferential characterizations of the allegations. (Indeed, while Defendants describe their brief as raising purely legal questions, the substance clearly implicates factual disputes that are inappropriate for a facial challenge.) New Jersey courts, however, will grant the extraordinary remedy of a facial dismissal of an indictment only when there is something manifestly or palpably wrong with the Indictment—essentially, when it either fails to provide a defendant with sufficient notice of what is charged, or else when it alleges a crime that is legally impossible as a matter of pure statutory or constitutional interpretation. Neither circumstance is met here.

Even if this Court humors Defendants' attempt to level what looks more like a civil Rule 12(b)(6) motion to dismiss a complaint in federal court,

Defendants' facial attack must be denied. The grand jury properly alleged each of the crimes it charged, and it is easy to see why: as alleged, Defendants formed an enterprise that would pursue both licit and illicit objectives, in both licit and illicit ways, including through a pattern of coercive and, ultimately, extortionate behavior. It engaged in that behavior to facilitate the receipt and sale of millions of dollars in tax credits, and it used both the corporations it controlled and the instruments of the Camden government to accomplish its ends. Indeed, one member of the enterprise was the City's mayor, who the grand jury validly alleged to have used the powers of her public office in an unauthorized way—to illegally advance the private ends of the Enterprise's members. Defendants' facial motions are without merit.

A. Defendants' Arguments Veer Far From The Narrow Circumstances In Which Facial Dismissal Is Appropriate.

Once a grand jury has returned an indictment, a defendant asking a trial court to dismiss that indictment faces a high bar. The indictment carries a presumption of validity, so a court can order the "draconian remedy" of its invalidation, State v. Williams, 441 N.J. Super. 266, 271 (App. Div. 2015) (citation omitted), only on "the clearest and plainest ground," State v. Campione,

462 N.J. Super. 466, 492 (App. Div. 2020).[1] For good reason: it is the grand jury that serves the "crucial function in our criminal justice system" of ensuring "there is adequate basis for bringing a criminal charge." State v. Saavedra, 222 N.J. 39, 56 (2015) (citation omitted). Thus, for a single judge to cast aside the grand jury's work at the outset of the case, the indictment must be "manifestly deficient or palpably defective." State v. Hogan, 144 N.J. 216, 228-29 (1996).

That is especially true where, as here, Defendants level only a facial charge. Broadly speaking, a defendant seeking dismissal of an indictment has two options—a facial motion, or a challenge to the State's presentation to the grand jury. See, e.g., Campione, 462 N.J. Super. at 491-92. Courts have granted facial motions in the rare instances when either (1) a conviction of the crime alleged is a legal impossibility—whether as a matter of pure statutory interpretation, e.g., State v. Perry, 439 N.J. Super. 514, 532 (App. Div. 2015); State v. Riley, 412 N.J. Super. 162, 169 (Law Div. 2009), or a simple failure to recite the crime's elements correctly, e.g., State v. Algor, 26 N.J. Super. 527, 535 (App. Div. 1953)—or (2) where the defendant had insufficient notice of the

[1] Defendants assert that an indictment's presumption of validity vanishes when, "as here, a motion to dismiss raises 'a purely legal question." P. Norcross Br. at 14 (citing State v. Derry, 250 N.J. 611, 626 (2022)). But defendants' motions here turn on both questions of fact and law. And under Derry, appellate courts review with fresh eyes motions to dismiss that hinge only on legal questions; it does not provide that the presumption disappears when a trial court decides motions in the first instance. Cf. 233 N.J. at 626.

charge against him and thus could not fairly prepare a defense, e.g., State v. Dorn, 233 N.J. 81, 94 (2018). Here, because these motions raise only a facial attack, Defs.' Oct. 11, 2024 Ltr. at 1 n.1, Defendants may prevail only by showing that a conviction would be a legal impossibility, or that they were deprived of sufficient notice.[2] They cannot do either, and the quarrels they raise are instead properly left for a future stage of this case—most properly, argument to the jury.

This Court can easily dispense with any notice theory, to the extent Defendants press one. This type of facial attack tests only whether the State's indictment suffices to "apprise a defendant of 'that against which he must defend.'" State v. Lisa, 391 N.J. Super. 556, 578 (App. Div. 2007) (citation omitted). Thus, "the fundamental inquiry is whether the indictment substantially misleads or misinforms the accused as to the crime charged." Dorn, 233 N.J. at 94 (citation omitted).

The indictment must therefore allege the essential facts of the crime, see R. 3:7-3(a)—a test it can fail if, for example, the indictment charges a third-

[2] Courts reviewing the State's presentation to the grand jury ask other questions, such as whether, with "the evidence and the rational inferences from that evidence viewed in the light most favorable to the State," it presented "some evidence establishing each element of the crime to make out a prima facie case." Saavedra, 222 N.J. at 57 (citation omitted). But no such challenge is raised here. See also infra at 35-38.

degree crime and then the State seeks to amend it to a second-degree crime as trial approaches, Dorn, 233 N.J. at 96-98. But an indictment need not walk through the majority of the State's evidence—it simply must "enable a defendant to prepare a defense," State v. Jeannotte-Rodriguez, 469 N.J. Super. 69, 103 (App. Div. 2021), and ensure that the defendant cannot be prosecuted later for the same offense, or convicted by a petit jury "of an offense which the grand jury did not in fact consider or charge," State v. Lopez, 276 N.J. Super. 296, 302 (App. Div. 1994). "The key is intelligibility"—not comprehensiveness or persuasiveness. Dorn, 233 N.J. at 94. Here, Defendants do not argue that any essential element or fact is missing that would deprive them of notice sufficient to prepare a defense, to avoid double jeopardy, or to be convicted for something other than what the grand jury charged. That forecloses any notice-based theory. See Jeanotte-Rodriguez, 469 N.J. Super. at 103; Lopez, 276 N.J. Super. at 302.

Defendants get no further trying to establish legal impossibility, although they expend much greater effort trying. Such claims almost exclusively arise where the possibility of a conviction rises and falls with a purely legal matter of constitutional or statutory interpretation. Take State v. Perry, 439 N.J. Super. 514 (App. Div. 2015), in which defendants were charged under N.J.S.A. 2C:40-26 with driving under a drunk-driving-related suspension, as an example. See id. at 519, 522-23. The wrinkle was that, even as alleged, each defendant's

period of court-imposed suspension had ended before the actus reus occurred; the State's theory of liability turned entirely on concluding that the statute also criminalized driving under an ongoing period of administrative suspension, before the defendants had their licenses reinstated. See id. at 519, 525-26. And guided entirely by the ordinary tools of statutory interpretation, the Appellate Division concluded that the statute did not cover driving under such administrative suspensions—meaning that even if every fact in the world was as the grand jury believed, a conviction was a legal impossibility. See id. at 526-27, 530, 532; see also, e.g., State v. Higginbotham, 257 N.J. 260, 270 (2024) (whether subsection of endangering-welfare statute satisfied First Amendment); State v. Morrison, 188 N.J. 2, 12 (2006) (whether defendant could be convicted of distribution of heroin to someone with whom he shared joint possession); State v. Thompson, 402 N.J. Super. 177, 198 (App. Div. 2008) (whether violations of Conflicts of Interest Law could give rise to criminal liability and what "duties" are "clearly inherent" in a public office under N.J.S.A. 2C:30-2(b)); State v. Mason, 355 N.J. Super. 296, 300-01 (App. Div. 2002) (whether private citizens performing services under a government contract are "public servants" within the meaning of N.J.S.A. 2C:30-2); State v. Riley, 412 N.J. Super. 162, 165 (Law Div. 2009) (whether unauthorized-computer-access law

covered employees granted access to computerized information who viewed or used such information contrary to employer's policies).[3]

Such facial attacks entail no analysis of the facts at all—and certainly no dispute about how to interpret the meaning of contested facts—but rather interpretation of matters of pure law. A defendant's guilt in such cases could not turn on whether the State had more evidence waiting in the wings, or whether a jury would likely find certain acts to be either malign or business-as-usual, but rather on whether "the facts presented to the grand jury simply do not fall within the statute invoked." E.g., Riley, 412 N.J. Super. at 169. And that analysis, naturally, could only occur when "the facts presented to the grand jury" were known, simple, and wholly undisputed. See ibid.; accord United States v. Wedd, 993 F.3d 104, 121 (2d Cir. 2021) ("Unless the government has made what can fairly be described as a full proffer of the evidence it intends to present at trial, the sufficiency of the evidence is not appropriately addressed on a pretrial motion to dismiss an indictment." (cleaned up)); United States v. Phillips, 690

[3] To the extent this Court wishes to consult non-New Jersey case law, it is not to the contrary. See also United States v. Brissette, 919 F.3d 670, 675-76 (1st Cir. 2019) ("a pretrial dismissal is essentially a determination that, as a matter of law, the government is incapable of proving its case beyond a reasonable doubt"); United States v. Sittenfeld, 522 F. Supp. 3d 353, 367 (S.D. Ohio 2021) ("[A]n indictment is subject to dismissal where it alleges conduct 'inconsistent with' the charged crime (i.e., conduct that shows that the crime did not occur.)"). But binding New Jersey precedent disposes of Defendants' motions.

F. Supp. 3d 268, 278 (S.D.N.Y. 2023) (discussing this "extraordinarily narrow exception to the rule that a court cannot test the sufficiency of the government's evidence on a pretrial motion to dismiss" (cleaned up)).[4]

Defendants cannot come close to satisfying this standard. Here, unlike in those cases, there are substantial disputes of fact; the State has made no full proffer of the evidence; Defendants are not asking this Court to resolve a matter of pure constitutional or statutory interpretation; and nothing in the Indictment would render the crimes alleged a legal impossibility. Defendants' papers claim that they are accepting everything in the four corners of the Indictment as true, but even a cursory glance at the Indictment's first few pages shows otherwise. Defendants do not, for example, accept as true that George Norcross "led a criminal enterprise whose members and associates agreed the enterprise would extort others through threats and fear of economic and reputational harm and commit other criminal offenses to achieve the enterprise's goals," Indict. ¶ 1; that, in addition to overt threats, they "conspired to have the City of Camden condemn the developer's rights through legal action to gain leverage in their

[4] As noted, facial attacks can also arise when an indictment simply fails to properly allege all elements of the crime, such as the correct mens rea. See Algor, 26 N.J. Super. at 535 ("It is basic that when a statute requires a specific criminal intent, the indictment charging the commission of the offense must allege the existence of such intent."). But Defendants do not (and could not) claim such a defect exists here.

negotiations; (2) plotted for Camden City officials to publicly 'accus[e]' the developer of being 'not a reputable person; (3) caused certain Camden City officials, including the Mayor, to stop communicating with the developer; and (4) plotted to use the Camden government to damage an unrelated project of the developer's," all for the purpose of coercing a private citizen to give up his property for their financial benefits, id. ¶ 4; see id. ¶ 6; that they used their power over city government to coerce and extort a non-profit to forgo a lucrative contract and to force its CEO out of the CEO's job "through threats to his reputation and economic harm," id. ¶¶ 7-8; or that they forced the non-profit CEO out for the specific purpose of delivering a financial benefit to one of the defendants, id. ¶ 9; see also, e.g., id. ¶¶ 212-240. Here, in contrast to cases like Perry, to accept all the facts alleged is simply to concede guilt.

Instead of fighting about the proper interpretation of the law, Defendants attack the persuasiveness of the Indictment's narrative by disputing the proper interpretation of their actions—arguing, for instance, that George Norcross's tactics should be understood as pure "hard bargaining, not criminal extortion or coercion." E.g., Omnibus Br. 14. But that transforms the standard for New Jersey grand jury indictments from one of pure legal impossibility to one akin to the federal standard for civil motions to dismiss, where courts interrogate the "plausibility" of the civil complaint's factual allegations. E.g., Ashcroft v.

Iqbal, 556 U.S. 662, 678 (2009). The standard for criminal indictments is different, see, e.g., Dorn, 233 N.J. at 93-94—and sensibly so, given that only criminal indictments must first be approved by "the conscience of the community," State v. Sivo, 341 N.J. Super. 302, 325 (Law. Div. 2000). Put simply, under binding precedent, "it is not the role of a reviewing court to question the strength of the case." State v. L.D., 444 N.J. Super. 45, 55 (App. Div. 2016) (cleaned up). Defendants' arguments are for the jury, not these facial motions to dismiss.[5]

Nor can Defendants convert their facial motions to dismiss into an attack on the sufficiency of the evidence presented to the grand jury simply because the grand jury returned a speaking indictment. A speaking indictment is not a "full proffer" of the State's case, e.g., Phillips, 690 F. Supp. 3d at 278, and an indictment is not invalid "merely because the specific facts that it sets forth are insufficient, in and of themselves, to unequivocally show that a crime did

[5] Philip Norcross makes plain this effort to replace New Jersey law's facial-indictment standard with the federal standard for reviewing motions to dismiss civil complaints, P. Norcross Br. 17 (citing United States v. O'Connell, No. 17-cr-50, 2017 U.S. Dist. LEXIS 171160, at *6 (E.D. Wis. Oct. 16, 2017)), but this Court is bound by published New Jersey appellate precedent, not a single unpublished case from the Eastern District of Wisconsin. And in any event, O'Connell itself does not say quite what Philip Norcross suggests—it says, instead, that "a motion to dismiss an indictment is more akin to a civil Rule 12(b)(6) motion than to a civil summary judgment motion." 2017 U.S. Dist. LEXIS 171160, at *6 (quoting United States v. Apple, 927 F. Supp. 1119, 1121 (N.D. Ind. 1996)). That comparative statement is true, but beside the point here.

occur," Sittenfeld, 522 F. Supp. 3d at 367. A grand jury "is permitted to give a defendant more detail regarding the evidence against him without assuming the risk that a court will treat such detail as a proffer of all of the evidence." Phillips, 690 F. Supp. 3d at 278. Indeed, were it otherwise, the inequity would be obvious: any defendant for whom the grand jury issued a speaking indictment would gain a windfall, becoming able to level a special, preliminary challenge that other defendants could not—and indeed the grand jury would seemingly be punished for providing a defendant with more notice of the nature of the charges against him. That, of course, is not the law, and Defendants are subject to the same facial standard as everyone else—foreclosing their attempt to treat the Indictment as tantamount to the State resting its case.

As noted, see supra at 29, the alternative to a facial attack on an indictment is an attack on the State's presentation to the grand jury—a challenge that often asks whether the State presented "some evidence establishing each element of the crime to make out a prima facie case," or alternatively whether some other error infected the State's presentation, such as a failure to present exculpatory evidence or "a defense of justification that should have been presented." Saavedra, 222 N.J. at 57; see Hogan, 144 N.J. at 228-29. Those types of challenges account for most of the cases Defendants cite to describe the governing legal standard. See Omnibus Br. 9-10; cf. Saavedra, 222 N.J. at 57;

L.D., 444 N.J. Super. at 61; State v. Talafous, No. A-1838-16T1, 2017 WL 2544790, at *4 (App. Div. June 13, 2017); [6] State v. Meier, No. A-1846-13T3, 2014 WL 1515884, at *4 (App. Div. Apr. 21, 2014); State v. Tucker, 473 N.J. Super. 329, 344 (App. Div. 2022) (presentation of improper evidence to grand jury); State v. Brady, 452 N.J. Super. 143, 165-66 (App. Div. 2017) (sufficiency of evidence and legal instructions presented to grand jury). But no such challenge is presented here, where only the four corners of the indictment—and not a full proffer of evidence, or anything in the grand jury transcripts—is before this Court. See supra at 27.

Given the nature of Defendants' claims at this stage and the proper standard applicable to those claims, this Court can easily reject the pending motions to dismiss, as there is nothing "manifestly deficient or palpably defective" about the Indictment. See Hogan, 144 N.J. at 228-29. Indeed, Defendants' focus on an in-depth interpretation of the allegations recited in the Indictment reveals the considerable distance between their approach—better suited to a jury argument—and what New Jersey courts adjudicating facial motions to dismiss indictments actually require under binding precedent. Still, for completeness, this opposition responds both to their improper

[6] The State is providing this and other unpublished opinions under R. 1:36-3 as stated in the Certification of Deputy Attorney General Adam D. Klein. The State knows of no contrary unpublished opinions.

recharacterization of the facts alleged in the Indictment, and explains why the grand jury's charges would satisfy even the unprecedented type of facial scrutiny they propose—while emphasizing again that such arguments stray far beyond the legal impossibility that Defendants would have to show to obtain the four-corners dismissal they seek under New Jersey law, with or without their improper characterizations of the facts.

B. The Indictment Properly Pleads Each Crime Charged.

The Indictment describes in detail what the grand jury found to be criminal, and thus ensures that Defendants can adequately prepare a defense, avoid double jeopardy, and safeguard against any substitution at trial of a crime the grand jury did not charge. See Jeannotte-Rodriguez, 469 N.J. Super. at 103; Lopez, 276 N.J. Super. at 302. And there is nothing legally impossible—or even implausible, if that were the standard (which it is not)—about the grand jury's allegations. Defendants are free to challenge, by separate motion, whether the grand jury saw "some evidence" sufficient to make out a prima facie case, Saavedra, 222 N.J. at 57, and in addition to argue to the petit jury, at trial, that the State has not proven its case beyond a reasonable doubt. At this stage, all this Court need confirm is that their facial motions fail.

