No. 25-____

IN THE

Supreme Court of the United States

ALEXANDER SITTENFELD AKA P.G. SITTENFELD,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The First Amendment protects soliciting and contributing funds to support a political candidate based on his or her intended policies. To avoid chilling this core First Amendment activity—or exposing routine campaign donations to selective prosecution—the Government must satisfy a heightened standard when it seeks to treat an otherwise-lawful campaign contribution as an unlawful bribe. It must prove an "explicit" quid pro quo agreement, with an official act conditioned on a campaign contribution. *McCormick v. United States*, 500 U.S. 257 (1991).

The question presented is:

When the government alleges bribery based solely on lawful campaign contributions, may the defendant be convicted based on evidence that is ambiguous as to whether the public official conditioned any official act on the campaign contributions?

PARTIES TO THE PROCEEDING AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner, who was the defendant and appellant below, is Alexander "P.G." Sittenfeld.

Respondent, who was the plaintiff-appellee below, is the United States of America.

LIST OF RELATED PROCEEDINGS

United States v. Alexander Sittenfeld, United States Court of Appeals for the Sixth Circuit, Case No. 23-3840 (Feb. 11, 2025).

United States v. Alexander Sittenfeld, United States District Court for the Southern District of Ohio, Case No. 1:20-cr-00142 (Nov. 11, 2023).

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INTRODUCTION

This case raises the question of when political campaign donations can be prosecuted as felony bribes. Federal law generally prohibits public officials from accepting a thing of value in exchange for official action. But when the "thing of value" is a campaign donation, the threat of criminal prosecution quickly runs into First Amendment concerns. Every day, American citizens participate in our democracy by contributing to political candidates precisely *because of* the policies the candidates have supported, the actions they have taken in office, or the actions they pledge to pursue if elected. Candidates thus routinely raise money based on pledges of official action: "Donate to me and I will vote to repeal the law my opponent supported!" "Send me a campaign check and I will cut your taxes—I can't do it without you!"

Such campaign solicitations are the lifeblood of our representative democracy, and they lie at the heart of the First Amendment's protection. But ambitious prosecutors can easily paint the same donations as corrupt agreements—a picture that many jurors hostile to money in politics will eagerly accept.

To prevent protected campaign activity from being recast as felony bribery, this Court has adopted the rule that no campaign donation can be prosecuted as a bribe unless it comes with an "explicit" quid pro quo. *McCormick v. United States*, 500 U.S. 257 (1991). At the very least, there must be clear evidence that some official action is being made contingent on the donation. *See id.*

But lower courts have struggled to apply *McCormick*, eroding its protections. This case is a striking example: Petitioner P.G. Sittenfeld was convicted for taking campaign donations with nothing resembling an "explicit" quid pro quo. All three judges on the panel below agreed the evidence of a quid pro quo was ambiguous at best. Even though Sittenfeld's conversations were all recorded, there was nothing remotely approaching a clear corrupt agreement, much less an "explicit" one. Yet the Sixth Circuit affirmed his conviction based on circuit precedent allowing a jury to *infer* a quid pro quo from highly ambiguous evidence.

Although the panel below was divided in its reasoning, it was united in calling for this Court to clarify the "blurr[y]" line between protected campaign contributions and illegal bribes. Pet.App.3a. The majority opinion, per Judge Nalbandian, explained that it is "time for the Court to revisit or refine the doctrine" defining that line. Pet.App.26a n.8. Judge Murphy concurred, agreeing that the conviction "raises First Amendment concerns," and affirming only because the Sixth Circuit was not "the right court to address the concerns." Pet.App.68a. Judge Bush, in dissent, would have overturned the conviction, and agreed that "it would be helpful for the Supreme Court to provide guidance here." Pet.App.98a. These judges are not alone; they "join the chorus of judges encouraging the Supreme Court to revisit" the law in this area. *United States v. Householder*, 137 F.4th 454, 491 (6th Cir. 2025) (Thapar, J., concurring).

At least two of the three judges below—and a bevy of former federal prosecutors as *amici*—also opined that Sittenfeld should not be deemed a felon on these

facts. But without this Court's intervention, donors and candidates exercising their everyday First Amendment rights face the same risk if a jury infers from ambiguous evidence that they crossed the blurry line between civic participation and felony bribery.

