| STATE OF NEW JERSEY<br><br>v.<br><br>GEORGE E. NORCROSS, III, et al.,<br><br>Defendants. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION — CRIMINAL<br>MERCER COUNTY<br><br>DOCKET NO.: MER-24-001988<br>INDICTMENT NO.: 24-06-00111-S |
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MEMORANDUM OF LAW IN SUPPORT OF
PHILIP A. NORCROSS'S MOTION TO DISMISS THE INDICTMENT

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Defendant Philip A. Norcross ("Philip Norcross") respectfully submits this memorandum of law in support of his motion to dismiss the Indictment.

## PRELIMINARY STATEMENT

Philip Norcross is a prominent and well-respected lawyer who for decades focused his practice on real estate law, public finance, and urban redevelopment. He is also the Chair of the Cooper Foundation, the charitable arm of Cooper Hospital. He is passionate about the City of Camden and, over the years, has initiated and completed a host of projects designed to revitalize that city.

For many years, Philip Norcross was CEO of Parker McCay, one of the State's leading law firms. He is not a public official, elected or otherwise; the charges against him concern his work as a lawyer. He joined the Defendants' omnibus motion to dismiss the Indictment, but makes this separate motion to highlight the manifest deficiency of its specific factual allegations as to him and, as if that were not enough, to establish that they are hopelessly time-barred.

For purposes of this motion, Philip Norcross does not deny any of the facts alleged in the Indictment. He denies that they constitute crimes. They do not. Accepting as true every fact alleged against him and every reasonable inference to be drawn from those facts, they do not establish a violation of any statute charged in the Indictment. To the contrary, they constitute the practice of law he engaged in to advance the legal, business, and civic interests of his clients—

including his brother, George Norcross, a powerful figure in New Jersey politics, and the Cooper Foundation, which Philip Norcross chaired. That is not a crime.

Defendant William Tambussi has already taken the OPIA to task for its false and misleading presentation to the grand jury. He is not alone in that assessment; the presentation was a colossal distortion of the truth as to every defendant, top to bottom. George Norcross is the political leader and Chair of Cooper Hospital who led Camden's renaissance. Philip Norcross is the gifted lawyer and Chair of the Cooper Foundation who helped make that renaissance a reality. John O'Donnell and Sidney Brown are honorable businessmen who invested in Camden's future, Dana Redd a public servant who worked to ensure it. They all behaved lawfully but were indicted to further the ruse that a criminal enterprise was afoot—a claim two federal prosecutors considered and rejected.

But as we advised your Honor from the outset, you need not review a page of grand jury transcript to dismiss the palpably defective Indictment out of hand. Simply placing the unalloyed facts it alleges against the criminal statutes it invokes reveals that instrument's fatal deficiency. That its reckless charges are outdated by years only underscores the point. So while he shares Tambussi's outrage, Philip Norcross remains firm in his view that the Indictment must be dismissed in its entirety for facial invalidity and rank untimeliness without the need to assess the despicable burlesque that engendered it.

No court in the country has ever declined to dismiss an indictment alleging acts that do not violate the statutes it invokes. This Court should not be the first.

## BACKGROUND

### A. The Indictment's Specific Allegations Involving Philip Norcross.

The allegations against Philip Norcross reduce to (i) encouraging the New Jersey Legislature to include certain language in the Economic Opportunity Act ("EOA") that would facilitate the desperately needed redevelopment of the Camden waterfront; (ii) urging Cooper's Ferry Partnership ("CFP") to partner with a particular investor to facilitate that redevelopment; (iii) participating in negotiations with a sophisticated developer, Carl Dranoff ("Dranoff"), and his team of lawyers to obtain property rights Dranoff owned that were impeding the redevelopment; and (iv) giving City of Camden officials and the Camden Redevelopment Agency ("CRA") suggestions on how to secure those rights.

None of these actions is remotely criminal; all are the type of things lawyers do every day. It is not a RICO violation, a criminal threat, theft by extortion, money laundering, official misconduct or any other crime for a lawyer to engage in tough negotiations with his counterparties or have both the access and the ability to engage with and make helpful suggestions to elected officials. The Indictment acknowledges—employing the shopworn prosecutorial device of drawing the sting of damning facts—that in addition to being CEO of Parker

McCay, Philip Norcross "was the Chair of the Board at the Cooper Foundation, which supports the charitable purposes, programs and services of Cooper Health and its affiliates" (Indictment ¶ 10) and "engaged in various philanthropic endeavors[,] including The Cooper Foundation[,]" that "did, in fact, generate substantial charitable fundraising." (Id. ¶ 208.) The allegation that it was a crime for a leading lawyer and Chair of a successful Camden charity to do what the Indictment accuses Philip Norcross of doing is not only ridiculous but disgraceful.

The Indictment's specific allegations against Philip Norcross concern his efforts regarding (1) the EOA; (2) the L3 complex; (3) Triad1828 Centre and 11 Cooper; and (4) the Radio Lofts. Those charges are addressed seriatim.