1. The Grand Jury Properly Charged Racketeering Conspiracy.

Count One properly charges that Defendants violated N.J.S.A. 2C:41-2(d) by conspiring to violate N.J.S.A. 2C:41-2(c)—that is, by conspiring to conduct or participate in the Enterprise's affairs, directly or indirectly, through a pattern of racketeering activity. Defendants seek to avoid this charge by claiming that the Indictment needs to definitively allege which acts of substantive racketeering Defendants agreed to engage in, but they are wrong twice over: first, because the Indictment need not do so at all, and second, because it does so anyway.

Subsection (d) of New Jersey's RICO statute, "modeled upon its federal counterpart," makes it a crime to conspire, as defined in N.J.S.A. 2C:5-2, to violate any provision in the RICO statute. State v. Cagno, 211 N.J. 488, 508 (2012); see N.J.S.A. 2C:41-2(d). One of those provisions, subsection (c), prohibits conducting or participating, directly or indirectly, in any commercial enterprise "through a pattern of racketeering activity." N.J.S.A. 2C:41-2(c); see State v. Taccetta, 301 N.J. Super. 227, 245 (App. Div. 1997). Put simply, the State must allege: "(1) the existence of an enterprise; (2) that the enterprise engaged in, or its activities affected, trade or commerce; (3) that defendant was employed by or associated with the enterprise; [and] (4) that he or she [agreed to] participated in the conduct of the affairs of the enterprise … through a pattern

of racketeering activity." State v. Ball, 141 N.J. 142, 176 (1995). Here, Defendants do not dispute that their actions affected commerce. They instead argue that the grand jury failed to allege an enterprise, Brown Br. at 8-9 n.6; that the grand jury failed to allege that they agreed to participate in the enterprise, id. at 20; and, primarily, that the Indictment does not allege substantive racketeering predicates to support the racketeering conspiracy charge, Omnibus Br. at 10-26, 37; see also Brown Br. 9-23.

While all three objections are misguided, the first two objections can be dealt with especially quickly. An enterprise "includes any individual, sole proprietorship, partnership, corporation, business or charitable trust, association, or other legal entity, any union or group of individuals associated in fact although not a legal entity." N.J.S.A. 2C:41-1(c). This requires only "a group of people, however loosely associated, whose existence provides the common purpose of committing two or more predicate acts." State v. Ball, 268 N.J. Super. 72, 107 (App. Div. 1993) (reasoning that "a requirement that there be evidence of a strict and ascertainable underlying structure" would be inconsistent with statute's legislative purpose). In Ball, for example, the Appellate Division concluded that the defendants constituted an enterprise under RICO even though they were "a somewhat disorganized group of individuals,"

with "no real 'leader,'" who "did not even seem to like each other, and were often engaged in double-dealing and back-stabbing." Id. at 107-08.

Here, Defendants were much more organized than those in Ball. George Norcross was indisputably the Enterprise's leader, dictating its priorities and agenda. Indict. ¶ 215(b). Philip Norcross often acted as George's proxy, delivering George's orders both inside and outside the Enterprise. See id. at ¶ 43(a) ("I try to practice as little law as possible … just for laughs and giggles I run a law firm. And for more laughs and giggles, my siblings and I get around the table and decide what [George Norcross's] agenda is in Camden."); see also, e.g., id. ¶¶ 6-7, 32-33, 49-51, 59, 70. Philip Norcross and Tambussi were the Enterprise's lawyers, able to wield their professional skills to the Enterprise's advantage—beyond the scope of lawful practice. See, e.g., id. ¶¶ 148-50, 156. O'Donnell and Brown were businessmen, who, among other things, participated directly in plotting to use a municipal entity to file a condemnation action to gain leverage against or punish Developer-1, supplied financial capital and in turn used their various entities to collect the tax credits at the heart of their conspiracy. See id. ¶¶ 159-160. And Redd was the Mayor of Camden—the most powerful government official in the City—allowing the Enterprise to directly control and leverage the people's government to pick winners and losers among its constituents. See id. ¶¶ 124-25, 134. In short, the grand jury properly

alleged an "enterprise," as that term is defined under binding precedent, in which Defendants participated.

The grand jury also properly charged the final element of a RICO conspiracy: "an agreement to violate the substantive provisions of the RICO Act." Ball, 141 N.J. at 176. That element itself includes two subsidiary elements: (1) the existence of "an agreement to conduct or participate in the conduct of the affairs of the enterprise" and (2) an agreement that "at least two predicate acts" will be committed by the Enterprise. Ibid.; see also id. at 177-81. Importantly, however, the State need not prove that the "'defendant himself agreed that he would commit two or more predicate acts,'" State v. Cagno, 211 N.J. 488, 510 (2012) (quoting United States v. Yannotti, 541 F.3d 112, 121 (2d Cir. 2008)) (emphasis added), nor that the conspirators were "involved in all aspects of the conspiracy," "know each other," "have personal knowledge of the outcome of the plan," or have "join[ed] in the common purpose at the same time," Ball, 141 N.J. at 178-80 (citations omitted). Rather, "'a defendant need only know of, and agree to, the general criminal objective of a jointly undertaken scheme' to be found guilty of RICO conspiracy." Cagno, 211 N.J. at 510 (quoting Yannotti, 541 F.3d at 122); see also Ball, 141 N.J. at 179 ("A defendant may be guilty of a RICO conspiracy without committing a substantive RICO offense."). In other words, an indictment need not specify, and a jury need not

find, which specific predicate acts a defendant agreed would be committed, so long as the defendant agreed to further an endeavor that involved such acts.

That makes sense as a matter of basic statutory construction. As to the text, reading the RICO conspiracy provision (subsection (d)) to require allegations (and eventually proof) of a specific substantive predicate (subsections (a)-(c)) would turn subsection (d) into pure surplusage, since "it would criminalize no conduct not already covered by" the subsections (a)-(c). United States v. Applins, 637 F.3d 59, 81 (2d Cir. 2011) (quoting United States v. Glecier, 923 F.2d 496, 500 (7th Cir. 1991)). And as to context and purpose, it bears emphasizing that a "conspiracy conviction does not turn on" the specific act itself—the crime is "in the forming of the scheme or agreement." Ball, 141 N.J. at 178 (cleaned up); see also Salinas v. United States, 522 U.S. 52, 65 (1997) ("It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself."). If it were otherwise, even the most dedicated member of a gang or mafia crew could remain perpetually innocent of RICO conspiracy so long as they "neither agreed to commit personally nor actually participated in the commission of the predicate acts"—an untenable reading of the statute. See Ball, 141 N.J. at 181; cf. N.J.S.A. 2C:41-6 (providing

that the provisions of N.J.S.A. 2C:41-2 "shall be liberally construed to effectuate the remedial purposes of this chapter").

Federal law confirms that "a RICO conspiracy charge need not specify the predicate or racketeering acts that the defendants agreed would be committed." Applins, 637 F.3d at 81; see Ball, 141 N.J. at 179 ("The federal understanding of the RICO conspiracy offense comports with our traditional treatment of conspiracy."); cf. Cagno, 211 N.J. at 508 ("[B]ecause our New Jersey RICO statute is modeled upon its federal counterpart, it is appropriate to accept guidance from the federal RICO cases." (cleaned up)). Take the U.S. Supreme Court's decision in Salinas v. United States, 522 U.S. 52 (1997), in which a defendant had been charged with one substantive RICO count, 18 U.S.C. § 1962(c), and one RICO conspiracy count, id. § 1962(d). 522 U.S. at 55. The jury had acquitted the defendant of the substantive RICO charge, yet convicted him of the RICO conspiracy charge, and the defendant thus argued that "[t]here could be no conspiracy offense … unless he himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under § 1962(c)." Id. at 61. The Court rejected that argument, explaining that "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense"; the co-conspirators simply "must agree to pursue the same criminal objective." Id. at 63-64. Thus, the

defendant in Salinas could be found guilty of conspiracy because he "intend[ed] to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense," so long as "he adopt[ed] the goal of furthering or facilitating the criminal endeavor." Id. at 65. And he could do that "in any number of ways short of agreeing to undertake all of the acts necessary"—such as "agreeing to facilitate only some of the acts leading to the substantive offense." Ibid.; see also United States v. Cornell, 780 F.3d 616, 626 (4th Cir. 2015); United States v. Randall, 661 F.3d 1291, 1297 (10th Cir. 2011); Applins, 637 F.3d at 81; Glecier, 923 F.2d at 501; United States v. Phillips, 874 F.2d 123, 130 (3d Cir. 1989).

Consistent with this wealth of precedent, the grand jury therefore properly charged Defendants with agreeing to participate in the Enterprise, and agreeing that the Enterprise that would achieve its goals through a pattern (at least two predicate acts) of racketeering activity—including extortion, financial facilitation, and corporate misconduct. Indict. ¶¶ 213, 215(a)-(i). While a petit jury must ultimately conclude that each Defendant in fact agreed to enhance the Enterprise's power and wealth in this way, at this stage, there is nothing implausible—let alone impossible—about the grand jury's conclusion that Defendants did indeed so agree. Nor is it any bar to liability if specific

defendants did not agree that him or herself would personally commit at least two predicate acts. Contra, e.g., Brown Br. 17-23.[7]

To the extent Defendants resist this conclusion by relying on Karo Marketing Corp. Inc. v. Playdrome America, 331 N.J. Super. 430, 444 (App. Div. 2000), they overread that civil case. See Omnibus Br. at 37; Brown Br. at 18. To begin with, the "criminal and civil pleading standards are different, even in RICO cases"—and thus "cases about motions to dismiss civil RICO complaints are inapposite when considering a criminal indictment." United States v. Raniere, 384 F. Supp. 3d 282, 302 (E.D.N.Y. 2019). In any event, nothing in the Karo opinion suggests that it concerns a RICO conspiracy allegation, rather than a substantive RICO allegation, see 331 N.J. Super. at 438, 444—indeed, the appellate briefing suggests otherwise, see Resps.' Br., No. A-3328-98T1, 1999 WL 34590547, at *3 (specifically identifying the plaintiff's

[7] To the extent Brown argues that the Indictment does not properly allege he agreed to participate in an enterprise that would engage in a pattern of racketeering activity, Brown Br. 17-23, his argument improperly seeks to make a sufficiency of the evidence argument in a facial motion. The Indictment plainly alleges an agreement to a pattern. Indict. ¶¶ 212-16. Moreover, in quibbling with the sufficiency of the evidence cited in the speaking Indictment regarding an agreement to a pattern of activity, Brown ignores the Indictment's allegations that he agreed, among other things, not to a single phone call, Brown Br. 20, but to a scheme to take Developer-1'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. While not legally required at this stage, the "threat of continuity," Brown Br. 19, is clear from the facial allegations.

allegation as racketeering "under N.J.S.A. 2C:41-2(c)"). And defendants cite no other authority (and the State knows of none) that would require a grand jury to charge a substantive racketeering count in order to charge a racketeering conspiracy count. Thus, it is hardly clear that Karo can be read to say anything at all about any RICO conspiracy (as opposed to substantive racketeering), let alone to render a criminal RICO conspiracy charge categorically deficient if it does not come with a substantive racketeering count. Such a result would, moreover, defy both common sense and precedent. After all, the wrong targeted by a conspiracy statute is the illicit agreement, and that harm can exist even when no substantive racketeering comes to pass. See, e.g., Ball, 141 N.J. at 178-79; Salinas, 522 U.S. at 65. And if defendants' theory were correct, it is hard to see how the U.S. Supreme Court could have affirmed the RICO conspiracy conviction in Salinas when that defendant had been acquitted of substantive racketeering—yet that is precisely what the Court held. 522 U.S. at 65.

In any event, even if such a requirement existed, it would be met here. The grand jury alleged that Defendants, "with the purpose of promoting and facilitating the commission of the crime of racketeering, did conspire, confederate and agree that": (a) "one or more of them would engage in conduct which would constitute the crime of racketeering"; and (b) "one or more of them would aid in the planning, solicitation and commission of the crime of

racketeering" by agreeing as employees or associates of an enterprise to conduct and participate in the "enterprise's affairs through a pattern of racketeering activity." Indict. ¶ 213. And it alleged that the contemplated pattern of racketeering would consist of at least two incidents of racketeering conduct, including 18 U.S.C. § 1951 (Hobbs Act Extortion); N.J.S.A. 2C:20-5 (Theft by Extortion); N.J.S.A. 2C:21-25 (Financial Facilitation of Criminal Activity); N.J.S.A. 2C:21-9 (Misconduct by Corporate Official); and N.J.S.A. 2C:5-2 (Conspiracy to commit these crimes). Indict. ¶ 216. Each of these crimes fall within the statutory definition of racketeering activity under N.J.S.A. 2C:41-1(d). Indict. ¶ 216. And the Indictment states the approximate time and place of the alleged conspiracy, describes the nature and organization of the enterprise, its purposes and objectives, and its means and methods of operation. Id. at 81-86, ¶¶ 212-216. So even proceeding under Defendants' erroneous assumption, the grand jury validly charged both racketeering conspiracy and multiple predicate substantive racketeering offenses as objects of that conspiracy, including through the extortionate and coercive conduct the next section discusses. In short, there is nothing "manifestly deficient or palpably defective" about Count One, see Hogan, 144 N.J. at 228-29, so Defendants' facial challenge to it fails.

2. The Grand Jury Properly Charged Extortion and Coercion Conspiracies.

The Indictment validly alleges wrongful and unlawful threats of financial and reputational harm, both express and implied, that strayed beyond the bounds of any particular economic transaction and that used the Enterprise's power over Camden's government to cause justifiable fear. In other words, the Indictment properly charges extortion and coercion conspiracies. Defendants seek to avoid this result, but they overlook these crucial differences between the facially charged conduct and garden-variety hard-bargaining, and they rely on defense-favorable inferences that are best suited to jury argument and are wholly out of place in these facial motions to dismiss.

1. Start with Hobbs Act extortion. The Hobbs Act covers anyone who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do." 18 U.S.C. § 1951 (a). The Act in turn defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." Id. § 1951(b)(2). Here, there is no real question that the grand jury charged defendants with causing the relevant victims to surrender property, see Indict. ¶¶ 5, 6, 7, 82, 152, and 195, so the only question is whether the grand jury also properly charged them with doing so in an extortionate way. It did.

Courts define extortion with a healthy dose of common sense. Extortion does not require that "fear be created by implicit or explicit threats"; instead, it requires only "evidence that the defendant knowingly and willfully created or instilled fear, or used or exploited existing fear with the specific purpose of inducing another to part with property." United States v. Coppola, 671 F.3d 220, 241 (2d Cir. 2012) (citation omitted). Thus, a threat need not be spoken or written: "the possibility of … serious adverse consequences may be inferred from the circumstance of the threat or the reputation of the person making it." United States v. Boggi, 74 F.3d 470, 477 (3d Cir. 1996) (citation omitted). Nor must the character of a threat be obvious to all who hear it: "a defendant who threatens a victim in esoteric, veiled, or elliptical language need not offer a simultaneous translation or define his terms, as long as he thinks or should think the victim understands what has been said." United States v. Hairston, 46 F.3d 361, 365 (4th Cir. 1995) (quoting United States v. Goodoak, 836 F.2d 708, 712-13 (1st Cir. 1988)).

United States v. DiSalvo, 34 F.3d 1204 (3d Cir. 1994), illustrates these principles. Defendant there unsuccessfully argued that his "mere use" of a mafia boss and underboss to help collect a debt was not extortionate. Id. at 1211. Because the debtor knew the mafia's reputation for violence, the group's leaders "did not have to threaten" him. Id. at 1212. Nor did the debtor need to "be

specifically alerted to the repercussions of a failure to pay," given his familiarity with the men and their organization's reputation. Id. at 1212-13. Rather, the men's "presence" when collecting the debt was enough to find that defendant used "an implied threat of violence to intimidate [the debtor]." Ibid.

Here, the grand jury's indictment highlights both explicit and implicit threats conveyed by or on behalf of George Norcross, as well as instillation and exploitation of fear that any similarly situated victim—familiar with Norcross's power and methods—would have felt. As to the Triad1828 Centre and 11 Cooper conspiracy, for example, when negotiations between George Norcross and Developer-1 did not proceed to Norcross's liking, he "threatened Developer-1 with economic and reputational harm." Indict. ¶ 95. With Philip Norcross on the line, George Norcross said, "If you f**k this up, I'll f**k you like you've never been f**ked up before." Id. ¶ 117. He added that he would "make sure the developer never did business in Camden again." Ibid. Indeed, on a recorded call, he later admitted: "I said … 'this is unacceptable. If you do this, it will have enormous consequences.' [Developer-1] said, 'Are you threatening me?' I said, 'Absolutely.'" Id. ¶ 137; see also id. ¶ 142-43 (George Norcross recorded saying that Developer-1 would "come under some very serious accusations from the City"; that the Enterprise needed "a bat over his head"; and that by using the City, they could make Developer-1 "cry uncle").

As in DiSalvo, defendants did not need to directly threaten Developer-1 (although they did), particularly given George Norcross's reputation for controlling Camden government. See 34 F.3d at 1212-13. Rather, Developer-1 took George Norcross's threatening words "seriously" for good reason. Id. ¶ 118. He experienced firsthand, for instance, the political boss's ability to get City officials who had once been responsive to suddenly freeze him out. Id. ¶¶ 124-25.