Fortunately, given the injustice of his conviction, Sittenfeld recently received a presidential pardon. But while that spares him further prison time, it does not vacate his conviction or return the $40,000 criminal fine he paid. This case thus continues to present a live controversy warranting this Court's review.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Sixth Circuit affirming Sittenfeld's conviction is reported at 128 F.4th 752 (6th Cir. 2025), and reproduced at Pet.App.1a. The district court's decision denying Sittenfeld's motion for judgment of acquittal and for new trial is reported at 669 F. Supp. 3d 672 (S.D. Ohio 2023), and reproduced at Pet.App.109a.

JURISDICTION

The United States District Court for the Southern District of Ohio entered a judgment of conviction against Sittenfeld on October 10, 2023. Pet.App.137a. He timely appealed, and the Sixth Circuit affirmed his conviction on February 11, 2025. Pet.App.1a. He timely sought an extension to seek certiorari on March 31, 2025, which was granted on April 9, 2025, extending the time to June 11, 2025. No. 24A964. Following his pardon on May 28, 2025, Sittenfeld sought and was granted a second extension, extending the time to seek certiorari to July 11, 2025. *Id.* This Court has jurisdiction under 28 U.S.C. § 1254.

PROVISIONS INVOLVED

The federal statutory provisions at issue, 18 U.S.C. § 666 and § 1951, are reproduced at Pet.App.280a.

STATEMENT

At its core, the case turns on whether Sittenfeld agreed to an "explicit" bribe in the form of campaign donations during conversations with undercover FBI agents—all of which were recorded.

A. Alexander "P.G." Sittenfeld

Sittenfeld was a rising star in Ohio politics. He was first elected to the Cincinnati City Council in 2011, the youngest person to ever hold the job, and was reelected twice before entering the mayoral race in 2020 as the frontrunner. *See* Pet.App.4a, 208a.

A defining trait of Sittenfeld's political identity was his unwavering support for economic development. He voted for every economic development deal put in front of him while on the Council. Pet.App.170a; R.269.PageID.6785-86.

B. The Sting

Chinedum Ndukwe was a real-estate developer in Cincinnati. Despite a generally good reputation (R.238.PageID.4310-11), he was caught skirting campaign-finance laws in his dealings with politicians other than Sittenfeld (R.264.PageID.5805). In a March 2018 proffer agreement, Ndukwe agreed to help investigate potential political corruption in Cincinnati. COA.App.117.

When Ndukwe first started cooperating, he provided a list of local officials—*not* including Sittenfeld—the FBI might want to investigate.

R.264.PageID.5898. Months later, Sittenfeld asked Ndukwe to help fundraise $10,000 for his mayoral campaign, to match other local developers. R.266.PageID.6245. Nothing about this was unusual. Sittenfeld and Ndukwe had been friends for years, and Ndukwe had donated and raised thousands of dollars for Sittenfeld's campaigns. R.269.PageID.6718-20. And nothing about this was unlawful either. Even so, Ndukwe relayed Sittenfeld's request to the FBI. R.266.PageID.6244-45.

The Government promptly organized a sting. R.263.PageID.5687, 5690. Agents directed Ndukwe to approach Sittenfeld about 435 Elm Street—a pending development project to revive a blighted downtown property. R.264.PageID.5911-12; R.266.PageID.6227, 6232-33. Ndukwe would connect Sittenfeld with purported investors in 435 Elm, who were actually undercover agents. R.263.PageID.5695-97; R.264.PageID.5913. Eventually, they would suggest a quid pro quo: you agree to back 435 Elm, and, in exchange, we will donate to your campaign. R.263.PageID.5700, 5709.

As the FBI knew, Sittenfeld supported 435 Elm before the sting began. R.269.PageID.6730-35; COA.App.115. Sittenfeld saw redeveloping 435 Elm as a "no brainer" regardless of any donations. R.269.PageID.6734-35.

C. The Recorded Conversations

Once the sting began, every relevant interaction was recorded. There were four key exchanges.