***The EOA.*** The EOA was enacted in September 2013 to incentivize investment in economically depressed areas by awarding tax credits for qualifying projects in such areas. (Indictment ¶¶ 28-29.) The Indictment alleges that Philip Norcross participated in meetings and discussions involving the draft legislation and encouraged the Legislature, by communicating with the then-Senate President, to include language in the statute that would advance the vision and interests of his client and brother, George Norcross. (Id. ¶¶ 32, 33, 36, 38, 39, 40.) The Indictment alleges that in a meeting with a group of individuals shortly after passage of the EOA, Philip Norcross commented that

he worked as a general matter to implement his brother's agenda in Camden as it pertained to urban redevelopment, education and public safety. (Id. ¶ 43.) The Indictment does not allege that he was paid for doing so or that he violated any lobbying rule or regulation. His volunteer, charitable work to facilitate redevelopment of the Camden waterfront—including work he did for the Cooper Foundation—was obviously not a crime. It was entirely lawful, constitutionally protected, and laudable conduct.

***The L3 Complex.*** The L3 Complex is a building CFP planned to purchase by partnering with an investor of its choosing. (See Indictment ¶¶ 47, 57.) George Norcross had an interest in that building because he believed it was a suitable property for the offices of Cooper Health, which he chaired. (See id. ¶¶ 1, 7.) The Indictment alleges that Camden Mayor Dana Redd's chief of staff directed the CEO of CFP to meet regularly with Philip Norcross and her to ensure that its projects were approved by George and Philip Norcross. (Id. ¶¶ 49-50.) Ignoring its acknowledgement of Philip Norcross's successful years-long tenure as Chair of the charitable Cooper Foundation, (id. ¶¶ 10, 208), the Indictment casts him as an interloper in the L3 transaction, stating: "Although he held no role at CFP or in Camden City government, Philip Norcross sought updates . . . on the status of CFP's agreement to purchase the L3 Complex." (Id. ¶ 52.) As a result of these meetings, the Indictment goes on to allege, Philip

Norcross learned of CFP's agreement to purchase the L3 Complex and sought updates from CFP about the intended acquisition. (Id.) The Indictment further alleges that, during the L3 transaction, Mayor Redd and her chief of staff responded to concerns raised by CFP's CEO by telling him that he had to deal with Philip Norcross. (Id. ¶ 77.)

The Indictment then charges that, during a meeting with CFP officials, Philip Norcross stated that CFP should not be involved in redevelopment projects and named several entities with which CFP should partner. (Indictment ¶ 59.) The CEO of Cooper Health allegedly told CFP officials to meet with Philip Norcross because George Norcross was angry about CFP's involvement in the L3 transaction. (Id.) Philip Norcross then insisted that CFP partner with a specific investor who had expressed an interest in the deal and that CFP could enter into a non-disclosure agreement with that investor. (Id. ¶¶ 60-61.) As a result, CFP entered into a non-disclosure agreement with the investor even though CFP was not otherwise interested in working with him. (Id. ¶ 63.)

According to the Indictment, on or about April 21, 2014, CFP reached an agreement in principle to conduct a joint venture with a different entity to complete the purchase of the L3 Complex. (Indictment ¶ 65.) Philip Norcross was allegedly "'torqued'" after learning of this redevelopment. (Id. ¶¶ 65, 67, 69.) On April 25, 2014, Philip Norcross and the Mayor's chief of staff allegedly

held a meeting with CFP's CEO during which Phil Norcross told the CEO that CFP was not allowed to use the entity it chose and it should only use the investor Philip Norcross had identified. (Id. ¶ 70.) The CEO allegedly "understood" this instruction to be an implicit "threat" based not on anything Philip Norcross said or anything the CEO believed about Philip Norcross, but on "what [the CEO] knew about" George Norcross and his conduct in the past. (Id. ¶¶ 71, 53-54.) The CEO's perception did not render that statement a "threat" of any kind, much less a criminal threat. The notion is absurd.

The Indictment also describes peripheral acts Philip Norcross took regarding the L3 Complex deal and Cooper Health's related application for tax credits. Cooper Health had previously forwarded information to Philip Norcross about leasing space in the L3 Complex; his acts consisted of suggesting how Cooper Health could secure tax credits and noting that CFP would have to pay $1.5 million to cover costs relating to windows in the L3 Complex. (Indictment ¶¶ 64, 75-76.) They also included telling CFP's CEO that (a) a particular individual would serve as co-chair of CFP, a message that had also been conveyed by Mayor Redd, who was then serving as CFP's other co-chair; and (b) having this individual as co-chair would help CFP mend fences with George Norcross. (Id. ¶ 78.) After that individual became co-chair, he responded to complaints raised by CFP's CEO about the L3 transaction by telling the CEO

that he had to deal with Philip Norcross and pushing the CEO to close the deal. (Id. ¶ 79.)

None of those acts bears any resemblance to a criminal threat, criminal coercion, theft by extortion or any other crime. They are standard fare for highly regarded lawyers with access to decision makers, and were particularly appropriate acts for the Chair of a Camden charity. It may vex those—apparently including Carl Dranoff—who resent highly experienced, well-respected local lawyers with institutional knowledge thwarting their commercial endeavors. But it is not criminal under any reading of the law to do anything Philip Norcross is accused of doing as regards the L3 Complex.