Indeed, other events only confirm that Developer-1's fears were well-grounded—and show that the Enterprise's pattern of extortionate behavior extended to punishing those who defied them. After all, not only did the Enterprise plot to use the City government to initiate public condemnation proceedings in order to gain leverage over the specific parcel at issue, id. ¶¶ 127-35, but they also schemed to use the City government to damage Developer-1's reputation generally and to harm his business interests—including by delaying the approval of the Victor PILOT transfer and using the fact that he had money "stranded" in the Radio Lofts site and needed the City's assistance to move that project forward as "another point of attack." Id. ¶¶ 4, 6, 95, 181, 186. Put bluntly, with respect to the Triad1828 Centre, 11 Cooper, and Radio Lofts properties, the grand jury charged that Defendants agreed to participate in a scheme through which they would threaten and use their control over the

Camden government and other power to strong-arm Developer-1 into surrendering his rights for their own private gain, and to reinforce these threats by using the Camden government to punish Developer-1 for acts of defiance. That is extortionate behavior. See Boggi, 74 F.3d at 477; Hairston, 46 F.3d at 365.[8]

So too with the L3 Complex scheme. There, defendants unlawfully exploited CFP's CEO's fear that, if CFP pursued the best deal for itself with a partner of its own choosing, it—and he personally—would suffer reprisals at the hands of both George Norcross personally and the City government. Indict. ¶¶ 8, 173-75, 217-18. And again, like a demand for payment of a debt issued with mafia affiliates standing nearby, the implications were clear to the victims. See, e.g., DiSalvo, 34 F.3d at 1212-13. After all, the nonprofit's CEO understood that (1) George Norcross controlled Camden's government; (2) that standard

[8] To the extent Defendants' resist that conclusion as to the Radio Lofts conspiracy because the Enterprise did not itself obtain Developer-1's "Radio Lofts rights," Omnibus Br. 7, they misunderstand either the charges or the law. As to the charges, punishing Developer-1 by using the City—an entity controlled by the Enterprise—to interfere with an entirely unrelated transaction and cause Developer-1 to release his redevelopment option only confirms the unlawful and extortionate nature of the Enterprise. See Indict. ¶¶ 181-86. And as to the law, courts have unanimously agreed that one can "obtain" another's property under the Hobbs Act by "by directing its transfer to another of his choosing, irrespective of whether he receives a personal benefit as a result." See United States v. Brissette, 919 F.3d 670, 679 (1st Cir. 2019) (collecting cases); see also id. at 680 (agreeing).

fare for Norcross was to use that control to punish those who defied him (including by having a local official in a nearby municipality fire an employee); and (3) that Norcross had already done just that to CFP by having Camden officials cut the nonprofit's funding after an earlier dispute with the organization's founder. Indict. ¶ 53-55. So when Philip Norcross—who does, and is known to, implement George Norcross's agenda, id. ¶ 70—told the CEO that CFP was "not allowed" to choose its own partner and had to use the Enterprise's chosen partner instead, it is easy to see why the nonprofit's CEO took those words as a threat, id. ¶ 71. See also id. ¶¶ 176-77 (unindicted co-conspirator telling CFP's CEO that if he did not resign, "they" would just make something up about him); id. ¶ 179 (same co-conspirator telling CEO, of defying George Norcross: "You can't go there. You don't want that fight. Believe me when I tell you. If you don't think he can get to anybody he wants to, you're kidding yourself … "). Here too, instilling and exploiting fear that one will cause economic and reputational harm, including unrelated economic harm and including through one's control of the City's own government, is behavior that society can, and does, prohibit. While Defendants will have every chance to argue at later stages of this case that they did not engage in such behavior, the grand jury validly charged them with doing so.

2. The same is true of the state-law conspiracy charges—both extortion and coercion conspiracies. Under New Jersey law, theft by extortion means "purposely and unlawfully obtain[ing] property of another by extortion." N.J.S.A. 2C:20-5. "A person extorts if he personally threatens to" take or withhold certain actions that, as alleged here, fall within subsections (c), (d), and (g). Those subsections involve threats to:

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

[Ibid.] As under federal law, a "threat may have been either written or spoken, expressly stated or implied from the surrounding circumstances." See Model Jury Charges (Criminal), "Theft by Extortion (N.J.S.A. 2C:20-5)" (rev. June 5, 2006) (emphasis added).

Similarly, New Jersey criminal coercion means threatening to take or withhold certain actions—which, as alleged here, fall within subdivisions (a)(3), (a)(4), and (a)(7)—"with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct." N.J.S.A. 2C:13-5. Like the extortion statute, these subdivisions cover threatening to:

> (3) Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
>
> (4) Take or withhold action as an official, or cause an official to take or withhold action; … or
>
> (7) Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

[Ibid.]

The extortion and coercion statutes are closely related. Their defining difference is what the actor sought: in extortion, money or property; in coercion, to restrict the victim's freedom of activity. Thus, coercion does not necessarily involve money or property, while extortion does. See, e.g., State v. Monti, 260 N.J. Super. 179, 185 (App. Div. 1992). As with Hobbs Act extortion, a threat may be "implied from the surrounding circumstances." See Model Jury Charges (Criminal), "Theft by Extortion (N.J.S.A. 2C:20-5)" (rev. June 5, 2006). And both statutes use the word "unlawfully," as relevant here, to distinguish between "situations in which people are acting in ways tolerated in commercial and personal life," and those in which there is no "economic or commercial nexus" between the defendant's threat and the transaction or action he threatens to disrupt. State v. Roth, 289 N.J. Super. 152, 158 n.4, 161-62 (App. Div. 1996) (quoting Cannel, New Jersey Criminal Code Annotated, cmt. 3 on N.J.S.A.

2C:20-5 (1995)); see also Cannel, N.J. Crim. Code Annotated, cmt. 3 on N.J.S.A. 2C:20-5 (2024) (Cannel).

Here, the grand jury properly charged both extortion and coercion, for largely the same reasons as just discussed with respect Hobbs Act extortion. The Enterprise conspired to obtain, and did obtain, Developer-1's property, and they also controlled and constrained his actions. They did so by exploiting his reasonable fear of financial and reputational harm, targeted at interests disconnected from any specific transactional dispute, see Roth, 289 N.J. Super. at 161-62, and using the instruments of governmental power to do so. They threatened to cut him out of an entire municipality (over which they did in fact exercise great power), and plotted to have the City initiate legal proceedings against him (for their own private leverage), publicly disparage him, and stop communicating with him. See supra at 16, 34; Indict. ¶¶ 3-5, 95, 219-22. They succeeded in getting the City to slow down approvals for the Victor Lofts sale to get Developer-1 to forfeit his Radio Lofts rights—neither of which they had any independent interest in at that point. See supra at 18; Indict. ¶¶ 6, 147, 181-186, 219-22. And so too by using their power over the instruments of City government and threats of harm to intimidate CFP into giving up the deal of its choice with KPG/MC in lieu of a far less favorable deal with Enterprise-related investors for the L3 Complex—a way of "doing business" that was only

confirmed by their later intimidating the nonprofit's CEO into resigning, having again (quite plausibly) threatened that, if he did not, they would harm him both reputationally and financially. See supra at 24; Indict. ¶¶ 7-8, 70-71, 77, 217-18.

3. Defendants err in seeking facial dismissal of the grand jury's charges, arguing primarily that they were engaged in mere "hard bargaining," Omnibus Br. 10-17, or else urging defense-favorable inferences about their acts and motives. Again putting aside that these arguments are wholly inappropriate in a facial challenge—indeed, they are more fitting for closing argument at trial—none succeeds in any event.

Begin with defendants' erroneous claim of "hard bargaining," which, again, at most tees up a factual question ill-suited to these facial motions. Generally speaking, the difference between illegal conduct and "hard bargaining" is whether the victim has a right to be free of the pressure that the defendant is imposing: thus, "in a 'hard-bargaining' scenario the alleged victim has no pre-existing right to pursue his business interests free of the fear he is quelling by receiving value in return for transferring property to the defendant, but in an extortion scenario the alleged victim has a pre-existing entitlement to pursue his business interests free of the fear he is quelling by receiving value in return for transferring property to the defendant." Viacom Int'l v. Icahn, 747 F.

Supp. 205, 213 (S.D.N.Y. 1990), aff'd on other grounds, 946 F.2d 998 (2d Cir. 1991). Thus, where a prominent shareholder amasses stock and threatens a corporate takeover unless the company buys him out at a premium, there is no extortion, because a corporation has no preexisting right to pursue its business free from the possibility of a corporate takeover—a specter corporations face "on a regular basis." Id. at 213-14 (citations omitted). But by contrast, where a public official's spouse causes a victim to believe that he will "lose the opportunity to compete for government contracts on a level playing field, an opportunity to which they were legally entitled," the conduct becomes extortion. United States v. Collins, 78 F.3d 1021, 1030 (6th Cir. 1996), cert. denied, 519 U.S. 872 (1996). The distinction is whether the victim is being "deprived of a 'level playing field.'" United States v. Albertson, 971 F. Supp. 837, 825 (D. Del. 1997), summarily aff'd, 156 F.3d 1225 (3d Cir. 1998); accord United States v. Tobin, 155 F.3d 636, 640 (3d Cir. 1998) ("The caselaw focuses on whether the victim of the extortionate activity had a preexisting right to be free from the threats invoked[.]").

Here, like the victim in Collins, the Enterprise did work to deprive its victims of a "level playing field," 78 F.3d at 1030, and the victims did "plainly possess[]" a "preexisting right to be free from the threats invoked," Tobin, 155 F.3d at 640. The whole premise of the Norcross Enterprise was that it controlled

not just financial capital—a permissible form of leverage—but raw political power and functional control over the levers of government, despite holding no elected or appointed office itself. In other words, the Enterprise could plausibly threaten—and indeed, made good on such threats—to turn the people's government against a private citizen, whether to cut funding to a nonprofit, fire a public employee, withhold an approval, disparage a local businessperson, or simply refuse to help a constituent for no reason other than that a private power broker said so. See Indict. ¶¶ 4, 53, 54, 77, 124-5, 177, 186. Nowhere should the promise of a level playing field be more straightforward than with elected government—yet the Norcross Enterprise extorted property and coerced action by intimating to its victims that, unless they did what George Norcross wanted, "they would forfeit any potential business opportunity" in Camden and indeed suffer harm at the hands of the City. See Collins, 78 F.3d at 1030. That is not hard bargaining by any stretch, and the grand jury was well within its rights to call it extortion.

Defendants get no further by seizing on the adverb "unlawfully" in New Jersey's extortion and criminal coercion statutes and claiming a nexus between the targets of their threats. Omnibus Br. 12-13. That term does not require a threat "to engage in unlawful behavior" for criminal liability to attach. Cannel, cmt. 3 on N.J.S.A. 2C:20-5. Indeed, for "many of the threats which this section

criminalizes would be perfectly appropriate if made without a demand for property." Roth, 289 N.J. Super. 152, 158 n.4 (citation omitted). For instance, "it is perfectly legal to publicize a true fact tending to expose a person to ridicule, but not legal to threaten to do so as a means to enforce an unrelated demand for money as the price of silence (2C:20-5)." Cannel, cmt. 3 on N.J.S.A. 2C:20-5 (emphasis added). So too for a threat to sue that on its own may be legal. Roth, 289 N.J. Super. at 158 & n.4, 160-62.

To the extent Defendants seek facial dismissal on the basis of an alleged claim of right, see N.J.S.A. 2C:20-5(g)—or an asserted "nexus" between what they threatened and the property or actions they sought, Omnibus Br. 13-14—their argument lacks merit thrice over. First, raising these affirmative defenses in these facial motions to dismiss is hopelessly premature, and again illustrates Defendants' overall misunderstanding of the relevant legal standard in bringing these facial motions: "whether a defendant has a plausible claim of right and whether there is a nexus between the threat and the defendant's claim are questions of fact for the factfinder." United States v. Jackson, 180 F.3d 55, 71 (2d Cir.), on reh'g, 196 F.3d 383 (2d Cir. 1999); see N.J.S.A. 2C:20-5(g) (identifying claim of right as "an affirmative defense'); State v. Saavedra, 433 N.J. Super. 501, 520 (App. Div. 2013) (explaining that "the time to assert such a defense … is at trial, rather than as a basis to dismiss the indictment"), aff'd,

222 N.J. 39. Second, such a defense is not properly understood to apply where, as here, the threats are not "purely economic," but rather extend to reputational harm wholly divorced from the dispute. Care One Mgmt. LLC v. United Healthcare Workers E., 43 F.4th 126, 146 (3d Cir. 2022) (quoting Tobin, 155 F.3d at 640). And third, in any event, the grand jury alleged threats that swept far beyond any "natural economic or commercial nexus." See Roth, 289 N.J. Super. at 162.[9]

Roth illustrates what constitutes a legitimate economic or commercial nexus clearly. There, the defendant threatened to move to set aside a sheriff's sale for an unrelated property unless the successful bidder paid him money. 289 N.J. Super. at 155. But though he had a "bare right" to file such an otherwise "lawful" suit, id. at 158 n.4, 161, that did not preclude him for being found guilty of extortion, since he had no legitimate link to the property, id. at 161-62. In contrast to a hypothetical franchise owner who threatens to relocate a team if he does not secure public financing for a new stadium, the defendant in Roth was

[9] See also Care One, 43 F.4th at 147 ("[W]e ask whether there is a reasonably close relationship—a nexus—between the alleged extortionate acts and the objective sought[.]"); Jackson, 180 F.3d at 71 ("[W]here a threat of harm to a person's reputation seeks money or property to which the threatener does not have, and cannot reasonably believe she has, a claim of right, or where the threat has no nexus to a plausible claim of right, the threat is inherently wrongful[.]").

simply using the unrelated sheriff's sale as raw leverage—and thus had been permissibly found guilty of theft by extortion. See ibid.

Much as with Defendants' "hard-bargaining" claims, the allegations here fall on the same wrongful side of the line. George Norcross did not threaten to stop personally doing business with Developer-1; he threatened to stop Developer-1 from doing business in Camden, period—even business in which Norcross had no interest. Indict. ¶ 3. Any listener in Developer-1's shoes would have understood that threat to extend to the instruments of City government. See id. ¶¶ 155, 194, 196. And indeed, the Enterprise followed through—getting the City to stop responding to Developer-1's requests for help, id. ¶¶ 124-25, and thwarting Developer-1's municipal approvals for the Victor Lofts sale as part of a "legal strategy" and "package deal" that caused Developer-1 to forfeit valuable rights in the Radio Lofts site. See id. ¶¶ 181-86; see also id. ¶ 147 (calling Radio Lofts "another point of attack on this putz"). This type of exploitation of fear, unlinked from the underlying transaction and using the implication that one's own public servants can be turned against them, is different in kind from a threat to affect a transaction to which the defendant

already has a legitimate nexus—much as it is different in kind from permissible hard-bargaining.[10]

The same is true of the Enterprise's threats against CFP and its CEO. There is no economic or commercial nexus between a threat to ruin all of CFP's ventures in Camden and the Enterprise's objective of having CFP partner with a Norcross-affiliated developer on a specific deal, and nothing in the Indictment suggests that the Enterprise's threats to CFP cabined the potential for retribution to details relating to the L3 Complex specifically. See, e.g., Roth, 289 N.J. Super. at 161. Indeed, what the CFP leaders already knew about George Norcross—for instance, his attacks on the organization's funding and efforts to obtain the termination of a local public employee, Indict. ¶¶ 54-55—made the breadth of these threats more than plausible. See supra at 53-54; DiSalvo, 34 F.3d at 1212-13. And what the Enterprise later did—pushing CFP's CEO out of a job he liked through threats of reputational and economic harm, in order to open up a position for Redd as CEO of the Rowan-Rutgers board, Indict. ¶ 174—only further confirms what the nonprofit's leaders already reasonably

[10] Brown and O'Donnell's claims that they were insufficiently involved in these plots to be charged go to the sufficiency of the evidence, not the validity of the Indictment. See Brown Br. 11-16; O'Donnell Br. 14-15, n. 14, 28-31. The grand jury validly charged each of them with participating in this scheme—and indeed they both participated in recorded discussions about using public power to achieve their private ends. See Indict. ¶¶ 142-49.

understood, and itself constitutes another act of extortion and coercion.[11] The Defendants may well seek to argue otherwise to a petit jury, but at this stage, all this Court need confirm is that the grand jury properly charged them with extortion and coercion conspiracies.

Defendants' remaining arguments simply tilt the facts in their favor—an obvious flaw in their four-corners motions. It is axiomatic that "[c]redibility determinations and resolution of factual disputes are reserved almost exclusively for the petit jury." State v. Hogan, 144 N.J. 216, 235 (1996). Yet consider, for

[11] Defendants argue, as to extortion, that a job and a salary are not transferrable property. Omnibus Br. 20 (citing a civil case where, unlike here, a Board seat could not be transferred to a certain person). But caselaw states otherwise. See, e.g., United States v. Brissette, 919 F.3d 670, 682 (1st Cir. 2019) ("Nor do the defendants contend that Sekhar—silently—superseded this established line of Hobbs Act extortion precedent."); United States v. Kirsch, 903 F.3d 213, 227 (2d Cir. 2018) ("In . . . Sekhar, the conduct did not constitute extortion because the defendants could not obtain the property for themselves. . . . In contrast, Kirsch sought to extort property that Local 17 members could clearly 'obtain': wages and benefits."); United States v. Burke, No. 19-cr-322, 2022 U.S. Dist. LEXIS 100432, at *241 (N.D. Ill. June 6, 2022) ("A full-time job amounts to 'property' under the Hobbs Act, even if the benefit does not flow to the alleged extortionist." (citation omitted)); United States v. Fitzgerald, 514 F. Supp. 3d 721, 762 (D. Md. 2021) ("The position and, along with it, the wages and benefits, were clearly transferable, as [the friend] was actually hired into the position and then presumably paid for it."). Nothing about Defendants' facial motion demonstrates it would be impossible for the State to prove Defendants' obtained a job and salary here; indeed, as alleged, the Enterprise in fact then transferred that job to another person as part of the scheme. Likewise, Defendants quibble that the threats to CFP CEO were not serious enough to constitute coercion, putting their own spin on the threat to "make something up," Omnibus Br. 21, but that is improper in a facial motion.

instance, the joint brief's hypotheticals about Philip Norcross's state of mind, asking this Court to "imagine" that he intended to communicate that if CFP "persist[ed] in partnering with an untrusted developer, the Cooper Foundation [would] cease funding CFP's endeavors." Omnibus Br. 19. Or its supposition that the Enterprise simply wanted "to petition the City to do something about the blighted Radio Lofts site." Id. at 27. Or that the grand jury could not have thought that George Norcross threatening "consequences" meant something more sinister than ordinary hard-bargaining among businesspeople. Id. at 17. None of these are proper arguments for defendants' facial motions—rather, they are best suited to arguments for the petit jury, or for a trial judge at the close of evidence. Cf., e.g., Saavedra, 222 N.J. at 47; Hogan, 144 N.J. at 235.