October 26, 2018. The first recorded call between Sittenfeld and Ndukwe was mostly personal conversation. Ndukwe eventually raised 435 Elm,

claiming he had two investors—"Rob" and "Brian" (FBI agents)—who wanted to meet Sittenfeld. Pet.App.156a-157a. Ndukwe added that these investors' LLCs could potentially donate to Sittenfeld's campaign. Pet.App.157a. Sittenfeld understandably responded positively, asking if they could contribute before a local law limiting LLC donations took effect. *Id*. Ndukwe did not know, and they left it there. Pet.App.157a-159a.

October 30, 2018. When Sittenfeld and Ndukwe spoke again, Ndukwe said he wanted to contribute to Sittenfeld, but was fearful because then-mayor Cranley was "trying to fuck me left and [right], because I supported Yvette," a political rival. Pet.App.161a. Ndukwe thus wanted to "keep [his] name off" donations. Pet.App.162a. Sittenfeld replied that he understood, "love[d] what [Ndukwe was doing] as someone revitalizing our city," and was "fond of [him] as a friend." Pet.App.162a. But, he added, there were "things I need to do to be a successful candidate"—i.e., fundraising—so he suggested Ndukwe help by bundling donations from others (a common, lawful practice). Pet.App.162a-163a.

At trial, the prosecution focused on one part of this exchange, which the district court branded the Government's "best" evidence (R.283.PageID.7140-41):

> Sittenfeld: So, but what that means is I don't really get like, if if you say look I don't want to support you in the name of Chinedum Ndukwe, but some guy I've never met from Columbus is going to use a coup[-], you know, you know you're network

> are going to a, round up a bunch of LLC checks. Like that's great. I actually don't care. But I mean the one thing I will say is like, you know I mean, you don't want me to be like **'hey Chin like love you but can't'** you know like, you know, I mean like, you know like. I, I, I want people to support me, that's like…
>
> Ndukwe: Absolutely.
>
> Sittenfeld: …if a candidate doesn't want people to support them, they're a shitty dumb candidate…
>
> Ndukwe: Yeah, right, yeah, right.
>
> Sittenfeld: …and you know I've been…a lot of people have come through in a really big way that's been awesome so far and I would love, I would love for you to be one of those people too.

Pet.App.162a-163a (emphasis added).

The Government characterized the bolded comment as a threat: Contribute to my campaign, or when you need help, I will say "love you but can't." Sittenfeld would explain, however, that he was just awkwardly asking a friend for money, by pointing out that he would not be in a position to help Ndukwe if he did not win the election (which he could not do without donations). R.269.PageID.6745-46. This is no different from every candidate who tells donors, "I can't do it without you."

November 2, 2018. The FBI did not kick down the doors after hearing this exchange. Instead, they had Ndukwe offer a clear quid pro quo three days later:

Ndukwe: But, but good news is I'll probably be able to get you close to twenty thousand over the next couple. Uhm you know, and, and these guys that are doing that deal on 435 Elm, uh, you know, they're, they're, very, you know, they don't really fuck around. They're very specific. They're like, you know…so I, you know, for me just want my experience of this whole Cranley bullshit with Yvette. Like I'm…

Sittenfeld: Yeah, yeah, no, I get it.

Ndukwe: …not trying to you know what I mean. I'm not trying to put anything on my name at all and…

Sittenfeld: Totally understand. I totally understand. Look if you can—

Ndukwe: …But, but—

Sittenfeld: Here, here, it it's my…as I told you before it's my job as a candidate to put myself in the strongest position as possible and you know, I've done a pretty good, I've done a pretty good job with that. At the end of the day, if you can, you know, rather than delivering 5K in LLC checks by next Tuesday, can help raise twenty over the next couple years. Like you know I will be incredibly grateful.

Ndukwe: No I mean, I think it's like over the next couple of weeks. I mean, so…

Sittenfeld: No shit. No, dude that's…yeah.