***Triad1828 Centre and 11 Cooper***. The second real-estate transaction at issue concerns the redevelopment of Triad1828 Centre and 11 Cooper. The Indictment alleges that George Norcross wanted to build Triad1828 Centre to serve as the headquarters of his company, Conner, Strong & Buckelew, and that of The Michaels Group and NFI, companies run by Defendants John O'Donnell and Sidney Brown, respectively. (Indictment ¶¶ 93-94.) George Norcross also allegedly wanted to build a residential development on the parcel where 11 Cooper was eventually built. (Id.) In order to do so, he had to secure two of Dranoff's property rights, a view easement that would have limited the height

and hence the value of Triad1828 Centre and a right of first refusal for residential redevelopment that included the 11 Cooper site. (Id. ¶ 94.)

The Indictment alleges that Philip Norcross was involved in efforts to obtain or extinguish these property rights of Dranoff in several ways. First, the Indictment alleges that Philip Norcross attended a meeting with representatives of the Economic Development Authority and others to "plan the Waterfront," and received information from CFP about plans and agreements related to the Waterfront District. (Indictment ¶¶ 101-102.) There is nothing criminal about a lawyer meeting with city officials to strategize about real estate redevelopment in that city. Nothing.

The Indictment also alleges that Philip Norcross was involved in negotiations relating to the development of Triad1828 Centre and 11 Cooper. Specifically, it alleges that he represented Camden Partners Tower, a group that included George Norcross and others, in negotiations with master developer Liberty Property Trust. (Indictment ¶ 107.) Those negotiations, the Indictment charges, included discussions with George Norcross and Dranoff regarding Camden Waterfront redevelopment opportunities and Dranoff's view easement for the Victor Lofts. (Id. ¶¶ 110, 116-117, 136.) During two calls Philip Norcross was on, George Norcross allegedly stated that (a) Dranoff would never do business in Camden again if he stymied or "f**ked up" George Norcross's

redevelopment plans; and (b) "there would be consequences" for Dranoff if he did not reach an agreement to release his view easement and transfer his right of first refusal on residential redevelopment, along with related rights. (Id. ¶¶ 117, 136.)

Strategizing with a government official is not a crime. Neither is negotiating with an opponent, even if someone resorts to the oft-used "F" word during those negotiations. To charge a lawyer with crimes for such strategizing and negotiating is outrageous.

The Indictment also alleges that Philip Norcross was involved in a plan to have the CRA, a governmental entity created by the Camden City Council (Indictment ¶ 20), condemn Dranoff's view easement through court action. (Id. ¶¶ 127-150.) In participating in this plan, the Indictment alleges, Philip Norcross sent a memo to William Tambussi analyzing whether the CRA could condemn Dranoff's view easement. Tambussi responded by stating that there was a good likelihood the court would declare that the CRA had the right to do so. (Id. ¶¶ 132-133.) The Indictment also alleges that Philip Norcross participated in conversations regarding the approval of the planned condemnation action after a proposed deal with Dranoff fell through. (Id. ¶¶ 138-140, 142, 148, 150.) Beyond there being nothing improper about being involved in such a plan, there is no allegation it was ever communicated to

Dranoff. Neither was it acted upon; as the Indictment alleges, the parties reached a seven-figure settlement with Dranoff. (Id. ¶ 151.) The allegation that it is a crime for one lawyer to provide another with input, ideas, or suggestions on litigation strategy is ludicrous.

Finally, the Indictment alleges that Philip Norcross instructed Mayor Redd not to meet with Dranoff during their negotiations over the Camden Waterfront and that, as a result, the Mayor stopped returning Dranoff's calls. (Indictment ¶ 125.) That must have been frustrating for Dranoff, "whose calls to city officials, including [Mayor] Redd, were typically returned." (Id. ¶ 124.) Nevertheless, for a lawyer to suggest that a government official decline contact with an opponent is not a crime. Not now, not ever.

***The Radio Lofts.*** The last real-estate transaction described in the Indictment relates to the Radio Lofts, a property over which Dranoff had a redevelopment option. (Indictment ¶ 98.) At the time Dranoff held that option, he also sought to sell six of his company's properties to a real estate investment trust. (Id. ¶ 183.) In order to complete that sale, Dranoff needed to transfer a PILOT (payment in lieu of taxes) agreement to the trust, which required the approval of the Camden City Council. (Id.)

The Indictment alleges that Philip Norcross was involved in efforts to cause Dranoff to forfeit his redevelopment rights relating to the Radio Lofts,

efforts that were facilitated by Philip Norcross's participation in weekly stakeholder meetings that involved various city officials, including Mayor Redd, the Mayor's chief of staff, and representatives of the City Attorney's office. (Indictment ¶ 184.) During one such meeting in March 2018, the Indictment alleges, Philip Norcross said, in substance and in part, that approval for the PILOT agreement transfer should be "slowed down by the City in order to create a 'legal strategy' to deal with [Dranoff's] Camden interests"—in particular, to cause him to forfeit his company's option to redevelop the Radio Lofts. (Id. ¶ 186.)

For a lawyer to communicate with a government official on legal steps she should consider taking to achieve a stated goal is not a crime. It's that simple.

The Indictment also alleges that, as a result of Philip Norcross's efforts, the CRA terminated Dranoff's Radio Lofts redevelopment option and the City refused to approve transfer of his PILOT agreement. (Indictment ¶¶ 187-191.) Dranoff thereafter filed a lawsuit against the CRA and the City relating to its failure to approve that transfer. (Id. ¶ 192.) In response to that lawsuit, the Indictment charges, Philip Norcross gave another lawyer, Defendant William Tambussi, talking points to the effect that Dranoff was responsible for the failure to redevelop the Radio Lofts and that the City would not be intimidated by his

litigation tactics. Those talking points were then repeated by Camden City officials. (Id. ¶¶ 193-194.)