Finally, and relatedly, Defendants' brief invocation of free-speech law, Omnibus Br. 18-19, misunderstands the precedents it cites. Defendants cite Counterman v. Colorado, 600 U.S. 66 (2023), and State v. Fair, 256 N.J. 213 (2024), but those cases are about what level of mens rea a State must charge—and the jury must find—for a defendant's conviction to comport with the First Amendment. See Counterman, 600 U.S. at 69 (recklessness is sufficient); Fair, 256 N.J. at 219-20 (same). But here, the Indictment alleges that Defendants acted purposely, e.g., Indict. ¶ 218 (L3 Complex charge), so these cases are irrelevant at this stage—they at most speak to what jury instructions Defendants

may be entitled to, cf. Fair, 256 N.J. at 239 (requesting change to model jury charge for terroristic threats and remanding for new trial with revised charge). Here too there is nothing "manifestly deficient or palpably defective," Hogan, 144 N.J. at 228-29, so this facial challenge to Counts Two and Three fails.

3. The Grand Jury Properly Charged Official Misconduct.

Nor is there any facial defect in Count Thirteen (Official Misconduct). As charged by the grand jury, Redd committed official misconduct by abusing her position as Mayor of Camden to commit the crimes charged in Counts 1-3 and 5-12 of the Indictment. Indict. ¶ 240. While Defendants primarily argue that Redd never crossed any clear legal line, Omnibus Br. 28-33; Redd. Br. 16-19; Brown Br. 25, there is no lack of clarity in prohibiting government officials from agreeing to use public power to extort or criminally coerce for private ends.[12]

"A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself," the official either "commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized," N.J.S.A. 2C:30-2(a), or "knowingly

[12] Throughout this discussion of official misconduct, the State focuses on the direct allegations against Redd. This analysis applies equally, however, to the other defendants' liability for official misconduct as accomplices to Redd. See Indict. ¶ 240 (charging all Defendants with violating N.J.S.A. 2C:30-2 (official misconduct statute) and N.J.S.A. 2C:2-6 (accomplice liability)); State v. Hinds, 143 N.J. 540, 550 (1996) ("a private person may be an accomplice to official misconduct").

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(b). In Count 13, Redd is charged with committing official misconduct by knowingly committing affirmative, unauthorized acts relating to her office in violation of N.J.S.A. 2C:30-2(a) (subsection (a)). Indict. ¶ 240. Those affirmative, unauthorized acts include the crimes alleged in Counts 1-3 (RICO conspiracy, L3 Complex conspiracy, and Triad1828 Centre and 11 Cooper conspiracy), as well as those alleged in Counts 5-12 (possessing and transacting in funds derived from those conspiracies and use of corporations to promote these crimes). Ibid.

Conceding that Redd was a public official from January 1, 2010, through December 31, 2017, Redd Br. 14, and rightly accepting the allegation of a sought-after benefit at this stage, Omnibus Br. 34 (citing Indict. ¶¶ 106, 178, 180), Defendants mainly dispute that (1) Redd committed any "unauthorized" acts, and (2) that any such acts were "related to her office." But these arguments resist the four corners of the Indictment; are premised on the untenable claim that agreeing to use public power to advance a conspiracy for private ends simply "is politics," Omnibus Br. 34; and ignore that Redd's position as Mayor uniquely enabled her to further the Enterprise's unlawful activities. None of these arguments justifies dismissal of Count 13.

1. Defendants' primary attack on the official misconduct charge is their startling claim that Redd would have violated no clear legal duty by agreeing to use her position as Mayor to participate in a racketeering enterprise, to commit theft by extortion, to commit criminal coercion; or the other crimes with which she is charged. Omnibus Br. 28-33; Redd Br. 16-19; Brown Br. 25. To the contrary, using one's office to commit these crimes is indeed "an unauthorized exercise of … official functions." N.J.S.A. 2C:30-2(a).

Begin with an elemental point: using one's public office to commit crimes is not authorized. See, e.g., State v. Hinds, 143 N.J. 540, 549 (1996) (officer committed official misconduct by "conspiring with a thief"); State v. Burnett, 245 N.J. Super. 99, 106 (App. Div. 1990) (officer committed official misconduct by stealing and possessing controlled substances). "As fiduciaries and trustees of the public weal," public officials are obligated "to serve the public with the highest fidelity," to act with "good faith, honesty and integrity," and to remain "impervious to corrupting influences." Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 474-75 (1952). That includes following the laws that govern one's official conduct and not using the power of one's office to commit crimes. See generally State v. Weleck, 10 N.J. 355, 366 (1952); State v. Schenkolewski, 301 N.J. Super. 115, 143 (App. Div. 1997). Thus, while "charges of official

misconduct may be sustained without proof of a criminal act,"[13] State v. Parker, 124 N.J. 628, 640 (1991), this is an even more clear-cut case, because using one's office to commit crimes surely constitutes an unauthorized use. See also State v. McConney, 2015 WL 4578409, at *4 (App. Div. July 31, 2015) ("Evidence of an unauthorized act can consist of a criminal act, violation of a specific policy, or a violation of a duty inherent to an official's position.").

Most of the cases Defendants rely on to support the need for "unmistakable legal lines" and "non-discretionary duties," see Omnibus Br. at 29-30, are cases about subsection (b)—rather than, or in addition to, subsection (a)—and thus have limited relevance. Omnibus Br. 29-30. For example, Defendants cite Thompson, 402 N.J. Super. 177, for its conclusion that the state-employee defendants' mere acceptance of benefits were a simple ethical violation, and not a violation of subsection (b). See id. But Defendants ignore Thompson's reinstatement of various counts—on all fours with this Indictment—under subsection (a), alleging that defendants illegally engaged in discretionary decision-making while under a conflict of interest. Id. at 194; see also McConney, 2015 WL 4578409, at *3 (explaining "Thompson does not stand

[13] For that reason, even if an underlying criminal act were not found by a petit jury, Redd could still be convicted of official misconduct. That the grand jury charged her with committing crimes relating to her office, however, is sufficient to reject this facial motion to dismiss.

for the proposition that a violation of an ethical code . . . cannot demonstrate the employee engaged in an unauthorized act" under subsection (a)).

Another case cited by Defendants, Brady, 452 N.J. Super. 143, is similarly a subsection (b) case about a judge's ethical duties "while at home on vacation." Id. at 168. Brady's requirement of a "non-discretionary duty" in a failure-to-act case says nothing about Redd's duty not to affirmatively commit crimes related to her office. See also id. at 163-64 ("We tread cautiously, with an express desire that our decision be limited only to the facts presented by this appeal and the arguments made by the State."). Indeed, the distinction makes good sense, since the criminal law typically requires a more stringent standard to impose liability for not doing something than for actively doing something. See generally State v. Lisa, 391 N.J. Super. 556, 569 (App. Div. 2007), aff'd, 194 N.J. 409 (2008) (per curiam).

Next, Defendants cite State v. Kueny, 411 N.J. Super. 392, 408 (App. Div. 2010), but that is a subsection (b) case about when "private" failure to act can count as official misconduct. Redd, unlike the police officer using an ATM on vacation in Kueny, "use[d] [her] status as [Mayor]" to commit the conduct at issue. Id. And while State v. Grimes, 235 N.J. Super 75, 90 (App. Div. 1989), is a subsection (a) case, the duties of a constable in a tenant-removal process that the court found "amorphous" are a far cry from a mayor's—or any public

official's—duty not to use the power of her office in service of a criminal Enterprise and its crimes.

Defendants' arguments that Redd did not act in an "unauthorized" manner, meanwhile, simply overlook the Indictment's allegations that Redd agreed to and did use her office to commit crimes, Indict. ¶ 240—running into at least three specific errors. First, Defendants miss the point in arguing that the mere violation of a "moral or ethical" standard does not render an act "unauthorized" within the meaning of the official misconduct statute. Omnibus Br. 28-31; Redd Br. 18. Count 13 includes charges of the use of office to commit specified crimes. Indict. ¶ 240.

Second, Defendants err in arguing that the Indictment is faulty for failing to "identify the legal command" Redd violated or how she violated that command. Omnibus Br. 31; Redd Br. 19. As a threshold matter, that would (if true) not require dismissal of the Indictment, because, "where the duties are imposed by a general statute or arise out of the very nature of an office, the source of the duty," and the duty itself, "need not be alleged in the indictment for the courts will take judicial notice of such duties." State v. Cohen, 32 N.J. 1, 6 (1960); see State v. Stevens, 203 N.J. Super. 59, 65 (Law Div. 1984) (indictment that alleged facts of police officer's unlawful conduct, without specifying duty, was sufficient under N.J.S.A. 2C:30-2(a)). And regardless, the

Indictment charges that Redd specifically violated her obligation to "perform her duties in a legal … manner," and that she did so by using her office to commit the specific crimes charged by the grand jury. Indict. ¶ 240. In short, Defendants' claim that the Indictment "never says [Redd] used her office to violate any law," Omnibus Br. 31, is mistaken.

Third, Defendants parse particular allegations involving Redd one by one and then claim that each is innocuous in isolation—ignoring the Indictment's charging language and how these particular allegations, taken together, fit into the crimes charged. For example, Defendants dismiss the allegations that Redd's chief of staff instructed the CEO of CFP to meet regularly with members of the Enterprise to ensure that all of CFP's projects were pre-approved by George and Philip Norcross, Indict. ¶¶ 49-50, characterizing Redd's actions as merely arranging helpful meetings among her "constituents." Omnibus Br. 32, 34. But this ignores the criminal context of these meetings and the presumptions the grand jury's charges are entitled to at this stage, and again injects factual arguments better suited to a jury presentation. After all, the Indictment charges that Redd committed official misconduct, Indict. ¶ 240, by conspiring as an associate of the Enterprise to use "the Enterprise's reputation for controlling government entities" to coerce "those who held property interests that the Enterprise wanted" into acceding to the Enterprise's demands regarding those

properties, id. ¶ 215(i). CFP was one such target, id. ¶¶ 7, 56, 58, 70-77, and Redd's instructing her mayoral chief of staff to direct the nonprofit to meet with and secure the approvals of George and Philip Norcross before beginning any projects, id. ¶ 49, was hardly innocuous, let alone necessarily so. Rather, as alleged, it reinforced the implication that the two brothers, despite having no formal government role, really did control the City (thus bolstering the nature and seriousness of their threats), and it thus facilitated the Enterprise's efforts to exploit CFP's reasonable fear to cause the nonprofit to partner with George Norcross's preferred developer, with whom he had a pre-existing financial relationship. See id. ¶¶ 7, 62-63, 70-77, 82-84, 88. The grand jury was not required to treat instructing a local nonprofit to obtain the Norcross brothers' approval of its projects as an authorized official act.

Defendants' attempt to dismiss Redd's refusal to answer Developer-1's questions about the Radio Lofts building, id. ¶¶ 122-25, likewise overlooks the context detailed in the grand jury's charges. Omnibus Br. 33; Redd Br. 16-17. While Redd may have had no affirmative obligation to return Developer-1's calls, the grand jury did not charge her with official misconduct for passively neglecting to answer the phone or simply ignoring a major developer. Rather, it charged her with affirmatively using her office to commit, inter alia, racketeering conspiracy and conspiracies to commit theft by extortion and

criminal coercion. Indict. ¶ 240. Her refusal to communicate with Developer-1 concerning the Radio Lofts building at Philip Norcross's request, id. ¶ 125, is part of Redd's use of her public office to advance the Enterprise's illicit goal of intimidating Developer-1 into giving up property rights, to serve the Enterprise's private ends, Indict. ¶¶ 215(i), 220(b)(ii), 240. Much as a police chief might have no duty to investigate a specific crime yet could still be liable for refusing to investigate crimes against a specific victim in order to help co-conspirators shake that victim down, Redd is not immune from the grand jury's charges simply because she was not obligated to answer every phone call.

2. Although Defendants argue that some of Redd's conduct—specifically, the actions Redd took as co-chair of CFP, see Indict. ¶¶ 77-78—did not relate to her office, see Omnibus Br. 33-34; Redd Br. 14-15, much of Redd's allegedly criminal conduct undisputedly was related to her office. See, e.g., Indict. ¶ 49 (instructions to CFP through mayoral chief of staff). In any event, so too were the actions Redd took as co-chair of CFP, a position she held by virtue of being Mayor of Camden.

Initially, even if the actions Redd took as co-chair of CFP were not "related to her office," it would not justify dismissal of Count Thirteen, because that count charges unauthorized acts relating to Redd's office that go far beyond those discrete allegations. The Indictment charges that Redd committed an act

"relating to her office" when she participated in the conspiracies alleged in Counts 1-3 (among other crimes), Indict. ¶ 240, and those conspiracies in turn plainly involved corrupt use of Camden entities for the personal gain of the Enterprise, id. ¶ 215(b)-(c), (i); id. ¶ 218(b)(ii); id. ¶ 220(b)(ii), during a time when Redd was mayor, id. ¶ 240. The RICO conspiracy count is particularly instructive: its objects, all of which the grand jury charged Redd with agreeing to, include using the Enterprise's reputation for controlling governmental entities—including the City—to intimidate and threaten those who held property interests that the Enterprise wanted to acquire, and generally using the Enterprise's control over government agencies to reward members and punish opponents. Indict. ¶ 215(b)-(c), (i). Given these objects, Redd's involvement was intrinsically linked to her mayoral role.

Indeed, though not necessary to put Defendants adequately on notice and to safeguard against double jeopardy or a substitution of charges at trial, see supra Point I.A, the Indictment spells out in considerable detail the ways in which the grand jury charged Redd with using her office to advance the Enterprise's unlawful goals. As noted, Redd's mayoral chief of staff instructed CFP's CEO to meet regularly with George and Philip Norcross to obtain their approval for the nonprofit's projects, Indict. ¶¶ 49-50, and such meetings, thus operating with the Mayor's imprimatur, allowed the Enterprise to coerce CFP

into acceding to its demands, id. at ¶¶ 49-88. Redd was also charged with refusing to help (or even to communicate with) Developer-1 when he reached out to her with questions about zoning and environmental remediation of the Radio Lofts building, furthering the Enterprise's scheme to harm, extort, and coerce Developer-1. Id. ¶ 125; see also id. ¶ 77 (similarly refusing CFP's requests for help).[14] And though the condemnation action did not ultimately materialize, Defendants plotted to use Redd, in her role as mayor, to implement the Victor Lofts view-easement condemnation plot, id. ¶ 134, which involved "using the City's governmental authority through the CRA to achieve the Norcross Enterprise's private interests in applying … pressure to Developer-1," id. ¶ 149. Indeed, it is hard to imagine a more straightforward example of using official powers entrusted to duly elected government leaders than invoking the extraordinary authority to take private property on behalf of the public—or a more obvious perversion of that unique public power than to wield it as a weapon to serve purely private ends.

Though the allegations with the closest potential nexus to Redd's role as co-chair of CFP, see id. ¶¶ 77-78, are therefore unnecessary for Count 13 to

[14] To be clear, the Indictment does not allege that Redd ignored Developer-1 entirely. In fact, during Developer-1's negotiations with LPT, TMO, and George Norcross, Redd signed a letter to the EDA on behalf of Camden to support Developer-1's tax credit application, which benefitted not only Developer-1, but also TMO. Indict. ¶ 113.

survive Defendants' dismissal motion, they too make out unauthorized acts relating to Redd's public office, for two independent reasons. For one, which hat Redd was wearing in these interactions is ambiguous, see ibid., and any argument that she was in fact wearing her CFP hat to the exclusion of the mayoral would go to the sufficiency of the evidence, and thus be a question for trial—not compel facial dismissal. For another, Redd's role with CFP was not independent of her mayoral role. When a public official "commit[s] an act of malfeasance … because of the opportunity afforded by [her] office," that conduct is "sufficiently relate[d]" to the official's office "to support a conviction under N.J.S.A. 2C:30–2(a)." State v. Bullock, 136 N.J. 149, 157 (1994); see State v. Saavedra, 222 N.J. 39, 61 (2015) (same). And as Defendants acknowledge, Redd held her role at CFP only because that seat was reserved for her as Mayor of Camden. Omnibus Br. 33. Thus, even the actions Redd arguably took as CFP's co-chair—for instance, telling CFP's CEO that his "job was in jeopardy" for resisting the Enterprise's demands, and directing the CEO to deal with Philip Norcross when he came to Redd and her chief of staff for help with the L3 Complex deal, Indict. at ¶ 77, were "related to" her mayoral office within the meaning of the official misconduct statute, as she could take these actions only because of that office. See Bullock, 136 N.J. at 157. Contrast

State v. Kueny, 411 N.J. Super. 392, 404-07 (App. Div. 2010) (off-duty police officer's theft of funds from an ATM unrelated to his office).