Ndukwe: …so and then for, and then for this meeting with Rob next week, I'm pretty

sure he can get you ten this week. **You know the biggest thing is, you know, if we do the ten, I mean, they're gonna want to know that when it comes time to vote on 435 Elm,** like whenever that, I don't know if it's next year, two years, three years, **that it's gonna be a yes vote, you know, without, without a doubt**. I've shared that with them, that hey known PG for years, all this stuff, but they're like all right we'll get his attention.

Sittenfeld: I mean, obv-, as you know, obviously nothing can be illegal like…illegally **nothing can be a quid, quid pro quo. And I know that's not what you're saying either**. But what I…

Ndukwe: Yeah.

Sittenfeld: …can say is that I'm always super pro-development and revitalization of especially our urban core.

Ndukwe: Okay, no, I hear ya. I hear ya. And so they're, he'll probably come out—

Sittenfeld: And we can, we, we, we can discuss that more in person.

Ndukwe: Okay, okay. My guy, perfect, perfect.

Sittenfeld: But I'm not, I'm not sure, I'm not they're, I, **in seven years I have voted in favor of every single development deal that's ever been put in front of me so.**

Pet.App.168a-170a (emphases added).

November 7, 2018. Five days later, Sittenfeld, Ndukwe, and "Rob" met for lunch, which was again recorded. After some small talk, Ndukwe and Rob pivoted to 435 Elm, telling Sittenfeld how well the project was doing—they had hired an elite architect, received key funding, and secured large tenants. Pet.App.179a-186a. Before anyone mentioned contributions, Sittenfeld announced, "[I]t's got my support…and you know [I] can certainly shepherd the votes too." Pet.App.186a.

The talk moved to other topics, including Sittenfeld's lament that the City had obstructed other good projects. Pet.App.195a-197a. Sittenfeld also pitched Rob on Cincinnati as a place to find a wife. Pet.App.200a. Only later—11 transcript pages after expressing support for the project on its merits—did Sittenfeld bring up fundraising, flagging it as "political stuff" unlike the prior conversation. Pet.App.203a. He did not treat anything as a done deal, as if the parties had already reached some quid pro quo. He instead brought out PowerPoint slides to try to convince Rob his campaign merited support:

> Sittenfeld: Chin can I show Rob some uh data on the, you mind if I, is that appropriate?
>
> Ndukwe: No no yes definitely.
>
> Sittenfeld: This this is this is political stuff.
>
> Ndukwe: Yeah yeah.
>
> Sittenfeld: But it is, in the event that um Chinedum is successful in twisting your arm to be supportive of someone, I want you to know that I think it's a you like making good bets and good investments. This is just

> three quick slides but give you some landscape here, given you some con-context rather.

Pet.App.203a.

After a discussion of granular political data, the agent directed the conversation back to 435 Elm:

> UC Rob: Um, you know obviously we're very concerned with knowing and being in a good relationship with the next Mayor, uh so and that's huge for us. The part that really concerns me for Chin is, you know, he said it, like Cranley's got a hard-on for him like…you know, and so we wanna try to set 435 up being veto-proof you know. And that that's kind of what's I'm 'cause this deal is gonna happen, long before that.
>
> Sittenfeld: yeah.
>
> UC Rob: So that that's kind of when our strategically that's how what what we're trying to figure out too so.
>
> Sittenfeld: So so two things, two reactions to that. One, you know like, I don't have a machine, but we just got 6 people together to pass my budget…
>
> UC Rob: Right.
>
> Sittenfeld: …over [Cranley]. I think I c–, at this point, I can say I control, not control, that's the wrong word.
>
> Ndukwe: Right right right right.
>
> Sittenfeld: But like I can move more votes than any single other person.

Pet.App.209a.

After lunch ended, Rob and Sittenfeld continued the meeting at Rob's staged condo, where Rob tried to proposition Sittenfeld directly. But he fudged the solicitation, and the two ended up talking past one another.