For a lawyer to provide another lawyer with talking points regarding an adverse party's lawsuit is not a crime. The claim that it is falls of its own weight. That Dranoff settled his lawsuit and the City's counterclaims on terms that required him to (i) release his Radio Lofts redevelopment option for $1; and (ii) pay the City approximately $3.3 million (Indictment ¶ 195) only underscores the point. It is hardly a crime for a lawyer to provide a public official with appropriate suggestions leading to a settlement of litigation that greatly benefited the taxpayers.

### B. The Indictment's Criminal Charges Against Philip Norcross.

The Indictment charges Philip Norcross in thirteen counts with racketeering involving criminal coercion, criminal threats, theft by extortion, financial facilitation of criminal activity, and official misconduct on theories of co-conspirator and accomplice liability. Count One charges an overarching RICO conspiracy to commit those crimes. (Indictment ¶¶ 212-216.) Counts Two through Four charge conspiracies to commit theft by extortion and criminal coercion as they relate to the properties described above. (Id. ¶¶ 217-222.) Counts Five through Ten allege the improper possession of tax credits, a form of money laundering, which the Indictment alleges were derived from criminal

activity. (Id. ¶¶ 223-234.) Counts Eleven through Twelve allege misconduct by a corporate official. (Id. ¶¶ 235-238.) Count Thirteen alleges official misconduct by Mayor Redd, for which Philip Norcross and others are allegedly liable as accomplices. (Id. ¶¶ 239-240.) As outlined above and amplified below, none of the acts Philip Norcross is accused of constitutes any of those crimes.

## ARGUMENT

### I. NONE OF THE INDICTMENT'S ALLEGATIONS INVOLVING PHILIP NORCROSS IS SUFFICIENT TO ALLEGE A CRIME.

The New Jersey Supreme Court has made clear than an indictment returned by a grand jury should be dismissed "'only on the clearest and plainest ground, and only when the indictment is manifestly deficient or palpably defective.'" State v. Bell, 241 N.J. 552, 560 (2020) (quoting State v. Twiggs, 233 N.J. 513, 531-32 (2018)). But the court has likewise made clear that a court should not presume the validity of an indictment where, as here, a motion to dismiss raises "a purely legal question, such as the interpretation of a statute." State v. Derry, 250 N.J. 611, 626 (2022). Rather, the court should grant the motion if the indictment is based on the State's erroneous construction of a criminal statute. State v. Perry, 439 N.J. Super. 514, 522-32 (App. Div. 2015).

Many New Jersey courts have applied this principle to dismiss indictments that charged defendants with conduct not encompassed by a criminal statute. See, e.g., State v. Morrison, 188 N.J. 2, 19-20 (2006) (affirming dismissal of

indictment where charged statute did not proscribe distribution of CDS to a person with whom defendant had joint possession); State v. Pandozzi, 136 N.J. Super. 484, 485 (App. Div. 1975) (affirming dismissal of indictment for giving false information to law enforcement officers because the fact it alleged, an exculpatory denial, did not violate the false information statute); State v. Riley, 412 N.J. Super. 162, 169 (Law Div. 2009) (dismissing indictment for unauthorized computer access and official misconduct because fact it alleged, using computer for an improper purpose, did not violate unauthorized use statute); State v. Kline, 277 N.J. Super. 623, 630 (Law Div. 1994) (dismissing indictment for absconding because statute proscribing that conduct was not in force when defendant left the jurisdiction); State v. Penta, 127 N.J. Super. 201, 203 (Law Div. 1974) (dismissing a two-count indictment charging defendant with (i) soliciting a reward for a vote and (ii) misconduct in office because the charged statutes did not apply as a matter of statutory construction to a councilman-elect who had not yet assumed office).

Federal cases applying the same principle are legion. See, e.g., United States v. Enmons, 410 U.S. 396, 412 (1973) (affirming dismissal of Hobbs Act indictment because the fact alleged, using force to obtain legitimate union objectives, did not constitute extortion under that statute); United States v. Dion, 37 F.4th 31, 33-34 (1st Cir. 2022) ("Typically, when . . . a motion seeks to

dismiss an indictment, its resolution will turn on pure questions of law regarding the sufficiency of the indictment's allegations."); United States v. McGeehan, 584 F.3d 560, 565 (3d Cir. 2009) ("The sufficiency of an indictment may be challenged . . . on the ground that 'the specific facts alleged . . . fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation.'") (quoting United States v. Panarella, 277 F.3d 678, 685 (3d Cir. 2002)); United States v. Harder, 168 F. Supp. 3d 732, 737 (E.D. Pa. 2016) (explaining that in deciding a motion to dismiss an indictment, the court "must accept factual allegations and disregard legal conclusions to determine whether the alleged facts constitute a crime"); United States v. Huynh, No. 4-CR-14-275, 2016 U.S. Dist. LEXIS 177619, at *5 (M.D. Pa. Dec. 22, 2016) ("In deciding a motion to dismiss, [the court] must accept factual allegations [in the Indictment as true] and disregard legal conclusions to determine whether the alleged facts constitute a crime.") (collecting authorities); United States v. Ferriero, No. 13-cr-0592, 2015 U.S. Dist. LEXIS 5311, at *13 (D.N.J. Jan. 15, 2015) (stating that a district court must find that "'a charging document fails to state an offense if the specific facts alleged in the charging document fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation.'") (quoting Panarella, 277 F.3d at 685).