3. Defendants' remaining attacks on Count Thirteen either misread the Indictment's language or rely on facts outside it. Although Redd claims that the Indictment does not allege that she acted knowingly, Br. 18-19, she is incorrect: the grand jury charged Redd with "commit[ting] an act relating to her office but constituting an unauthorized exercise of her official functions, knowing that such act was committed in an unauthorized manner." Indict. ¶ 240 (emphasis added). Redd's argument that she subjectively believed she was acting lawfully because she sometimes acted in the presence of attorneys, Br. 19, could support an advice-of-counsel defense at trial, but provides no justification for facial dismissal. So too with Redd's reliance on facts she introduces in her brief. Br. 16-17. Similarly, Brown's argument that he did not intend for Redd to commit official misconduct, and thus cannot be held vicariously liable for that crime, see Brown Br. at 23-27, simply contradicts the accomplice liability that the grand jury charged, Indict. ¶ 240; see supra at 61 n.9, and invites a factual dispute about Brown's subjective state of mind that this Court cannot properly resolve pre-trial, let alone on the face of the Indictment. Once again, there is nothing "manifestly deficient or palpably defective" about this charge, Hogan,

144 N.J. at 228-29, so this Court should deny Defendants' motion as to Count Thirteen.

4. The Grand Jury Properly Pleads Misconduct By A Corporate Official, Financial Facilitation Of Criminal Activity, And Conspiracies To Commit Those Crimes.

The remaining counts of the Indictment properly charge Defendants with Financial Facilitation of Criminal Activity (Counts 5-10) ("Financial Facilitation" counts) and Misconduct by a Corporate Official (Counts 11-12) ("Corporate Official" counts). The Financial Facilitation counts charge that Defendants possessed and directed transactions involving millions of dollars derived from their criminal conspiracies—the tax credits derived from the property rights Defendants extorted from their victims—knowing that those credits were derived from crime. Indict. ¶¶ 224, 226, 228, 230, 232, 234; see N.J.S.A. 2C:21-25(a) (prohibiting "possess[ing] property known or which a reasonable person would believe to be derived from criminal activity"); N.J.S.A. 2C:21-25(c) (prohibiting directing transactions in the same).[15] And the

[15] Although Defendants refer to the crimes charged in Counts 5-10 as "money laundering" charges, Omnibus Br. 43, only subsection (b) of N.J.S.A. 2C:21-25 prohibits conduct commonly referred to as "money laundering." See State v. Diorio, 216 N.J. 598, 623 (2014). Defendants are not charged with violating subsection (b), but rather with violating subsections (a) and (c), which prohibit, respectively, possessing and transacting in property knowingly derived from crime regardless of any intent to thereby conceal or promote crime. See State v. Marias, 463 N.J. Super. 526, 532 (App. Div. 2020) (explaining how N.J.S.A. 2C:21-25 "criminalizes three distinct types of activities").

Corporate Official counts charge that Defendants knowingly used corporations under their control—Cooper Health, CSB, NFI, TMO, CP Residential GSGZ, and CPT Equities—for the furtherance of those criminal conspiracies. Indict. ¶¶ 236, 238; see N.J.S.A. 2C:21-9(c) (prohibiting "knowingly us[ing] … a corporation for the furtherance or promotion of any criminal object").

In seeking facial dismissal of the Financial Facilitation and Corporate Official counts, Defendants primarily refer back to their arguments that the Indictment does not adequately allege extortion or criminal coercion so as to support the conspiracies alleged in Counts 1-4. Omnibus Br. 35-36; P. Norcross Br. 27. But as already explained, see supra Points I.A, I.B.1-2, Defendants are incorrect: the grand jury validly charged Defendants with conspiring to obtain and obtaining various property interests they desired by threatening victims with economic and reputational harm unless their victims ceded those interests to them—i.e., with criminal coercion and extortion.

Defendants' sole argument directed specifically to the Financial Facilitation charges contradicts the statute's plain text and, regardless, is unripe for consideration at this stage. Drawing on subsection (d) of the statute, see N.J.S.A. 2C:21-25(d) (explaining "property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal

activity" (emphasis added)), Defendants assert that the receipt and sale of over $50 million dollars of tax credits are too removed from the charged crimes to count as "proceeds" of those crimes. See Omnibus Br. 41-43. But Defendants fail to cite a single New Jersey case in support of this argument, let alone one interpreting N.J.S.A. 2C:21-25. And contrary to Defendants' assertion, subsections (a) and (c) of N.J.S.A. 2C:21-25 are not confined to prohibiting possessing or transacting in property that has been directly obtained from crime. Rather, by their plain text, they reach all property "derived from criminal activity," N.J.S.A. 2C:21-25(a), (c), which the Legislature defined to mean "obtained directly or indirectly from" crime, N.J.S.A. 2C:21-24 (emphasis added). See State v. Lawson, No. A-5545-17T2, 2019 WL 4732762 (App. Div. Sept. 27, 2019) (affirming conviction under N.J.S.A. 2C:21-25(c) where payments defendant received for construction project contracts were indirectly derived from the fraud he committed to obtain home-improvement-contractor license).

Nor could the word "proceeds" in subsection (d) logically limit the meaning of "derived from" contrary to its definition in N.J.S.A. 2C:21-24. See, e.g., DiProspero v. Penn, 183 N.J. 477, 497 (2005) ("we read the two provisions, as we must, in harmony with each other"). Rather, subsection (d) clarifies that to satisfy the statute's mens rea requirement, a defendant need only know that

the property is derived "from some form, though not necessarily which form, of criminal activity." N.J.S.A. 2C:21-25(d). The Legislature appears to have intended "derived from" in subsections (a) and (c) of N.J.S.A. 2C:21-25 to be synonymous with "proceeds from" in subsection (d) of the same—and thus neither would have to be the direct and immediate result of a crime, consistent with N.J.S.A. 2C:21-24. And although Defendants suggest there must be some point at which a crime's connection to property derived from it becomes too "attenuated" to support Financial Facilitation charges, Omnibus Br. 43, that point cannot be one transaction removed from the crime—much as the art thief who steals a Rembrandt cannot claim that the money he receives from selling the painting to a fence is too attenuated from the heist. Otherwise, the Legislature's instruction that "derived from" crime includes property obtained "indirectly from" a crime, N.J.S.A. 2C:21-24, would be rendered meaningless, contrary to hornbook principles of statutory construction. See Matter of Proposed Constr. of Compressor Station (CS327), 258 N.J. 312, 325 (2024); DiProspero, 183 N.J. at 492, 496-97.

Defendants' narrow construction is not only at odds with the statute's plain text, but also irreconcilable with the "broad scope" that the Legislature intended the statute to have. State v. Diorio, 216 N.J. 598, 625 (2014). Concerned, among other things, that "white-collar criminals … motivated by

profit look[ed] at New Jersey as a safe haven when conducting financial transactions with their crime-tainted money," the Legislature designed N.J.S.A. 2C:21-25, "one of the strongest" statutes of its kind "in the country," to entirely "take the profit out of crime." James B. Johnston, An Examination of New Jersey's Money Laundering Statutes, 30 Seton Hall Legis. J. 1 (2005) (cited by Diorio, 216 N.J. at 625). Indeed, in enacting N.J.S.A. 2C:21-25, the Legislature declared its intent to hold criminally accountable those "who drain money from the economy by illegal conduct and then undertake the operation of otherwise legitimate businesses with the proceeds" of that conduct. N.J.S.A. 2C:21-23. Defendants' argument that their receipt and sale of tax credits does not count as property derived, directly or indirectly, from criminal activity because it is one step removed from the activity that enabled them to obtain those credits cannot be squared with the statute's purpose any more than with its text.

In any event, to the extent that Defendants contend that the tax credits are not the indirect result of crime, that argument raises a question of proximate causation—a quintessential fact question reserved for the jury, not one for this court to determine pre-trial. Cf. State v. Martin, 119 N.J. 2, 16 (1990) (whether victim's death "was too remotely related to [defendant's] conduct to permit a finding that he was the cause of her death" was factual question for the jury).

For any of these reasons, this Court should reject Defendants' facial challenge to Counts 5-10.

Only Tambussi attacks the Misconduct by a Corporate Official counts independently, and his challenge can be easily rejected at this stage because it simply quarrels with what the grand jury charged. Tambussi argues that the Indictment fails to allege either that he controlled any of the corporations named in Counts 11 and 12 or that he is liable as an accomplice for his co-defendants' control of those corporations. Tambussi Br. 35-36. But the Indictment's allegations that Tambussi agreed to the charged conspiracies, including through the use of corporate entities controlled by Tambussi's co-conspirators, Indict. ¶¶ 215 (e)-(f), 216(d), 218, 220, suffice to allege that he is liable as an accomplice for Counts 11 and 12. Like most if not all of Defendants' arguments, Tambussi's disagreement is best suited for trial, and wholly unsuited to this facial motion.

In sum, as with the other Counts, the grand jury validly charged Defendants with conspiring to criminally obtain property interests that enabled them to possess and sell millions of dollars in tax credits and to use corporations they control to achieve these crimes, and there is nothing "manifestly deficient or palpably defective" about its decision. See Hogan, 144 N.J. at 228-29. The

Court should reject Defendants' facial challenge to Counts 5-10 (Financial Facilitation) and Counts 11-12 (Corporate Official).

5. Using Public Entities To Intimidate And Punish Private Adversaries Is Not Constitutionally Protected Petitioning Activity.

Defendants' attempts to achieve the unusual result of facial dismissal by invoking constitutional protections for entreaties to the government (and, as the next section discusses, lawyering), get them no further. As to the first, Defendants essentially ask this Court to condone, as constitutionally protected petitioning activity, Defendants' plots to condemn Developer-1's Victor Lofts view easement, Indict. ¶¶ 126-51; to slow down approval of his Victor PILOT agreement transfer, id. ¶¶ 183-86, 190, 192-94; and to have the City disrupt his ability to use or sell his Radio Lofts rights, id. ¶¶ 147, 181. See Omnibus Br. 22-27; O'Donnell Br. 29-30. But they misunderstand either what the grand jury charged, the nature of the constitutional protection they invoke, or both. Defendants are not alleged to have asked municipal entities to take these actions, but rather to have directly and corruptly caused or plotted to cause those public entities to do so. And using the instruments of public power to serve private criminal ends is far from constitutionally protected petitioning.

To start, Defendants misperceive the role of these alleged plots within the Indictment. Defendants expend paragraphs arguing that they never communicated to Developer-1 the plot to condemn his view easement, and thus

that this plot "did not involve any threats." Omnibus Br. 22-23; P. Norcross Br. 23. But Defendants are charged with conspiring to—that is, agreeing to—obtain Developer 1's property via threats. Indict. ¶¶ 213, 216(a)-(b), 220. The crime is committed by the agreement to threaten, whether or not the threats ultimately materialize.[16] Defendants "all agreed to cause the CRA to bring [the] court action … with the purpose of creating additional pressure on Developer-1 to sell his rights." Id. ¶ 127. Defendants schemed to have a court "declare that the CRA had the power to condemn Developer-1's view easement." Id. ¶ 135. Such a declaration would have communicated that a Camden agency (the CRA) had the power and intent to condemn Developer-1's view easement—all while George Norcross was explicitly "threaten[ing] Developer-1 that there would be consequences if he did not" cede his property rights as the Enterprise was demanding. Id. ¶ 136. Thus, the plotted condemnation action was intended to

[16] See, e.g., United States v. Capers, 20 F.4th 105, 118 (2d Cir. 2021) ("RICO conspiracy is thus a crime that can be committed simply by sitting around a table and agreeing with other individuals to create an organization … that would engage in criminal acts … , whether or not the organization ever gets off the ground and whether or not the defendant, or any of his co-conspirators, ever commits any of the anticipated crimes."); United States v. Panaro, 266 F.3d 939, 947-48 (9th Cir. 2001) (upholding extortion-conspiracy conviction despite that the defendants never threatened the victim); United States v. Rizzo, 373 F. Supp. 204, 206 (S.D.N.Y. 1973) ("[T]he crime of conspiracy to extort can be committed whether or not extortionate means were ever used on a prospective victim.").

be part and parcel of these mounting threats against Developer-1—it was intended to communicate that the Enterprise could and would use the instruments of City government against Developer-1 unless he yielded to their demands.[17] That the condemnation plot "did not ultimately occur," id. ¶ 151, does not undo the fact that the Defendants planned and agreed for it to occur.

Second and independently, the condemnation plot demonstrates Defendants' efforts to make good on George Norcross's threat to Developer-1 that he "would never do business in this town again" and would suffer "enormous consequences" for not complying with Norcross's wishes. Id. ¶ 117, 136-37. It evidences Norcross's ability to follow through on his threats, and reinforces the meaning of those threats—up to and including invoking the Government's unique and extraordinary authority take private property for (properly) public purposes. The plot to slow down approval of the Victor Lofts PILOT-agreement transfer likewise supports multiple relevant conclusions: (1) it shows the Enterprise making good on its threats to retaliate against Developer-1 for his resistance to their demands; and (2) it makes clear to Developer-1 the

[17] Defendants' assertion that the "alleged scheme was never to use a condemnation action as a threat," Omnibus Br. 23, contradicts the Indictment's plain language and draws inferences favorable to Defendants from that language—neither of which is appropriate at this stage. So too with other inferences Defendants invite this Court to draw about their subjective beliefs and motives. E.g., Omnibus Br. 23 & n.2, 24.

full meaning of the continuing threats against him, in an effort to get him to forfeit his right to redevelop the Radio Lofts parcel. Id. ¶ 186 (Philip Norcross indicating that the purpose of slowing down the PILOT agreement was to force Developer-1 to forfeit his unrelated Radio Lofts rights, as part of a "package deal"). Similarly, George Norcross's proposal, in a call with Enterprise members, to "hav[e] the CRA take away Developer-1's Radio Lofts redevelopment option" "tomorrow" "as another point of attack on this putz," id. ¶ 147, demonstrates not only Defendants' understanding of George Norcross's power and the means of the Enterprise's operation, but also underscores what any reasonably informed observer would have understood George Norcross to mean when he threatened "consequences" for failing to abide by his demands. Id. ¶ 5, 136-37; see also ¶ 215(h)-(i) (Enterprise's objectives included "[p]romoting compliance with the [its] demands by retaliating against those in the way," and "[u]sing [its] reputation for controlling government entities to intimate and threaten those who held property interests that the Enterprise wanted to acquire").

Nor, contrary to Defendants' striking argument, is this "how business works" or "how deals get done." Omnibus Br. 24-27; see also O'Donnell Br. 29-30. It should go without saying, but capturing a local government and using it (including its extraordinary power to take private property) to strong-arm

others into acceding to one's private demands, to serve one's private ends, is not constitutionally protected activity—petitioning or otherwise. In arguing that it is, Defendants mischaracterize these plots as plans to ask (i.e., to petition) the City to do what they want, when the plots as alleged in the Indictment were to use the Enterprise's control over the City to have City entities to do what the Enterprise wanted. Indeed, as alleged in the Indictment, Defendants plotted to condemn Developer-1's view easement without any "meaningful participation by the CRA"—even though "condemnation can only be exercised by government entities." Indict. ¶¶ 129-30; see also id. ¶ 128 (alleging that Philip Norcross and Tambussi "devise[d] a plan by which the CRA, a City government entity … would seek to condemn Developer-1's view easement" (emphasis added)); id. ¶ 144 (alleging that Philip Norcross characterized the condemnation plot as a "plan to use the City of Camden's government to bring a condemnation action against DPI's property interest to give the Norcross Enterprise leverage over Developer-1" (emphasis added)).

Similarly, Defendants' plot with respect to Developer-1's Victor Lofts PILOT-agreement transfer was to have the City "slow[] down the … transfer approval … to cause Developer-1 to forfeit DPI's option to redevelop Radio Lofts" even though Defendants had no right to have the City delay in approving that transfer for that illegal purpose. Indict. ¶ 186. Likewise, Defendants'

proposal to "hav[e] the CRA take away Developer-1's Radio Lofts redevelopment option" "tomorrow" as another "point of attack" on Developer-1, id. ¶ 147, shows their direct control over the City and use of it for their own ends. While private citizens have a constitutional right to request that the government do what they want, see, e.g., Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972), they have no right to co-opt a government and wield it as a cudgel to serve their private ends.

For this reason, Defendants' reference to a line of civil cases holding that filing a frivolous lawsuit is not a "wrongful" act within the meaning of the Hobbs Act, see Omnibus Br. 23-24, is inapposite: the wrong here is not Defendants' planning the filing of a private lawsuit at all, but rather their planning to corruptly cause a municipal entity to file an action that only that public entity could file—for Defendants' private purposes (i.e., to pressure Developer-1 to accede to their demands). That is far from the sort of "social[ly] stabili[zing]" conduct courts intend to protect by declining to include litigation as a wrongful act within the meaning of the Hobbs Act. Deck v. Engineered Laminates, 349 F.3d 1253, 1258 (10th Cir. 2003) ("To promote social stability, we encourage resort to the courts rather than resort to force and violence."). And it explains why the defendant in Roth could be found guilty of extortion for threatening to move to set aside an unrelated sheriff's sale, even though he (like everyone else) had a general right

to file lawsuits. See 289 N.J. Super. at 155, 158 n.4, 161-62; see also supra at 55-60; EDF Renewable Development, Inc. v. Tritec Real Estate Co., 147 F. Supp. 3d 63, 69 (E.D.N.Y. 2015) (cited at P. Norcross Br. 17-18) (explaining that the "corruption exception to Noerr-Pennington" applies "where a party has stepped beyond the bounds of zealous advocacy and engages in conduct alleged to be criminal" (cleaned up)).