> UC Rob: Um, but at the same time, like we want to help, we want to make sure, we want to really get this thing, Cranley, I would feel comfortable tellin' my guys like hey we're in…
>
> Sittenfeld: Right.
>
> UC Rob: …this deal with Chin if I know we're Cranley-proof.
>
> Sittenfeld: Yeah.
>
> UC Rob: Um and so with that like Chin told me like hey you know I want to try to get uh P.G. 20,000…
>
> Sittenfeld: Right.
>
> UC Rob: …and I'm like, hey man I I'm I'm if if if we can get this deal done, like fuckin' let's do it.
>
> Sittenfeld: Yeah.
>
> UC Rob: You know and so.
>
> Sittenfeld: Do you guys?
>
> **UC Rob: What is the best way, what's the best way for us to get that to you, to get that deal? You know what I mean, like…**

> **Sittenfeld: Yeah yeah yeah. I'm just, do you guys know that he's gonna try and veto it?**
>
> UC Rob: No, we don't know that. I'm just saying like I want it, I just want to be comfortable that…
>
> Sittenfeld: Yeah no I get it I get what you're…
>
> UC Rob: I mean obviously like I think, I don't think he will. Like we've had a lot of just meetings with him you know. We've we've done some things to kind of massage, we just wanna you know, he's been pretty good like, he he straight up told us, we had a meeting with him in his office and he's like, look, like it'll get, I'm fine with it I just don't want Chin to be the face of it. I just don't want Chin to be the one walking in and we're like cool we're fine with that.
>
> Sittenfeld: Honestly I can I can deliv-…I can sit here and say I can deliver the votes.

Pet.App.219a-221a (emphases added).

As Rob admitted at trial, Sittenfeld thought he was talking about his development deal, not some bribery deal. R.265.PageID.6157. Sittenfeld's responses make no sense otherwise—of course, the Mayor would not "veto" a bribe. R.269.PageID.6751-52.

December 17, 2018. A month later, Sittenfeld accepted a $20,000 PAC donation via Rob. R.265.PageID.5974. Why the delay? Because Sittenfeld kept *rejecting* Rob's attempts to donate

improperly—including through money orders, corporate checks, or cash. Pet.App.224a-230a, Pet.App.239a-241a, Pet.App.254a-256a.

Sittenfeld was so punctilious that he once refused what the government thought was a *lawful* donation, because Sittenfeld spotted a legal problem the FBI hadn't noticed. Pet.App.254a-255a; R.265.PageID.5976-77. Sittenfeld explained to Rob he wanted to be "thorough" to "make sure I'm doing this right." Pet.App.239a-241a.

In the lead-up to the December 17 donation, Sittenfeld continued to voice support for 435 Elm. Sometimes he and Rob also discussed donating, but there was never any explicit link between the two. *See* R.251.PageID.5010-12.

Apparently unsatisfied with the evidence it had, the Government kept investigating Sittenfeld for another year. Agents never offered Sittenfeld another quid pro quo, however, nor did Sittenfeld solicit further donations from them. *See* R.251.PageID.5027-30. Instead, he rebuffed the agents' repeated attempts to ply him with personal benefits. He declined invitations for trips to Miami, Las Vegas, and Nashville; rejected open-ended offers for anything Rob could "help out with" (R.265.PageID.5992-93); and always paid or offered to pay for meals with the "investors." (R.269.PageID.6836-37.) The only personal benefit Sittenfeld accepted was a bottle of scotch (which Sittenfeld does not drink) and a box of cigars (which Sittenfeld does not smoke), gifted when his son was born. R.269.PageID.6830-32.

D. Indictment, Trial, and Conviction

A year after the investigation ended, Sittenfeld was indicted. *See* R.3. The indictment included three bribery offenses related to the facts discussed above: honest-services fraud (Count 1), federal-programs bribery (Count 3), and Hobbs Act extortion (Count 4). He was also charged with three counts involving an alleged sports-betting scheme on which he was ultimately acquitted (Counts 2, 5, and 6). Pet.App.138a.

At trial, the Government's case-in-chief rested principally on the recordings above, without any evidence suggesting Sittenfeld solicited or accepted bribes outside the sting (including in his years-long, pre-sting relationship with cooperating witness Ndukwe). The jury acquitted on the 435 Elm honest-services count. But it convicted on the other two counts, even though they turned on the same evidence. *Id*.