As this body of law makes clear, where, as here, a defendant moves to

dismiss an indictment because the facts alleged do not constitute the crime charged, the court should treat the motion as it would a motion to dismiss a civil complaint for failure to state a claim. United States v. O'Connell, No. 17-CR-50, 2017 U.S. Dist. LEXIS 171160, at *6 (E.D. Wis. Oct. 16, 2017) (likening a motion to dismiss an indictment to a federal Rule 12(b)(6) motion to dismiss a complaint for failure to state a claim). Such a motion must be granted where, assuming the truth of the facts alleged and the reasonable inferences to be drawn from those facts, the defendant is entitled to judgment as a matter of law.

Focusing on precisely what Philip Norcross is accused of doing draws the impropriety of calling it criminal into sharp relief, and explains why this is the rare case in which dismissal is not only appropriate, but essential. Reduced to its essence, the Indictment accuses him of using his access to city officials to accomplish his clients' goals on the Camden waterfront at the expense of a rival developer. In EDF Renewable Development, Inc. v. Tritec Real Estate Co., 147 F. Supp. 3d 63 (E.D.N.Y. 2015), the court flatly rejected a civil suit based on precisely such conduct.

The plaintiff in EDF Renewable sued the defendant for tortious interference, alleging that he persuaded the county not to permit the plaintiff's solar project, to stop supporting and cooperating with the plaintiff regarding the building permit for that project, and to devise a plan to stall the project. 147 F.

Supp. 3d at 66. Dismissing the case, the court said—in language uniquely applicable here—"an attempt to influence a political decision-maker . . . regarding the performance of a governmental function" is not actionable, much less "overtly corrupt or illegal conduct." Id. at 70. To allow allegations of identical conduct to go to a jury here would place this Court's imprimatur on the State's misguided attempt to criminalize the act of petitioning the government. The Court should decline to do so.

### A. The Allegations Concerning Philip Norcross's Acts of Petitioning the Legislature Attack Constitutionally Protected Conduct.

The Indictment alleges that Philip Norcross participated in meetings and discussions analyzing drafts of the EOA and convinced the Legislature, through discussions with the then-Senate President, to include certain language in the EOA. (Indictment ¶¶ 32-42.) It further alleges that an object of Defendants' RICO conspiracy was "influencing the New Jersey Legislature" to pass legislation that greatly increased tax credit awards for projects in Camden and advanced the interests of Defendants' supposed RICO "enterprise." (Id. ¶ 215(d).) The Indictment does not allege that Philip Norcross violated any lobbying rules or regulations through such participation, and with good reason: influencing the Legislature is not a crime.

As the Supreme Court recognized in Eastern Railroad Presidents

Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 139 (1961), "[i]t is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors." Indeed, the entire foundation of a representative democracy "depends upon the ability of the people to make their wishes known to their representatives." Id. at 137. Since Noerr was decided, courts have uniformly recognized that "legislative lobbying is the quintessential political realm in which petitioning rights enjoy their greatest protection." Aventis Pharma S.A. v. Amphastar Pharms. Inc., No. 5:03-00887, 2009 U.S. Dist. LEXIS 132345, at *38-39 (C.D. Ca. Feb. 17, 2009); see also Solutions v. Cal. Med. Transp. Ass'n, No. 17-CV-8082, 2018 U.S. Dist. LEXIS 237391, at *21 (C.D. Ca. May 21, 2018) (noting that lobbying "is one of the prototypical examples of protected petitioning activity"). Again, the Indictment does not allege that Philip Norcross violated lobbying rules or regulations. The State's attempt to convert his constitutionally protected petitioning conduct into the aim of a criminal RICO enterprise should be rejected out of hand.

### B. The Allegations Relating to the L3 Complex Fail to Sustain any Charge.

The Indictment alleges that Philip Norcross took the following actions with respect to the L3 Complex deal: (i) meeting with CFP's CEO, along with the chief of staff to the Camden Mayor, to monitor CFP's projects, and seeking

updates from CFP about the L3 Complex deal; (ii) directing CFP to enter into a non-disclosure agreement and ultimately partner with an investor identified by Philip Norcross rather than CFP's chosen developer; (iii) commenting on ancillary aspects of the deal—that is, noting that CFP would have to pay $1.5 million relating to windows and suggesting how Cooper Health might secure tax credits—after CFP proceeded with the investor he identified; and (iv) telling CFP's CEO that having a certain individual serve as its co-chair would help CFP mend fences with George Norcross.