Because the activity Defendants' mischaracterize involves using municipal power as an instrument of coercive ends, rather than simply requesting action, their invocation of First Amendment principles generally—and of the Noerr-Pennington doctrine specifically—is misplaced. See Omnibus Br. 24-27; O'Donnell Br. 29-30. The Noerr-Pennington doctrine immunizes from certain civil actions those who legitimately "petition the government for redress."[18] Structure Bldg. Corp. v. Abella, 377 N.J. Super. 467, 471 (App. Div. 2005); see Borough of Englewood Cliffs v. Trautner, 478 N.J. Super. 426, 446 n.11 (App. Div. 2024). The seminal Noerr case held that federal antitrust laws

[18] Philip Norcross takes issue with the allegations in the Indictment concerning his personal influence in the drafting of the EOA, see Br. 18-19, but the grand jury did not allege that wielding that influence itself was criminal. Rather, Philip Norcross's (and George Norcross's) influence over the Legislature simply provides background on the political power and objectives of the Enterprise, which, like virtually any RICO enterprise, engages in both lawful and unlawful activities. See N.J.S.A. 2C:41-1 (defining "Enterprise" to include any "group of individuals associated in fact … illicit as well as licit").

do "not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly." E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127, 136 (1961) (railroad association's publicity campaign against trucking business, designed to influence legislation, did not violate the Sherman Act). The Pennington case clarified that, under Noerr, otherwise lawful "joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition." United Mine Workers of Am. v. Pennington, 381 U.S. 657, 670 (1965) (labor union's concerted action to influence legislation did not violate Sherman Act). Together, Noerr and Pennington stand for the idea that "groups with common interests may … use the channels and procedures of state and federal agencies and courts to advocate" for "their business and economic interests" without violating the antitrust laws. Trucking Unlimited, 404 U.S. at 510-11. New Jersey courts have applied Noerr-Pennington principles in various civil contexts, for example, to protect "[t]he right of homeowners to participate in hearings and oppose zoning applications that affect their property," Abella, 377 N.J. Super. at 471 (dismissing action claiming that homeowners' opposition before Planning Board to developer's subdivision was tortious).

But these principles are inapposite to Defendants' alleged criminal manipulation of City entities to corruptly advance Defendants' private interests. Without citing a case applying Noerr-Pennington to bar criminal charges, Defendants claim that Noerr-Pennington principles protect Defendants' "political influence over the City." Omnibus Br. 26 (citing Columbia v. Omni Outdoor Advert., Inc., 499 U.S. 365, 383 (1991)). But Columbia simply held that neither a city nor a business violates antitrust laws when they collaborate on legislation with an anti-competitive effect, while expressly acknowledging that a conspiracy with city officials could be invalid if it "involves some element of unlawfulness (beyond mere anticompetitive motivation)[.]" 499 U.S. at 383-84; see, e.g., A Fisherman's Best, Inc. v. Rec'l Fishing All., 310 F.3d 183, 194 (4th Cir. 2002) (under Noerr, "[c]ompetitive bidders are free to lobby the relevant government, but they cannot do so" through "corrupt or questionable practices"); Cent. Telecomm., Inc. v. TCI Cablevision, Inc., 800 F.2d 711, 725 (8th Cir. 1986) (rejecting defendants' "argument that Noerr-Pennington allows them to engage in excessive and intimidating conduct"); Monarch Entm't Bureau, Inc. v. N.J. Highway Auth., 715 F. Supp. 1290, 1303 (D.N.J. 1989) (Noerr-Pennington does not immunize "the use of improper means, such as bribery, to obtain the desired governmental action"). Likewise, that there is nothing inherently criminal about "cultivating close ties with government

officials," Omnibus Br. 26 (quoting Boone v. Redevelopment Agency of San Jose, 841 F.2d 886, 894 (9th Cir. 1988)), does not mean that using such ties as part of schemes to commit racketeering, extortion and coercion cannot be prosecuted, cf. Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240, 1256 n.23 (9th Cir. 1982) ("fraud and bribery" not protected by Noerr-Pennington).[19]

In short, the plots alleged here are nothing like the petitioning activities at issue in the Noerr-Pennington line of cases for the simple reason that they do not allege petitioning or civil allegations; rather, they involve grand jury charges that Defendants co-opted the instruments of City government to advance the Enterprise's extortionate agenda. Noerr-Pennington in no way renders the Indictment facially invalid.

[19] Defendants' passing references to Percoco v. United States, 598 U.S. 319, 331 (2023), Omnibus Br. 26, do not help them. Percoco held that particular instructions to a jury (concerning whether a private individual exercised such a degree of influence over the government that he should qualify as a public official capable of depriving the public of honest services) were too vague. 598 U.S. at 330-31. That holding is irrelevant for multiple reasons, including that this case does not concern honest services fraud, and moreover that concerns over the language in jury instructions obviously have no merit in a facial challenge such as this one.

6. Philip Norcross's And Tambussi's Roles As Attorneys Do Not Immunize Their Actions From Criminal Liability.

Philip Norcross's and Tambussi's reliance on protections for the routine practice of law are unavailing. Their two motions largely assert that their conduct constituted the "routine practice of law," and emphasize that lawyers cannot be held criminally responsible for zealously representing their clients. P. Norcross Br. at 27-29; Tambussi Br. at 19-27.[20] But the first premise is mistaken, and the second is not implicated: both are charged with conduct committed in furtherance of the Enterprise that went beyond zealous legal advocacy, and instead constituted criminal activity.

Initially, in seemingly seeking dismissal of the charges against them based on their status as lawyers, Philip Norcross and Tambussi ignore that they are charged with agreeing to each of the conspiracies alleged in the Indictment. Compare Tambussi Br. 1 (erroneously claiming that the Indictment only mentions Tambussi in connection with the condemnation plot and a Superior Court action); id. at 31 (erroneously claiming Tambussi is being prosecuted "solely because he is George Norcross's lawyer"); P. Norcross Br. 28 (erroneously claiming that the only conduct Philip Norcross engaged in was lobbying the legislature and advocating for his clients), with Indict. ¶¶ 213, 218,

[20] As agreed by all parties, the State is not responding to the portions of the Tambussi Brief that cite to the grand jury transcripts. See supra at 6.

220, 222. Even if particular actions that Philip Norcross and Tambussi took in furtherance of these conspiracies were somehow protected lawyering activity—which they are not, see infra at 98-100, that would not insulate them from liability for agreeing (itself non-lawyering activity) that these crimes should occur through the non-lawyering activity of co-conspirators. While Tambussi and Philip Norcross may contest that there is sufficient evidence that they agreed to these conspiracies, those arguments are not before the Court at this stage.

Both Defendants' individual motions also fail to grapple with the acts that the grand jury actually charged as crimes. Start with Tambussi, who argues that, if the Indictment stands, lawyers will have insufficient notice of what constitutes criminal activity. Tambussi Br. 19-29. But while Tambussi argues, as to the plot to the have the CRA condemn Developer-1's view easement, see Indict. ¶¶ 4, 95, 127-151, that he engaged only in legal research, Tambussi Br. 1, 19, 27, 33, the grand jury did not charge him with crimes for doing legal research. Rather, it charged him (and Philip Norcross) with having "agreed to cause the CRA" to take steps to condemn Developer-1's view easement as part of the Enterprise's broader efforts to force or extort "Developer-1 to sell his rights." Indict. ¶ 127. It is agreeing to coopt a public entity to advance the Enterprise's private, illicit purposes that crosses the line—not researching a legal issue. See supra Points I.B.2, I.B.5.

Likewise, while the CRA was a client of Tambussi's firm, Indict. ¶ 128, this hardly immunizes Tambussi from the grand jury's charges—least of all in this facial posture. To start, it in no way establishes that Tambussi himself was indeed on the call in that capacity, let alone for a benign purpose (if he himself, as opposed to a law partner, even represented the CRA in the first place). Further, it adds even more support to show the Enterprise's ability to wield the City's extraordinary condemnation power to serve its private aims, which some legitimate nexus to that power in no way vitiates—just as a police officer who otherwise is permitted to make arrests would not be immune from liability for accepting bribes to arrest a briber's enemy. See also infra at 96-97 (discussing scenarios in which attorneys can be prosecuted for actions they take as lawyers). Nor, for much the same reason, did the grand jury indict Tambussi for having "divided loyalties between clients in apparent breach" of the rules of professional conduct. Tambussi Br. 23-25. It charged him with conspiracy to commit theft by extortion and criminal coercion, among other crimes—so there is no concern about bootstrapping ethics rules into criminal liability, ibid., or interfering with the Supreme Court's regulation of professional conduct, id. at 27-29; see also infra at 101-02.

As to the pretrial motion Tambussi filed and argued seeking to preclude any reference to George or Philip Norcross in litigation over the Radio Lofts

site, see Indict. ¶¶ 155-57, Tambussi's motion to dismiss misunderstands the role of these allegations in the Indictment as well, see Br. 1, 19, 21, 25. Tambussi's actions in connection with this motion are not themselves charged as crimes. Rather, these actions show continued coordination among the Enterprise's associates to conceal evidence and suppress awareness of their conspiratorial activities. See Indict. ¶¶ 156-57, 215(g). And here too, therefore, there is no risk of a lack of notice to the legal profession, or of converting ordinary ethics issues into criminal liability. While Tambussi can of course attack the sufficiency of the evidence against him at later stages of this case, the charges themselves in no way criminalize the practice of law.

Philip Norcross similarly errs in arguing that the allegations pertaining to his lobbying activities and representation of Cooper Hospital do not amount to crimes, P. Norcross Br. 28, when the grand jury did not charge these activities as crimes. Instead, Philip Norcross is charged with personally agreeing to each of the conspiracies alleged in the Indictment, see Indict. ¶¶ 213, 218, 220, 222, as well as with taking particular actions in furtherance of those conspiracies, such as demanding that CFP partner with the Enterprise's preferred developer, Indict. ¶¶ 59-63; directing that Mayor Redd ignore Developer-1's phone calls as a means of pressuring Developer-1 to accede to the Enterprise's demands, id. ¶¶ 122-25; and causing Camden officials to slow down approval of Developer-1's

Victor PILOT agreement transfer to pressure Developer-1 to relinquish his Radio Lofts redevelopment option, id. ¶¶ 184-86. This coordinated, conspiratorial activity is far from the practice of law altogether, let alone its routine practice.

Considered alongside what the grand jury actually charged, Tambussi's and Philip Norcross's constitutional arguments about criminalizing the practice of law likewise fall apart. Each claims, for instance, that constitutional due process precludes the charges against them because otherwise, no attorney will be able to understand whether their own lawyering conduct is criminal. See Tambussi Br. 19-21; P. Norcross Br. 27-30. But attorneys can easily avoid such uncertainty by declining to conspire to extort or criminally coerce others, including by using public entities to do so.

For essentially the same reason, nothing about the grand jury's charges will chill other attorneys' zealous advocacy of their clients. Contra Tambussi Br. 26-27. The only authority Tambussi cites in support of this argument is a Third Circuit case holding that a defendant could establish ineffective assistance of counsel from the fact that his attorney, unbeknownst to him, was under indictment and engaged in plea bargaining with the same U.S. Attorney's Office prosecuting the defendant's appeal. Tambussi Br. 26 (citing United States v. DeFalco, 644 F. 2d 132, 136 (3d Cir. 1979)). Far from supporting Tambussi's

argument, the case shows that attorneys can be, and are, criminally prosecuted for actions they take as lawyers. See also, e.g., Matter of Verdiramo, 96 N.J. 183, 185 (1984) (detailing how DeFalco's attorney pled guilty to "the crime of obstruction of justice in attempting to persuade a prospective witness to testify falsely before a grand jury."); Weleck, 10 N.J. at 367-68, 376 (reinstating indictment against borough attorney for official misconduct where one of the defendant's alleged violations was failing "to render legal services to a client to the best of his ability and uninfluenced by adverse motives and interests"). In a similar vein, although Tambussi suggests that this prosecution is unconstitutionally selective because other attorneys in Tambussi's firm have not been prosecuted, Br. 25-26, no other attorneys in Tambussi's firm are alleged to have "agreed to cause the CRA" to take steps to condemn Developer-1's view easement as part of the Enterprise's conspiratorial plan to coerce "Developer-1 to sell his rights." Indict. ¶ 127.

Indeed, as alleged, Tambussi was hardly advocating for a client at all—but rather working for the Enterprise—when he agreed to use the CRA to pressure Developer-1 to accede to the Enterprise's demands, Indict. ¶ 127, and when he filed a pretrial motion in Superior Court to conceal the Enterprise's illicit activities, Indict. ¶¶ 156-57. Although Tambussi may argue that the evidence establishes otherwise, that argument is not before this Court at this

stage. And in any event, even if Tambussi had been acting on behalf of a client, "it is no part of an attorney's duty to assist in crime,—he ceases to be counsel and becomes a criminal. … [H]e cannot properly be consulted professionally for advice to aid in the perpetration of a crime." In re Selser, 15 N.J. 393, 407 (1954) (discussing crime-fraud exception to attorney-client privilege); see also Weleck, 10 N.J. at 367-68.

Nor are Tambussi or Philip Norcross immune from liability pursuant to a privilege for "actions taken during judicial proceedings." Tambussi Br. at 21-22. This "privilege generally protects an attorney from civil liability arising from words he has uttered in the course of judicial proceedings," Loigman v. Township Committee of Township of Middletown, 185 N.J. 566, 579 (2006) (emphasis added); see Hawkins v. Harris, 141 N.J. 207, 215 (1995) (the privilege "immunizes [a] defamer from a civil damage action" (emphasis added)). The privilege is designed to enhance the truth-seeking function of trials, giving advocates "absolute freedom to express the truth as they view it" without fear of defamation actions. Hawkins, 141 N.J. at 217. But it does not protect testifying witnesses who violate their oaths from perjury prosecutions, id. at 16, nor does it protect attorneys who agree to extort, racketeer, or conceal these crimes from prosecution either, see In re Giannini, 212 N.J. 479, 483 (2012) ("the litigation privilege … provides immunity from civil liability, but the

privilege does not cloak attorneys from 'the discipline of the courts, the bar association, and the state.'" (quoting Hawkins, 141 N.J. at 215)).

That "the Supreme Court has 'plenary constitutional authority' over the practice of law," Tambussi Br. 27-29 (quoting Application of LiVolsi, 85 N.J. 576, 584 (1981)), likewise does not immunize these defendants from prosecution for the crimes alleged. To the contrary, attorneys who commit crimes may face both disciplinary proceedings by the Office of Attorney Ethics (OAE) and prosecution for the same conduct. See N.J. Rules of Court 1:20-13 (detailing discipline procedures for when "[a]n attorney … has been charged with an indictable offense"); see also, e.g., Verdiramo, 96 N.J. at 185 (disciplining attorney who pleaded guilty to "obstruction of justice in attempting to persuade a prospective witness to testify falsely before a grand jury"); Matter of Hughes, 90 N.J. 32, 34 (1982) (same as to attorney who pleaded guilty to bribing IRS agent, falsifying records, and submitting false records to county register); Matter of Mirabelli, 79 N.J. 597, 598 (1979) (same as to attorney who pleaded guilty to bribing public officials on behalf of attorney's client in attempt to secure non-custodial sentence for the client). None of these actions infringed on our Supreme Court's authority to regulate the profession—to the extent that Tambussi suggests that only our Supreme Court can regulate criminal conduct by attorneys, Br. 27-8, his argument has no basis in law at all.

Nor does Tambussi's argument that "fundamental fairness" requires that Tambussi benefit from a heightened mens rea standard, Tambussi Br. 29-33, justify dismissal of any count of the Indictment. Tambussi is alleged by the grand jury to have conspired to participate in a racketeering organization, to commit theft by extortion, and to commit criminal coercion, among other crimes, "with the purpose of promoting and facilitating the commission" of those crimes. Indict. ¶¶ 213, 218, 220, 222 (emphasis added). Because "'[p]urposeful' or 'with purpose' is the highest form of mens rea contained in our penal code," State v. Duncan, 376 N.J. Super. 253, 262 (App. Div. 2005), there is no higher standard for Tambussi to benefit from.[21] To the extent that Tambussi argues that the evidence does not support that he acted with such purpose, that argument goes beyond the face of the Indictment and is not properly considered at this time.

[21] Although Tambussi references a safe harbor provision within the federal obstruction of justice statute, providing that the statute does not criminalize "bona fide, legal representation services," Tambussi Br. 32 (quoting 18 U.S.C. § 1515(c)), improperly engrafting such a requirement onto any of the statutes charged here—which do not include such a safe harbor—would do Tambussi little good. For one, the provision sets out an affirmative defense rather than an element of the crime, see United States v. Kloess, 251 F.3d 941, 945 (11th Cir. 2001), so the government need not include allegations in an Indictment establishing that it does not apply. In any event, the Indictment on its face does establish that such a safe harbor would not apply. As explained supra at 91-94, Tambussi is not being prosecuted for providing any bona fide legal services; he is charged with, among other crimes, conspiring to participate in a racketeering enterprise, to commit theft by extortion, and to commit criminal coercion.