Sittenfeld moved for post-trial relief, arguing in part that the evidence was insufficient to prove an "explicit" quid pro quo as required by *McCormick*. R.270; R.271. The district court acknowledged that the evidence was at most "ambiguous." Pet.App.112a. But it thought the jury could nevertheless divine an "explicit" exchange from this ambiguous record. *Id*.

The court sentenced Sittenfeld to 16 months' imprisonment and imposed a $200 special assessment and $40,000 fine, which he paid. Pet.App.139a, 148a.

E. Sixth Circuit Appeal

Sittenfeld appealed to the Sixth Circuit. The court's motions panel denied Sittenfeld's motion for release pending appeal. ECF21. Following briefing

and oral argument, however, the court granted a renewed motion for release pending appeal, noting that Sittenfeld's appeal presented "a close question." Pet.App.107a.

A divided panel affirmed the conviction, with Judges Nalbandian and Murphy affirming and Judge Bush dissenting.

As Judge Nalbandian explained in his opinion for the majority, "Every day in this country, politicians solicit donations to finance their campaigns. And every day, those same politicians make statements about what they believe in, what they've done, and what they promise to do once elected." Pet.App.2a. Moreover, "these solicitations and promises [often] occur in the same place, at the same time." *Id.* According to the majority, this routine conduct, which is "protected by the First Amendment," is divided from illegal bribery only by a "blurr[y]" line. Pet.App.3a. And in Sittenfeld's case, "despite nearly every relevant conversation" of a years-long investigation "being recorded, the investigation didn't yield overwhelming evidence" that he had crossed that line. *Id.* Nonetheless, the majority concluded, the jury permissibly concluded from the ambiguous evidence that Sittenfeld had accepted an illegal bribe.

In reaching this conclusion, the majority focused on two Supreme Court cases: *McCormick v. United States*, 500 U.S. 257 (1991), and *Evans v. United States*, 504 U.S. 255 (1992). As the court explained, "[c]ombined with controlling precedent" from the Sixth Circuit, those cases require the government to "show that an elected official received campaign donations 'in return for an explicit promise or undertaking.'"

Pet.App.17a-18a. However, in the Sixth Circuit's view, *Evans* (and in particular Justice Kennedy's concurrence) clarified "that by 'explicit' *McCormick* did not mean 'express,' and therefore [the Sixth Circuit] do[es] not require unambiguous evidence, so long as the jury can infer the content of the quid pro quo." Pet.App.19a-21a.

Applying that standard, the panel majority concluded that "[t]wo conversations, in context, support the jury's verdict." Pet.App.27a. "First, Sittenfeld arguably solicited a bribe…when he said, '[y]ou don't want me to be like "hey Chin like love you but can't."'" *Id*. As the majority saw it, "[e]ven if [Sittenfeld and Ndukwe] didn't reach a bargain, Sittenfeld plainly asked for money and implied that negative consequences could result" if no donation came through. Pet.App.28a.

Second, when a government agent in a separate conversation said, "if we can get this deal done, like fuckin' let's do it," Sittenfeld "nodd[ed] along as he listened," asked if the agent expected the mayor to veto the *development* deal, and explained how he could help get the *development* deal done. *Id*. Again, in the majority's view, "a reasonable juror could conclude" from this "that Sittenfeld understood" and accepted a bribe, Pet.App.29a, even though *both* participants in the conversation testified that *neither* understood it that way.

Concurring, Judge Murphy "share[d] [the dissent's] concerns with Sittenfeld's prosecution in this case." Pet.App.77a. He nonetheless joined the majority based on existing precedent, even though that "precedent seems to interpret [federal bribery

law] in a way that maximizes (rather than minimizes) the constitutional concerns." Pet.App.59a. To start, "*McCormick* is an opaque opinion" that leaves "room for debate over the proper test." Pet.App.63a. And Sixth Circuit precedent held that "while an agreement must be 'explicit'" under *McCormick*, "it need not be 'express'"—despite the fact that "these two words are synonyms." Pet.App.64a. Judge Murphy "doubt[ed]…that courts should be sending people to prison" based on that "subtle distinction" between protected speech and illegal bribery—particularly given his "doubt" that "many jurors would understand" the line. *Id.*