As made clear in the Defendants' omnibus motion to dismiss the Indictment, none of that conduct is remotely criminal. (See Omnibus Motion, at 11-14, 18-19 (demonstrating that the extortion and coercion statutes do not prohibit hard bargaining, and that none of the Indictment's allegations relating to CFP identify any unlawful threat).) With one exception, the Indictment does not even allege that any of the actions constituted a "threat," as required to sustain a charge of extortion or coercion.[1] That exception consists of the allegation that, when Philip Norcross told the CEO of CFP that CFP should only

[1] See N.J.S.A. 2C:20-5 (stating that a person extorts another if he "purposely threatens" conduct described in the statute); id. 2C:13-5 (stating that one commits the crime of criminal coercion if he "threatens" the conduct described in that statute); 18 U.S.C. § 1951(b)(2) (defining extortion as the obtaining of property from another through "wrongful use of actual or threatened force, violence, or fear, or under color of official right").

use the developer Philip Norcross suggested, the CEO "took" this directive "as a threat to CFP." (Indictment ¶ 70.) But as the United States Supreme Court and our State Supreme Court have recently held, to comply with the constitutional protections of free speech, a statement can only be criminalized when (i) a reasonable person would perceive it as a threat; and (ii) the speaker acted recklessly in issuing the threat. See Counterman v. Colorado, 600 U.S. 66, 74, 79 (2023); State v. Fair, 256 N.J. 213, 230, 233 (2024). This recklessness requirement is "demanding," as it requires the State to prove that the defendant committed more than just a "'bad mistake'" but rather "'consciously accepted a substantial risk of inflicting serious harm.'" Fair, 256 N.J. at 233 (quoting Counterman, 600 U.S. at 80).

Ignoring these requirements, the Indictment contains no allegation that Philip Norcross acted recklessly when asking CFP's CEO to partner with a particular investor. Nor could it, as any such allegation would mean that a request made by a well-established person in a business setting could subject that individual to charges of criminal extortion or coercion. That result would have an improper "chilling [effect on] protected speech," Fair, 256 N.J. at 234, particularly by a lawyer. See also Counterman, 600 U.S. at 79-80 (explaining that the "constitutional interest in free expression" demands a "correlative need to take into account threat prosecutions' chilling effects.").

Moreover, even if the Indictment alleged that Philip Norcross acted with the requisite mental state, his statement that CFP should partner with a specific investor does not qualify as a threat proscribed by the extortion and coercion statutes. The Indictment does not identify the specific consequence Philip Norcross was allegedly threatening. (See Omnibus Motion, at 18-19.) By the Indictment's terms, the statement he is accused of making had a reasonable nexus to Cooper Health's anticipated relocation to the L3 Complex, placing it beyond the reach of the cited criminal statutes.

The State also alleges that the L3 Complex deal embraced a conspiracy to commit official misconduct in violation of N.J.S.A. 2C:30-2. Here the Indictment appears to suggest that Mayor Redd, either directly or through her chief of staff, violated this statute by either (i) directing CFP's CEO to meet or deal with Philip Norcross; or (ii) telling CFP's CEO that a certain individual would be serving as CFP's co-chair. (Indictment ¶¶ 49, 77, 78.) That cannot be so. The Indictment does not identify a clear legal command, a *sine qua non* of alleging official misconduct, and none exists. (See Omnibus Motion, at 27-34.) In short, none of the allegations relating to the L3 Complex states a crime.

### C. The Allegations Relating to the Triad1828 Centre and 11 Cooper Fail to Sustain Any Charge.

The Indictment alleges that Philip Norcross took the following actions with respect to the redevelopment of Triad1828 Centre and 11 Cooper:

(i) attending meetings with government officials and receiving information from CFP to plan for redevelopment of the Camden Waterfront; (ii) participating in calls with Dranoff in which George Norcross stated that Dranoff would never do business in Camden and "there would be consequences" if he imperiled George Norcross's redevelopment plans; (iii) participating in communications relating to a planned action by the CRA to condemn a view easement held by Dranoff; and (iv) instructing Mayor Redd not to meet with Dranoff, which apparently resulted in the Mayor not returning his calls.

As an initial matter, none of this conduct constitutes a threat that could support extortion or coercion charges. (See Omnibus Motion, at 15-17, 22-23.) The allegations regarding the planned CRA condemnation action fail at the threshold, because there is no allegation that this plan was ever communicated to Dranoff. (See id. at 22-23.) Nor can any of these allegations sustain a crime for official misconduct. It is not official misconduct for a mayor not to return telephone calls. (See id. at 33.)

Making matters worse, the allegations relating to Triad1828 Centre and 11 Cooper target constitutionally protected conduct. The gravamen of these charges against Philip Norcross is that he conspired with City officials and the CRA to pressure Dranoff to give up his view easement. But working with government officials to secure redevelopment rights is protected petitioning

conduct. See Boone v. Redevelopment Agency of San Jose, 841 F.2d 886, 889, 894-95 (9th Cir. 1988) (holding that the Noerr-Pennington doctrine protected a developer's efforts to lobby a redevelopment agency to allow it to build an office building). So too is petitioning a government agency to bring a condemnation action. See Zemenco, Inc. v. Developers Diversified Realty Corp., No. 03-175, 2005 U.S. Dist. LEXIS 23011, at *31 (W.D. Pa. Oct. 7, 2005) ("[A] party's efforts to induce or facilitate a municipal body's condemnation of property are protected by the Noerr-Pennington doctrine." (citing Oberndorf v. City of Denver, 696 F. Supp. 552 (D. Colo. 1988), aff'd 900 F.2d 1434 (10th Cir. 1990)). Indeed, it is well established that the Noerr-Pennington doctrine protects access to the courts so long as the litigation is not a "sham." Borough of Englewood Cliffs v. Trautner, 478 N.J. Super. 426, 446 n.11 (App. Div. 2024) (cleaned up). The Indictment does not allege that the contemplated action was a sham. To the contrary, it acknowledges that Philip Norcross and others were advised that the court would likely declare that the CRA had the right to condemn Dranoff's view easement. (Indictment ¶ 133.) For these reasons, the Indictment's factual allegations relating to Triad1828 Centre and 11 Cooper do not state a crime.