Finally, although Tambussi leans heavily on Mayo, Lynch & Associates, Inc. v. Pollack, 351 N.J. Super. 486 (App. Div. 2002), Br. 31-33, that case does not help him. There, an attorney was sued for allegedly participating in a bid-rigging conspiracy. 351 N.J. Super. at 488. The trial judge granted summary judgment for the attorney on the ground that there was insufficient evidence that the attorney knowingly engaged in the conspiracy. Ibid. The Appellate Division reversed, holding that a factfinder could conclude from "two blatantly incorrect legal opinions" rendered to participants of the conspiracy that the attorney knew of the conspiracy and intended to engage in it. Id. at 496-98. Because the attorney's "state of mind" was in dispute, the court concluded that granting summary judgment was inappropriate. Far from helping Tambussi, Mayo shows both that it would be improper to dismiss the indictment based on a factual argument that he lacked the requisite mens rea (despite no evidence being before the court and despite contrary allegations in the Indictment), and moreover that attorneys can permissibly be held liable for participating in conspiracies, including conspiracies that involve lawyering activities. See ibid.

POINT II

THE INDICTMENT IS FACIALLY TIMELY.

The Indictment properly alleges that each crime charged occurred within the applicable limitations period. Under New Jersey's criminal statute of

limitations, "[a] prosecution for a crime" generally "must be commenced within five years after [the crime] is committed." N.J.S.A. 2C:1-6(b)(1); see State v. Cagno, 211 N.J. 488, 506 (2012). The statute of limitations for official misconduct and conspiracy to commit the same is seven years. N.J.S.A. 2C:1-6(b)(3). Under the statute, "[a] prosecution is commenced … when an indictment is found." N.J.S.A. 2C:1-6(d). The Grand Jury returned this indictment on June 13, 2024, so the charges are timely prosecuted if the crimes they allege had not been fully committed as of June 13, 2019, and June 13, 2017, respectively. As explained below, each crime allegedly extended into the applicable limitations period; thus, none is facially time-barred. This Court should reject Defendants' statute of limitations challenges.

A. The RICO Conspiracy Charge Is Timely.

Begin with the Indictment's RICO conspiracy charge (Count One). Indict. ¶¶ 213-16. This Court can summarily reject Defendants' facial statute of limitations challenge to Count One because the Indictment plainly states that this conspiracy, far from ending before June 2019, continued "[f]rom at least approximately 2012 to the present." Indict. ¶ 1; see also id. ¶¶ 93, 213.

Defendants' arguments that the RICO charge is facially time-barred ignore this critical allegation. See Omnibus Br. 37-43; O'Donnell Br. 14-26; P. Norcross Br. 30-31; Brown Br. 28; Redd Br. 19-20. Yet they offer no authority

under which this Court could dismiss as facially time-barred an indictment that explicitly alleges a RICO conspiracy that has continued into the present. Instead, bypassing the determinative allegation that the RICO conspiracy continued through the present, Indict. ¶ 1; see also id. ¶ 213 (alleging agreement through "the date of this Indictment"), Defendants point to other allegations in the Indictment, detailing discrete acts alleged to be part of the RICO conspiracy, and arguing that each such act occurred outside of the limitations period or is not actually part of the alleged racketeering conspiracy.

Those arguments, however, are essentially claims that there was insufficient evidence for the grand jury to allege that the RICO conspiracy continued through the present—classic factual disputes for trial. "[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." State v. W.S.B., 453 N.J. Super. 206, 236 (App. Div. 2018) (cleaned up); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 3.7 on R. 3:10-2 (2024) ("If there is a dispute as to whether the statute has run the issue must be decided by the jury following proofs adduced during trial." (citing N.J.S.A. 2C:1-14(h)(d))). For that reason, courts have recognized that whether a "conspiratorial agreement was in fact as broad as the Indictment alleges, whether each defendant in fact subscribed to that agreement, and if and when the

conspiracy ended are issues for the jury." United States v. Kozeny, 493 F. Supp. 2d 693, 715 (S.D.N.Y. 2007), aff'd, 541 F.3d 166 (2d Cir. 2008); see, e.g., United States v. Carnesi, 461 F. Supp. 2d 97, 98-99 (E.D.N.Y. 2006) (denying facial limitations challenge to money-laundering-conspiracy charge where indictment alleged conspiracy continued during limitations period); United States v. Persico, 621 F. Supp. 842, 872 (S.D.N.Y. 1985) (denying similar challenge to RICO conspiracy charge where "the indictment alleges that the agreement continued until the filing of the indictment"). Accordingly, this Court should look no further than the Indictment's allegations that the charged RICO conspiracy continued into the present, Indict. ¶ 1, and that each Defendant agreed to that conspiracy, id. ¶ 214, to reject Defendants' facial statute of limitations challenges to Count One.

Defendants Brown and O'Donnell specifically err in arguing that the RICO charges against them personally are time-barred because, they claim, the Indictment does not provide details about how they specifically agreed to conduct the Enterprises' affairs through a pattern of racketeering activity within the limitations period. See Brown Br. 28; O'Donnell Br. 14 n.14. But the Indictment alleges that Brown and O'Donnell agreed to the entire racketeering conspiracy. Indict. ¶ 213. Thus, the length of Defendants actual participation "in the conspiracy" is, again, an "issue[] of fact for the jury to decide." Carnesi,

461 F. Supp. 2d at 99 (denying motion to dismiss based on argument that defendant did not personally engage in the conspiracy within the limitations period, because "at this stage of the litigation the motion is premature"); see also, e.g., United States v. Darden, 346 F. Supp. 3d 1096, 1139 (M.D. Tenn. 2018), aff'd sub nom. United States v. Burks, No. 22-6094, 2024 WL 4250334 (6th Cir. Sept. 20, 2024) (same); cf. United States v. Berger, 22 F. Supp. 2d 145, 154 (S.D.N.Y. 1998) (denying motion to dismiss based on defendant's alleged non-involvement in conspiracy where "the Indictment properly alleges that Goldstein committed the charged offenses"). That ends the facial inquiry for them as well.

Even if Defendants were correct that this Court should search the Indictment for particular details supporting the allegation in paragraph 1 that the RICO conspiracy continued through the present, their challenges would still fail because the Indictment—going well beyond what is required to put Defendants on notice of the charges against them, see supra at 37-38 (discussing standard for facial motions and perverseness of a rule that would penalize grand juries for issuing speaking indictments)—spells out in considerable detail how the conspiracy continued into the limitations period. A RICO conspiracy continues "until the accomplishment or abandonment of the objectives of the conspiracy.'" Cagno, 211 N.J. at 509-10 (quoting United States v. Persico, 832 F.2d 705, 713

(2d Cir. 1987)); see also United States v. Jimenez, 96 F.4th 317, 322 (2d Cir. 2024) ("Conspiracy is generally a continuing crime … not complete until the purposes of the conspiracy have been accomplished or abandoned." (quotation omitted)); United States v. Berroa, 856 F.3d 141, 155 (1st Cir. 2017) (similar).[22] Here, the Indictment charges that the RICO conspiracy pursued at least three objectives that continued into the present: (1) enriching themselves and obtaining effectively free property through EOA (Grow NJ and ERG) tax credits over a ten-year period; (2) promoting compliance with the Enterprise's demands by intimidating and retaliating against those who defied them; and (3) concealing the illegal activities of the Enterprise. And it supports each with specific allegations of continuation past June 2019. Thus, even assuming this Court accepts Defendants' faulty premise that the grand jury's express charge that that the conspiracies continued into the limitations period is somehow insufficient, Count One is facially timely.

[22] Several federal circuit courts adhere to the presumption that a RICO conspiracy, once established, continues until a defendant demonstrates otherwise. See United States v. Delgado, 971 F.3d 144, 158 (2d Cir. 2020); United States v. Starrett, 55 F.3d 1525, 1550 (11th Cir. 1995). In Cagno, the New Jersey Supreme Court acknowledged this presumption, but found it unnecessary to decide whether to adopt it because the government had affirmatively established that the conspiracy continued. See 211 N.J. at 511.

1. Financial Facilitation And Tax-Credits Objective.

First, a central objective of the RICO conspiracy was "[o]btaining Grow NJ and ERG tax credits," and then "[u]sing the tax credits … so that costs expended in planning, constructing, or occupying [the criminally obtained] property would be offset by the application or sale of the tax credits." Indict. ¶ 215(e), (f). Firms controlled by Defendants received and sold these tax credits throughout 2022 and 2023.[23] See id. ¶¶ 5, 7, 87, 161-64, 169-72. These sales themselves were crimes alleged by the grand jury—confirming the validity of the charge of a continuing conspiracy. See supra Point I.B.4. And Defendants remain eligible to seek such credits related to the property interests they extorted through 2030. Id. ¶ 165. As Defendants continued obtaining and selling tax credits after June 2019, prosecution for the conspiracy is not time-barred. See Cagno, 211 N.J. at 509-10.

That conclusion, consistent with Cagno, flows directly from the "ordinary rule" applicable to conspiracies to achieve economic benefits. See United States

[23] Without any supporting authority or developed argumentation, O'Donnell suggests that this Court should not consider the receipt and sale of tax credits as part of the charged conspiracy because the credits were directly received and sold by uncharged businesses entities controlled by Defendants, rather than directly by Defendants. See O'Donnell Br. 17. But the Indictment alleges Defendants controlled these entities for criminal ends, Indict. ¶¶ 236, 238, and details how their control of these entities to commit the alleged crimes resulted in millions of dollars of gain to the Defendants personally, id. ¶¶ 198-211.

v. Rutigliano, 790 F.3d 389, 400 (2d Cir. 2015). That ordinary rule is that a conspiracy for economic gain continues until the accomplishment or abandonment of its economic objectives. Ibid. Applying the ordinary rule, federal courts have held, inter alia, that a conspiracy to rig the bidding process to secure a government contract continued beyond the award of the contract until receipt of the final payment on the contract work, see United States v. Girard, 744 F.2d 1170, 1172-73 (5th Cir. 1984); that a conspiracy to commit insurance fraud continues beyond receipt of the fraudulently obtained insurance proceeds until a co-conspirator received his promised pay-off, United States v. Mennuti, 679 F.2d 1032, 1034-35 (2d Cir. 1982); and that a conspiracy to commit securities fraud continues beyond receipt of the fraudulently obtained securities until the conspirators sell the securities at an artificially inflated market price, thus achieving the fraud's ultimate objective, United States v. Salmonese, 352 F.3d 608, 615-17 (2d Cir. 2003). And the rule "makes a good deal of sense," because "the receipt of such [economic] benefits is the sole reason the conspirators become involved in the scheme." Id. at 615.

In arguing that the receipt and sale of the tax credits do not demonstrate a conspiracy that continued into the limitations period, see Omnibus Br. 43; O'Donnell Br. 17-26; P. Norcross Br. 30-31, Defendants ignore our Supreme Court's controlling opinion in Cagno and the weight of persuasive precedent,

relying instead on a pair of federal appellate decisions (the Doherty/Grimm exception) holding that a conspiracy for economic gain does not continue until the accomplishment of the conspiracy's economic objectives if those economic objectives are achieved through the receipt of "serial payments" that are "lengthy, indefinite, ordinary, … noncriminal and unilateral." United States v. Grimm, 738 F.3d 498, 503 (2d Cir. 2013); see United States v. Doherty, 867 F.2d 47, 61 (1st Cir. 1989). But the Doherty/Grimm exception is a "narrow" carve-out from the commonsensical "ordinary rule," Rutigliano, 790 F.3d at 400—and in any event does not fit this case.

The Doherty/Grimm exception departs from the ordinary rule in only limited circumstances. In Doherty, the First Circuit rejected the idea that a conspiracy to unlawfully obtain a promotion continued for as long as the conspirator received the higher salary from the promotion. 867 F.2d at 62. In Grimm, the Second Circuit held (over a dissent) that a conspiracy to rig bids for interest rates on loans did not continue for as long as unindicted co-conspirators paid interest on those loans at the unlawfully depressed rate. 738 F.3d at 502-04.[24] The rationale is that such unilateral, indefinite payments do not pose "the

[24] O'Donnell, Br. 22-24, cites two additional cases within his Doherty/Grimm exception-based argument, United States v. Silver, 948 F.3d 538 (2d Cir. 2020) and United States v. Colón-Muñoz, 192 F.3d 210 (1st Cir. 1999), but each is inapposite. In Silver, the Second Circuit held that a bribery defendant's

special dangers attendant to conspiracies," Grimm, 738 F.3d at 502, i.e., "'concerted' activity and 'group association' for criminal purposes," Doherty, 867 F.2d at 61 (citation omitted). The exception conflicts with Cagno, which does not recognize any exceptions to the rule that conspiracies continue until the accomplishment or abandonment of their objectives, and has never been recognized by New Jersey courts.

Indeed, no court has applied this logic to bar a charge for RICO conspiracy specifically—which makes sense. Both Doherty and Grimm interpreted the federal statute of limitations, 18 U.S.C. § 3282, as applied to the federal general conspiracy statute, id. § 371, which together require proof of an overt act in furtherance of the conspiracy within the limitations period to convict. See Doherty, 867 F.2d at 60-61; Grimm, 738 F.3d at 501. Thus, Doherty and Grimm each analyzed whether receipt of certain economic benefits constituted overt

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continued referrals to a public official's personal injury practice after the public official had refused to continue providing the monetary grants sought by the doctor did not extend the limitations period for the bribery scheme; the scheme was over once the doctor no longer agreed to provide the grants in exchange for the referrals. See 948 F.3d at 572-74. But here, no bribery charges are at issue, let alone a breakdown in an ongoing quid-pro-quo, as occurred in Silver. In Colón-Muñoz, meanwhile, the First Circuit held that a conspiracy to commit bank fraud did not continue for as long as the defendant used proceeds from that fraud where defendant's use of the fraudulently obtained funds was not part of the scope of the conspiratorial agreement. See 192 F.3d 210. But here, the receipt and sale of tax credits were not outside the scope of the conspiratorial agreement alleged, as the use of the bank fraud proceeds were in Colón-Muñoz.

acts in furtherance of the conspiracy. See Doherty, 867 F.2d at 62; Grimm, 738 F.3d at 504. That analysis has never been applied to either New Jersey's RICO or general conspiracy statutes (nor to federal RICO conspiracies). For good reason: New Jersey's RICO statute does not require proof of an overt act to convict for RICO conspiracy. See N.J.S.A. 2C:41-2; Cagno, 211 N.J. at 401-02. Nor does New Jersey's general conspiracy statute require an overt act for conspiracies of the first or second degree—as the grand jury charged here. See N.J.S.A. 2C:5-2(d). Rather, under Cagno, a conspiracy's duration is defined not by when the last overt act occurred but by when "the objectives of the conspiracy" have been "accomplishe[d] or abandon[ed]." Cagno, 211 N.J. at 509-10. So the Doherty/Grimm exception is especially inapposite here.

Regardless, even if the Doherty/Grimm exception were incorrectly imported into New Jersey law, the receipt and sale of the tax credits here do not fit within the exception. Initially, the receipt and sale of the tax credits are not "indefinite."[25] Grimm, 738 F.3d at 503. Defendants' eligibility to apply for and receive the tax credits ends in 6 years. Indict. ¶ 165. More importantly, achieving this economic objective requires more than a passive "unilateral" act.

[25] Thus, contrary to Defendants' argument, Omnibus Br. 43, denying their motions does not require assuming that a conspiracy could continue as long as an entity rented out property obtained via an extortion conspiracy or operated a business from a location thus obtained. And those are not, to be clear, the type of theories that undergird this Indictment.

Grimm, 738 F.3d at 503 (serial payments of interest "made unilaterally by a single person or entity"). Unlike the salary payments at issue in Doherty, 867 F.2d at 62, or the interest payments at issue in Grimm, 738 F.3d at 502-04, Defendants must apply annually for the tax credits, Indict. ¶ 27, and make specific showings, id. ¶ 29. Moreover, in order to avoid attempts by the State to recapture the value of the credits, Defendants coordinated in their efforts to conceal that the credits stemmed from criminal activity. Id. ¶ 215(g). Thus, unlike the period in which salary payments were passively received in Doherty, or the period in which the interest payments were passively made after the bid-rigging was over in Grimm, it cannot be said of the period in which the tax credits were received and sold here that there was not "any further [conspiratorial] objectives or cooperative activity." Contrast Doherty, 867 F.2d at 62; contrast also Grimm, 738 F.3d at 502-04. Thus, even if the Doherty/Grimm exception applied to this New Jersey RICO conspiracy charge despite Cagno, it would be still inappropriate to dismiss the charge as time-barred: the receipt and sale of the tax credits were neither "indefinite" nor "unilateral," cf. Grimm, 738 F.3d at 503; other objectives and conspiratorial activity continued, see infra at 116-118; and, much as a district court bound by Doherty has reasoned in distinguishing that case, these financial benefits were

"part and parcel of the conspiracy," see United States v. Derman, 23 F. Supp. 2d 95, 102 (D. Mass. 1998).

Defendants also argue that the RICO conspiracy does not extend through the receipt and sale of the tax credits because Defendants did not act unlawfully in obtaining or selling the tax credits, see Omnibus Br. 41-43; O'Donnell Br. 17, but "the legal as well as the illegal aspects of an agreement are all part of a conspiracy to commit an illegal act for statute of limitations purposes." United States v. Helmich, 704 F.2d 547, 549 (11th Cir. 1983). And in any event, the receipt and sale of those tax credits is unlawful, as the credits were "derived from" Defendants' conspiratorial and extortionate activity. N.J.S.A. 2C:21-25; see Indict. ¶¶ 224, 226, 228, 230, 232, 234 (Counts 5-10, charging Financial Facilitation of Criminal Activity); see also N.J.S.A. 2C:41-1(o) (Financial facilitation is a RICO predicate offense); supra at Point I.B.4. That simply confirms that the grand jury validly charged a continuing conspiracy—its Financial Facilitation crimes are still being committed, much as they would if a ring of art thieves stole ten Rembrandts and sold off one per year.