Judge Bush dissented, noting that despite an extensive sting seeking "evidence of a bribe or extortion," "[o]nly a few words…created ambiguity as to his intent." Pet.App.77a. All other evidence—including that Sittenfeld "refused contributions that did not comply with the law, resisted frequent attempts by the FBI's pretend donors to cajole him with personal gifts, and repeatedly reminded these donors of how to contribute to his campaign legally"—eliminated even that ambiguity. Pet.App.77a-78a. Overall, the evidence "reveal[ed] that Sittenfeld himself viewed the transaction as lawful and that he did what one would expect for a lawful contribution." *Id.*

Sittenfeld's conviction was all the more troubling, Judge Bush noted, because any "prosecution based on a campaign contribution alone" is on "thin legal ice." Pet.App.81a. After all, "[c]itizens make campaign contributions to influence policymaking, and these contributions constitute political speech under the First Amendment." *Id.* By the same token, "[a]

politician may take a legislative position, fundraise off it, and then fundraise more after successfully passing laws that advance it." *Id.* "This happens all the time, and nobody doubts its legality." *Id.* Given that this case thus "presents the most troubling context for application of the bribery and extortion laws" because "conduct arguably protected by the Constitution is at issue," Judge Bush emphasized the need to "police th[e] line [of sufficiency] vigorously." Pet.App.82a. That required reversal, since "the government's proof of Sittenfeld's alleged corrupt intent is entirely consistent with his having a lawful motive." *Id.*

F. Pardon

On May 28, 2024, President Trump issued a pardon to Sittenfeld for the offenses he was convicted of below, which Sittenfeld—believing he had been wrongfully convicted—gratefully accepted. While the pardon assures that Sittenfeld will not serve the remainder of his prison sentence, this case continues to present a live controversy because the pardon does not return the $40,000 criminal fine he paid based on his conviction, and because some potential collateral consequences of the conviction remain. *See Knote v. United States*, 95 U.S. 149, 154 (1877) ("However large . . . may be the power of pardon possessed by the President . . . it cannot touch moneys in the treasury of the United States."); *Sibron v. New York*, 392 U.S. 40, 57 (1968).

REASONS FOR GRANTING THE PETITION

In *McCormick*, this Court introduced a safeguard against prosecutorial overreach by holding that otherwise-lawful campaign donations cannot be punished as bribes unless the government establishes

an "explicit" quid pro quo. 500 U.S. 257 (1991). The meaning of *McCormick*'s "explicit" requirement, though, remains hotly disputed—and lower courts' confusion has rendered the intended safeguard largely ineffective. The resulting muddle has left politicians open to prosecution whenever a prosecutor can convince jurors—who generally dislike money in politics—to *infer* from ambiguous evidence that the politicians' fundraising is corrupt. Since creative prosecutors can almost always paint a picture of corruption from normal donor interactions, virtually every politician that accepts campaign donations is vulnerable to prison time.

This case offers an ideal opportunity for the Court to provide much-needed clarity to *McCormick* and *Evans*: every important conversation was recorded, and there is no alleged *quid* other than campaign contributions that everyone agrees were lawful if they were not made in exchange for any official action. The case thus turns entirely on whether a bribery conviction can rest solely on a campaign donation plus ambiguous conversations that are fully consistent with lawful campaigning.

I. THE APPROACH ADOPTED BELOW PUTS A PROSECUTORIAL BULLSEYE OVER LAWFUL CAMPAIGN DONATIONS.

McCormick recognized that allowing campaign donations to serve as the predicate for bribery charges absent an explicit quid pro quo "would open to prosecution not only conduct that has long been thought to be well within the law but also conduct that in a very real sense is unavoidable so long as election campaigns are financed by private contributions or

expenditures, as they have been from the beginning of the Nation." 500 U.S. at 272. Permitting such prosecutions poses at least two key risks: (1) candidates and their supporters will be chilled from engaging in core First Amendment speech, and (2) overzealous prosecutors will have enormous power to pick and choose which politicians and political donors to target for selective prosecution. Those risks are untenable.