### D. The Allegations Relating to Radio Lofts Fail to Sustain Any Charge.

The allegations against Philip Norcross regarding Dranoff's Radio Lofts

redevelopment rights consist of: (i) participating in weekly stakeholder meetings that involved various City officials; and (ii) advising City officials during one such meeting that an approval Dranoff needed to sell a property should be "slowed down" to create an overall "legal strategy" to deal with Dranoff's Camden interests. The Indictment also alleges that Philip Norcross was involved in the CRA's decision to terminate Dranoff's redevelopment option for Radio Lofts and its subsequent efforts to respond to Dranoff's lawsuit. (Indictment ¶¶ 192-97.)

None of this is criminal; all of it is standard fare for lawyers. The State's attempt to transform stakeholder meetings with government officials into something illegal or nefarious is entirely misguided. See Boone, 841 F.2d at 894 (explaining that "cultivating close ties with government officials is the essence of lobbying" and "certainly falls within the ambit of the Noerr-Pennington doctrine."). These protected interactions are inherent in the redevelopment process, which, "by its very nature, allows for ex parte deliberations between decision makers and advocates of a particular view." Id. at 895. (See also Omnibus Motion, at 24-26.)

The State implies that Philip Norcross urged the CRA to terminate Dranoff's Radio Lofts redevelopment rights and assisted the CRA and the City in their lawsuit with Dranoff. That is not criminal conduct. (See Omnibus

Motion, at 27.) The right to petition the government protects efforts to advise government agencies and encourage or facilitate their filing of court actions. (See id. at 24-26.) Once again, the State fails to allege that the CRA or the City adopted "sham" litigation positions in their legal battle with Dranoff. To the contrary, the Indictment acknowledges that Dranoff effectively lost his litigation with the City and CRA, settling the lawsuit on terms that required him to give up his Radio Lofts redevelopment rights for $1 and pay the City approximately $3.3 million. (See Indictment ¶ 195.) Naturally, a successful action "self-proves its reasonableness and 'certainly cannot be characterized as a sham.'" United States Futures Exch., L.L.C. v. Bd. of Trade, 953 F.3d 955, 963 (7th Cir. 2020) (quoting Allied Tube & Conduit Corp. v. Indian Head, 486 U.S. 492, 502 (1988)). That the Indictment would embrace Dranoff's contention that he settled the litigation because he viewed the Superior Court of New Jersey, Camden County, as corrupt bespeaks the extraordinary lengths to which the Attorney General was willing to go to bring this case. For an arm of state government to give sympathetic voice to that cynical and baseless concern is deeply troubling, even for an embattled agency in deep decline. Whatever the State's motivation for doing so, the Indictment fails to include allegations that could sustain any criminal charges with respect to the Radio Lofts.

### E. Without any Predicate Crime, the Indictment's Derivative Charges of a RICO Conspiracy, Money Laundering, and Misconduct by a Corporate Official Necessarily Fail.

The Indictment is premised entirely on the predicate crimes of theft by extortion, criminal coercion, and official misconduct. Because the Indictment fails to allege that Philip Norcross committed any of those crimes, its derivative charges of a RICO conspiracy, money laundering, and misconduct by a corporate official necessarily fail. (See Omnibus Motion, at 35-37.)

## II. DISMISSAL OF THE INDICTMENT IS NECESSARY TO ENSURE THAT ATTORNEYS ARE NOT SUBJECT TO CRIMINAL PROSECUTION FOR ENGAGING IN THE ROUTINE PRACTICE OF LAW.

It is well established that "[a] statute that criminalizes conduct in terms so vague that [persons] of common intelligence must necessarily guess at its meaning . . . violates the first essential of due process of law." State v. Pomianek, 221 N.J. 66, 85 (2015) (cleaned up). Vague statutes "not only deprive individuals of adequate notice, but they may also result in arbitrary and erratic enforcement." State v. O'Donnell, 255 N.J. 60, 82 (2023) (cleaned up). To avoid a vagueness challenge, criminal statutes must "draw clear lines separating criminal from lawful conduct." Pomianek, 221 N.J. at 85; see also id. ("A penal statute should not be 'a trap' for the unwary."); State v. Thompson, 402 N.J. Super. 177, 203 (App. Div. 2008) ("The guarantee of procedural due process in criminal law requires that the defendant receive notice of illegality in

a clear and understandable fashion.").

A defendant does not receive fair warning when a criminal statute is interpreted in a novel way to criminalize "conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope." United States v. Lanier, 520 U.S. 259, 266 (1997); accord State v. Jeannotte-Rodriguez, 469 N.J. Super. 69, 96 (App. Div. 2021). The touchstone of this fair-notice inquiry is whether a statute, "either standing alone or as construed, made it reasonably clear at the relevant time that the defendant's conduct was criminal." Lanier, 520 U.S. at 267; see also O'Donnell, 255 N.J. at 82 ("[P]eople are entitled to know in advance whether their conduct is lawful or criminal.").