Nor does the fact that the State itself "paid the credits" render anything about this result "Kafka[esque]." Omnibus Br. 42. An objective of the charged conspiracy was to obtain these millions of dollars while concealing the Enterprise's acts and purposes, and "misleading the public, law enforcement,

the news media, and others into believing that the acquisition and sale of the tax credits stemmed from purely lawful activity." Indict. ¶ 215(g); see also infra Point II.A.3. Defendants can hardly bootstrap the grand jury's charge that they were successful in this objective into a basis for this Court to throw out the grand jury's Indictment. Indeed, it is Defendants' argument that reads like a Catch-22: it suggests 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. That is not, and cannot be, the law.[26]

Finally, whether defendant Redd "has never held a job at a for-profit entity" and "has no largesse to show for her uninterrupted public service," Redd Br. 1, is beside the point. Even if Redd could permissibly insert facts into this facial challenge (which she cannot), there is no basis to assume Redd desisted from the conspiracy sooner than anyone else. Indeed, one result of the Enterprise's actions was to find a role for Redd after her mayoral role ended—a role that opened up through the Enterprise's threats to the CFP CEO, enabling

[26] As to Defendants' further assertion, Omnibus Br. 42-43, that the receipt and sale of tax credits are too removed from the criminal activity charged, this argument essentially replicates their attack on the Financial Facilitation counts and fails for the same reasons: it contradicts both case law and legislative intent, and regardless raises a classic factual question of proximate cause inappropriate for adjudication on this posture. See supra at 77-78.

the former CEO of the Rowan-Rutgers board to take the nonprofit's CEO job, and Redd to take the Rowan-Rutgers job, a job she held until 2022, at significant financial benefit to herself (in part thanks an arcane tweak to New Jersey pension laws that George Norcross's close ally in the Senate had just pushed through). See Indict. ¶¶ 173-74, 8, 178-180; see also id. ¶ 215(c) (objective of "rewarding members," including with lucrative jobs).

2. Intimidation And Retaliation Objective.

Second, in addition to the tax credit objective, the charged RICO conspiracy had as an objective "[p]romoting compliance with the Enterprise's demands by retaliating against those in the way of and opposed to the Enterprise" and "[u]sing the Enterprise's reputation for controlling governmental entities to intimidate and threaten those who held property interests that the Enterprise wanted to acquire." Indict. ¶ 215(h)-(i). This objective was neither completed nor abandoned as of June 2019. For example, the Enterprise engaged in a protracted retaliation campaign against Developer-1 that involved directing Camden officials to delay in providing an approval Developer-1 needed to complete a business deal. Id. ¶¶ 181, 186. The retaliation campaign continued through 2023, when Developer-1 finally caved and forfeited an unrelated property interest (his right to redevelop the Radio Lofts parcel) as a result of the Enterprise's efforts. Id. ¶ 197; see also id. ¶ 147

(George Norcross, in a recorded call, referring to Radio Lofts as "another point of attack on this putz"). Defendants have no response to the fact that this objective continued into the limitations period.

3. Concealment Objective.

Third, the objectives of the RICO conspiracy also included "[c]oncealing, misrepresenting, and hiding the illegal operation of the Enterprise." Id. ¶ 215(g). Defendants engaged in, or caused others to engage in, alleged acts of concealment in October of 2019, id. ¶¶ 91-92 (misleading statements to the media regarding the L3 Complex deal); and in August and September of 2023, id. ¶¶ 155-57 (Tambussi's motion to preclude reference to the Norcross brothers in the Radio Lofts litigation and misleading statements in court).

Although Defendants argue that Tambussi is immune for any acts he committed as a lawyer, and thus that those acts cannot count as conspiratorial acts in furtherance of the conspiracy for statute of limitations purposes, Omnibus Br. 40, this argument fails both because Tambussi is not so immune, see supra Point I.B.6, and because acts of concealment need not themselves be criminal to constitute acts in furtherance of the conspiracy for statute of limitations purposes. See, e.g., Helmich, 704 F.2d at 549.[27]

[27] It bears adding that Defendants wholly misread the Indictment in asserting that the grand jury was "insinuat[ing]" that a judge is corrupt. Omnibus Br. 41.

As for Defendants' arguments that these acts of concealment are not part of the charged conspiracy, see Omnibus Br. 39-40; O'Donnell Br. 26 n.19, they ignore the critical paragraph in the Indictment alleging that they, in fact, are. See Indict. ¶ 215(g). While it is true that "mere overt acts of concealment" are not tantamount to "a conspiracy to conceal," State v. Twiggs, 233 N.J. 513, 543 (2018) (citation omitted), the Indictment alleges more than particular acts of concealment after the RICO conspiracy's objects were obtained; it alleges a RICO conspiracy that includes concealment of the criminal conspiratorial activity as one of the objectives. See Indict. ¶ 215(g). While Defendants can later argue that the evidence presented to the grand jury (and ultimately, to the petit jury at trial) does not support this alleged objective, neither that argument nor that evidence is presently or appropriately before this Court.

* * *

In sum, Count One is not facially time-barred because the Indictment states that the charged RICO conspiracy has continued "to the present." Indict. ¶ 1. More detail is not necessary, but even if it were, the Indictment provides numerous examples of objectives of the conspiracy that remained neither fully

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The relevant paragraph notes Developer-1's subjective "concerns over corruption in Camden," which "made him believe that he would not be treated fairly." Indict. ¶ 196 (emphasis added). It does not allege judicial corruption, nor did it need to.

accomplished nor abandoned as of June 2019: after that point, tax credits continued to be received and sold, and Defendants continued to commit acts of retaliation and concealment, among other conduct. Thus, Count One is timely. See Cagno 211 N.J. at 509-10.

B. The Other Conspiracy Charges Are Timely.

For essentially the same reasons that the overarching RICO conspiracy charge is timely prosecuted, the other conspiracy charges (Counts 2-4)—alleged to have continued at least into mid-2022 if not later, see Indict. ¶¶ 6, 87, 88(f), 93, 195—are also timely.

The objectives of the RICO conspiracy charge that extended into the limitations period—including obtaining tax credits, retaliating against enemies of the Enterprise, and concealing those crimes—were also objectives of the conspiracies alleged in Count Two (L3 Complex), Count Three (Triad1828 Centre and 11 Cooper), and Count Four (Radio Lofts). Counts Two, Three, and Four each allege that Defendants agreed to use criminal means to obtain various property rights on the Camden waterfront. Id. ¶¶ 218, 220, 222. Among the objectives the grand jury charged were obtaining tax credits under the EOA that would offset the costs of the properties. Id. ¶¶ 31; see also id. ¶¶ 93, 218(b)(iii)-(iv), 220(b)(iii)-(iv). Further, part of the conspiracy with respect to Counts Two and Three was that Defendants, up through "the date of this Indictment," id. ¶¶

218, 220, had agreed to receive and sell tax credits related to the relevant properties—including throughout 2022 and 2023, see id. ¶¶ 87 (L3 Complex); 161-64 (Triad1828 Centre); 169-72 (11 Cooper); 218(b)(iii)-(iv) (L3 Complex); 220(b)(iii)-(iv) (Triad1828 Centre and 11 Cooper). Defendants also retaliated against Developer-1 for his resistance to their demands (Count Four), resulting in Developer-1's capitulation within the limitations period. See id. ¶¶ 4, 147, 181, 186, 197. And they committed acts of concealment, having conspired to do so, id. ¶ 215(g), with respect to the crimes that are the subject of Counts Two and Three, id. ¶¶ 91-92, 155-57.

Again, Defendants may argue later, or seek to prove at trial, that the objectives of the conspiratorial agreements in fact were accomplished or abandoned outside of the limitations period. As facially alleged, however, the charges are timely.

C. The Financial Facilitation Charges Are Timely.

On its face, the Indictment plainly alleges that Defendants engaged in Financial Facilitation of Criminal Activity, see N.J.S.A. 2C:21-25, which continued beyond June 2019. Counts 5-10 allege that all Defendants possessed and directed transactions in funds from the sale of tax credits related to the L3 Complex, the Triad1828 Centre, and the 11 Cooper building; and that Defendants knew, or reasonably should have known, that those tax credits were

derived from criminal activity—namely, the conspiratorial and extortionate conduct that Defendants engaged in to obtain the property interests that gave rise to the tax credits. Indict. ¶¶ 224, 226, 228, 230, 232, 234. The Indictment alleges that Defendants possessed and directed transactions in funds up through "the date of this indictment," ibid., and specifically alleges the receipt and sale of these criminally derived tax credits in 2022 and 2023, see Indict. ¶¶ 7, 87, 161-64; 169-72. Thus, these charges are timely prosecuted.[28]

D. The Misconduct by a Corporate Official Charges Are Timely.

For the same reason that the Financial Facilitation charges are timely prosecuted, the Misconduct by a Corporate Official charges (Counts 11-12), see N.J.S.A. 2C:21-9(c); Indict. ¶¶ 236, 238, are also timely prosecuted. That is because the Misconduct by a Corporate Official charges allege that Defendants used corporations that they control to promote criminal objectives, and among those criminal objectives are the receipt and sale of the criminally derived tax

[28] Tambussi claims Counts 5-10 are facially time-barred as to him specifically because the Indictment does not detail exactly how Tambussi was personally involved with the receipt and sale of these tax credits. Tambussi Br. 37-39. That argument goes to the sufficiency of the evidence implicating Tambussi in Counts 5-10, rather than any facial deficiency with the Indictment, which plainly alleges his involvement in these crimes, which continued through the limitations period. See supra at 101-102.

credits, i.e., the conduct underlying the Financial Facilitation charges. See Indict. ¶¶ 224, 226, 228, 230, 232, 234, 236, 238.[29]

E. The Official Misconduct Charge Is Timely.

Finally, the Indictment validly alleges that all Defendants—Redd directly, the others vicariously through her—committed Official Misconduct (Count Thirteen) within the limitations period, i.e., beyond June 2017. See N.J.S.A. 2C:1-6(b)(3); N.J.S.A. 2C:2-6(a), (b)(3)-(4)); N.J.S.A. 2C:30-2; Indict. ¶¶ 218(b)(vi), 220(b)(vi), 240.[30]

To begin with, the Indictment properly alleges that all Defendants committed this offense between "January 1, 2014 and December 31, 2017," which overlaps with the limitations period. Indict. ¶ 240. That alone is sufficient to reject this facial challenge to Count 13, with arguments about the

[29] As with Counts 5-10, Tambussi claims Counts 11-12 are facially time-barred as to him because the Indictment does not detail exactly how Tambussi was personally involved with these acts of corporate misconduct. Tambussi Br. 37-39. Here too, that argument goes to the sufficiency of the evidence, rather than any facial deficiency with the Indictment. See supra at 101-102, 89 n.17.

[30] O'Donnell and Tambussi claim that Count 13 is facially time-barred as to them specifically because the Indictment does not detail exactly how they acted as accomplices to Redd's commission of Official Misconduct. O'Donnell Br. 15 n.15; Tambussi Br. 37-39. That argument goes to the sufficiency of the evidence implicating these defendants in Count 13, rather than any facial deficiency with the Indictment, which plainly alleges they agreed to the commission of this crime, which itself continued through the limitations period. See supra at 101-102.

factual underpinning of that allegation improper for these facial motions. See supra at 103-04; W.S.B., 453 N.J. Super. at 236.

Even if more detailed factual allegations were required at this stage (which they are not), the Indictment remains valid. Most relevantly, the grand jury charged Redd with committing "an act relating to her office" that she knew to be "an unauthorized exercise of her official functions" by engaging in the various crimes alleged in Counts 1-3 (RICO conspiracy; L3 Complex conspiracy; and Triad1828 Centre and 11 Cooper conspiracy) and Counts 5-12 (financial facilitation and corporate misconduct charges related to the same). Indict. ¶ 240; see also supra at 75-77. Because those Counts themselves charge Redd with crimes committed beyond June 2017 and through December 2017 when her term in office ended, see supra at 11-12, Count Thirteen is timely.

Further, even if the Indictment were required to identify a specific act of misconduct that furthered this conspiracy from within the relevant period, it meets that test, particularly given the standard that applies to facial motions. See supra at 29-30. Consider Redd's involvement in the RICO conspiracy charged in Count One. See Indict. ¶ 213. The objectives of that conspiracy included promoting the power, influence, and wealth of George Norcross by controlling the local government and influencing government contracts, Indict. ¶ 215(b), (c); see also id. ¶ 215(i) ("[u]sing the Enterprise's reputation for

controlling governmental entities to intimidate and threaten"), and the conspiracy continued through the present, id. ¶ 1—including, of course, the last six months of Redd's term as mayor. The grand jury charged Redd agreed to participate in this RICO conspiracy by using her position as mayor of Camden to advance the conspiracy's objectives, including those related to control of the government. See Indict. ¶¶ 213, 240.

That qualifies as official misconduct within the limitations period for either of two reasons. For one, the agreement itself constituted official misconduct, and the agreement continued through the end of Redd's mayoral term, and thus six months beyond the June 2017 limitations cut-off for official misconduct. See id. ¶ 8.

For another, even if that were not enough (though it is), the Indictment charges that the Enterprise operated continuously between June and December 2017 (when Redd left office), as the conspirators reaped the benefits of their crimes: some Defendants used the property rights they extorted to construct buildings on the Camden waterfront (taking a key step towards their ultimate goal of offsetting the costs of that construction with tax credits), see id. ¶¶ 160, 169, 212-16, while Redd received her own financial benefits for her participation, see supra Point I.B.3, by having the Enterprise work to secure her a highly remunerative position as CEO of the Rowan-Rutgers Board, which

would also boost her pension thanks to the unassuming legislative tweak that George Norcross's close ally in the Legislature had just pushed through, see id. ¶ 174-80; supra at 119-20. Thus, Redd's active participation in the conspiracy—and thus her official misconduct—was ongoing during this period, since it was during this time that she was still "obtain[ing] a benefit for [herself]," and thus in the process of continuing or completing both crimes. See Weleck, 10 N.J. at 368, 374-75 (official misconduct charge not time barred where official demanded within limitations period to be paid for having corruptly influenced amendment to ordinance); Mennuti, 679 F.2d at 1035-36 (explaining that conspiracies generally continue "until conspirators receive their payoffs," and finding conspiracy charge timely on this basis); see also supra Point II.A.1. Accordingly, because Redd's commission of official misconduct continued during the final six months of her term, the official misconduct charge against her is timely. And because the other Defendants agreed to Redd's participation in the RICO conspiracy in her capacity as mayor, Indict. ¶ 215(b), (c), 239-40, and are otherwise vicariously liable for Count 13, Count 13 is timely as to them as well.

Defendants' responses are unpersuasive. They argue primarily that the "typical" criminal offense is complete as soon as every element occurs, see Omnibus Br. 38, and then try to define for themselves when the State's charged

offense was complete. But this is not the typical case: it is one on in which a grand jury did not allege an isolated unauthorized act, but rather the ongoing participation by a public official in criminal conspiracies and other crimes, and the use of her public powers to advance those crimes. See Indict. ¶¶ 212-20, 223-38. Indeed, the only two cases Defendants cite help prove this point: Diorio, on which they primarily rely, was not itself about official misconduct, and its discussion of official misconduct in dicta simply references an older case, Weleck, that acknowledges that an "indictment for misconduct in office may allege a series of acts spread across a considerable period of time," and that "[i]f any of the acts fall within" the limitations period, "prosecution is not barred by the statute of limitations." See Weleck, 10 N.J. at 374; see also Diorio, 216 N.J. at 617 (recognizing that, in Weleck, "the offense of official misconduct premised on an agreement between a borough attorney and a private citizen for the attorney to use his influence to guide legislative action for the benefit of the private citizen is a continuing offense"). That, of course, is helpful to the State, as the criminal agreements continued here. And indeed, though not about official misconduct, Diorio itself held that the fraud scheme charged there was "a continuing offense," id. at 619—much like the continuing conspiracies that the grand jury charged here.

Defendants' claim that Redd's receipt of a benefit for her participation in the conspiracy cannot qualify for statute of limitations purposes also fails. Omnibus Br. 38; Redd Br. 19-20; O'Donnell Br. 15 n.15. To start, this theory overlooks that the receipt of the benefit does qualify as part of the conspiracy, see supra Point II.A.1; see also Indict. ¶ 215(c) (alleging that one of the Enterprise's objects was "[e]nriching and rewarding members, allies, and associates of the Enterprise, including with … appointments to public positions"), and Redd was charged with committing official misconduct by using the powers of her office to participate in the Enterprise's conspiracy, see supra Point I.B.3. And though a public official need not "actually gain a benefit" to commit official misconduct, Saavedra, 222 N.J. at 60—or else an unsuccessful attempt would be immune from prosecution—that hardly means that remaining part of a conspiracy in order to collect a payoff from that conspiracy does not constitute an act of official misconduct. Rather, just as the borough attorney's official misconduct "continued so long as [he] held office and persisted in his efforts to obtain money from" a private citizen for his efforts to corruptly influence a local ordinance amendment in Weleck, 10 N.J. at 374, so too did Redd's official misconduct continue while she remained part of the Enterprise and persisted in her efforts to obtain a financial reward for her corrupt participation. Because her misconduct continued through the end of her term as

mayor, and thus within the limitations period, Count Thirteen—even on Defendants' own terms—is timely prosecuted for purposes of this facial challenge.

CONCLUSION

This Court should deny Defendants' motions to dismiss the Indictment.

Respectfully submitted,

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