Here, it would be improper and dangerous to apply the criminal statutes cited in the Indictment to criminalize Philip Norcross's alleged conduct. See State v. Dalal, 467 N.J. Super. 261, 281 (App. Div. 2021) (explaining that a statute can be challenged as facially vague or vague as applied). As shown above, the conduct that Philip Norcross allegedly engaged in consisted of bringing his legal expertise to bear on draft legislation affecting urban redevelopment, advocating for or advancing the interests of clients such as the Cooper Foundation and Cooper Hospital when negotiating or strategizing real-estate deals and redevelopment projects, and helping City officials develop litigation strategies.

None of the criminal statutes relied on by the State provide fair notice that this conduct is criminal. Nor could they, as the conduct consists of the routine practice of law that is not only lawful but laudable. An attorney's "primary duty is to be a zealous advocate for his or her own client." LoBiondo v. Schwartz, 199 N.J. 62, 73 (2009). This advocacy includes representing clients in hard-fought negotiations. See In re Christall, No. CC-08-1039, 2008 Bankr. LEXIS 4695, at *21 (9th Cir. BAP July 16, 2008) ("A characteristic of arms-length negotiation is extensive and hard-fought adversarial negotiation between competent attorneys." (cleaned up)); Cajoeco LLC v. Bensi Enters., No. A-4562-18, 2021 N.J. Super. Unpub. LEXIS 1150, at *35 (App. Div. June 17, 2021) (noting that business deals were properly "negotiated at arms-length between the parties' attorneys"). Moreover, part and parcel of a lawyer's role in litigation is to "formulate a reasonable legal strategy." Charter Oak Fire Ins. Co. v. State Farm Mut. Auto. Ins. Co., 344 N.J. Super. 408, 415 (App. Div. 2001).

For this Court to interpret the criminal statutes cited in the Indictment to permit the State to charge Philip Norcross would effectively allow the State to prosecute attorneys who engage in the ordinary practice of law. Allowing this prosecution to proceed would impermissibly allow the State to criminalize conduct that is "so passive, so unworthy of blame, that the persons violating the

proscription would have no notice that they were breaking the law." State v. Maldonado, 137 N.J. 536, 555 (1994).

## III. THE INDICTMENT'S ALLEGATIONS AGAINST PHILIP NORCROSS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Defendants' Omnibus Motion argues that in addition to being dismissed for failure to allege a crime, the Indictment should be dismissed for the independent reason that all of the charged conduct is barred by the applicable statutes of limitations. (Omnibus Motion, § IV.) In addition, Defendant John O'Donnell's motion dissects the Indictment's factual allegations, explaining exactly why that is so. Philip Norcross joins in both arguments, adding this brief discussion only to supplement the point that the on-going sale of tax credits does not render the Indictment's criminal-conspiracy charges timely. (See, e.g., Indictment ¶ 218(b)(iii).)

As the Second Circuit explained in United States v. Grimm, 738 F.3d 498, 503 (2d Cir. 2013), the receipt of otherwise-lawful payments does not suffice to extend the life of a conspiracy. As the Grimm court explained, although the result of a conspiracy may extend into the limitations period, the conspiracy itself cannot be said to continue absent continuous cooperation of the conspirators to keep it up. Id. at 503-04 (quoting Fiswick v. United States, 329 U.S. 211, 216 (1946)). Generally, "overt acts have ended when the conspiracy

has completed its influence on an otherwise legitimate course of common dealing that remains ongoing for a prolonged time, without measures of concealment, adjustment or any other corrupt intervention by any conspirator." Id. at 503.

That is precisely what the Indictment alleges here. Defendants allegedly acted in concert to cause Dranoff to sell his residential redevelopment rights to certain Camden waterfront properties on or before October 24, 2016—outside of the limitations period. (Indictment ¶¶ 152-154.) Defendants or entities associated with them thereafter received and sold tax credits obtained by developing those properties and moving their businesses there in the ensuing years without any further concerted action, and by normal operation of the tax-credit programs. (Id. ¶ 166-172.) The sale of those tax credits, without more, does not make the Indictment's conspiracy allegations timely. Grimm, 738 F.3d at 503-04.

Whatever alleged threats the Indictment claims were made on a phone call almost a decade ago to facilitate George Norcross's interest in redeveloping the Camden waterfront, the state cannot properly prosecute them now. (Indictment ¶ 136.) Those supposed crimes are not revived in perpetuity just because the redevelopment continues to generate income in the form of tax credits. Absent an on-going conspiracy, the charges against Philip Norcross are not timely.

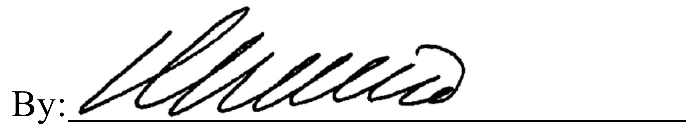
## CONCLUSION

For the foregoing reasons, Philip Norcross respectfully requests that the Court dismiss the Indictment against him with prejudice.

Dated: October 1, 2024

Respectfully submitted,

**MARINO, TORTORELLA & BOYLE, P.C.**

By: 

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