McCormick addressed these risks by demanding an "explicit" quid pro quo: bribery charges premised on campaign contributions can succeed "only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *Id*. at 273. This ensures that normal political activity cannot be targeted by creative prosecutors drawing strained inferences from ambiguous evidence. When the only alleged "bribe" is an otherwise lawful campaign donation, prosecutors can target only blatantly corrupt conduct.

Unfortunately, the protections that *McCormick* established have proved illusory. By permitting juries to convict based on evidence that is at least as consistent with lawful campaign donations as with illegal bribery, the decision below, and others like it, obliterate the safeguards *McCormick* was designed to provide.

A. By Undermining *McCormick*, The Decision Below Poses Severe Risks to Protected Speech.

1. Despite *McCormick*'s instruction that an "explicit" quid pro quo is required, the panel majority embraced a rule that allows a jury to convict if it *infers*

from ambiguous evidence that a defendant reached a quid pro quo. Pet.App.28a. That cannot be right—and it effectively eliminates the protections *McCormick* sought to provide.

After all, as *McCormick* recognized, "[m]oney is constantly being solicited on behalf of candidates…who claim support on the basis of their views and what they intend to do or have done." 500 U.S. at 272. Candidates make campaign promises all the time, and their supporters contribute to their campaigns precisely because they expect the politicians to keep those promises. That does not amount to quid pro quo bribery, which must involve a far more explicit exchange when based on donations. *See, e.g.*, *United States v. Carpenter*, 961 F.2d 824, 827 (9th Cir. 1992) (defendant legislator responded with dollar figure when undercover agent asked how much it would cost to get legislator to change a state law); *United States v. Loftus*, 992 F.2d 793, 795 (8th Cir. 1993) (FBI investigated tip regarding explicit quid pro quo offer made by local official, leading to video of official taking bribe).

Under the test described below, however, routine political activity would expose politicians and donors to federal bribery charges. Consider, for example, a politician who runs for office "on a platform of repealing a well-known law—say, the Affordable Care Act." Pet.App.57a (Murphy, J., concurring). And suppose the politician seeks donations based on this platform: "Donate to my campaign today because I will vote to repeal the Affordable Care Act if elected." *Id.* One could infer from this statement a corrupt bargain—a skeptical jury could infer that the politician is demanding donations in exchange for a

vote to repeal the ACA. The inference of corruption is even more plausible if the politician frames the outreach in starker (but still quite ordinary) terms: "Without your support, I won't be able to repeal the ACA."

Indeed, if the facts here permit conviction, it is hard to see how any politician that accepts campaign donations could protect themselves from bribery charges. Sittenfeld expressly refused to accept a quid pro quo the only time it was directly offered. He announced his intention to support the project at issue before ever discussing a donation. To show that donating to him was a good investment, he pointed not to his intention to keep up his side of a bargain, but to his consistent track record of supporting developments just like the one at issue. He refused personal gifts. What more could he have done to make clear that he was seeking only legitimate campaign donations from people aligned with his longstanding platform? The Sixth Circuit's approach provides no answer—and thus no way for a politician to ensure that lawful outreach to potential donors will not be recast as criminal corruption.

2. Sittenfeld's conduct did not involve anything close to an explicit quid pro quo, instead mirroring ordinary donor interactions undertaken every day by politicians at every level of government. Without this Court's intervention, these politicians—and their donors—are all vulnerable to selective prosecution.

In the last presidential election, for example, President Trump hosted a "roundtable discussion on energy security" attended by "executives from oil companies"—and took the opportunity to "ask[] the

attendees to contribute a combined $1 billion for his campaign."[1] At the same event, President Trump promised to support various policies the oil companies supported.[2] An aggressive prosecutor could doubtless present this meeting alone as at least ambiguous evidence of a quid pro quo.

During the 2016 election, meanwhile, Hillary Clinton was the keynote speaker at a Planned Parenthood event, where she spoke about the risk that her opponent would "defund Planned Parenthood" and promised she, in contrast, would "be [Planned Parenthood's] partner."[3] Planned Parenthood endorsed Clinton in that election, noting its intention to "spend at least $20 million in the upcoming election cycle" and its intention to "target key states in the Presidential" race—and expressly backed Clinton because she was "in Planned Parenthood's corner."[4] Again, it is not difficult to see how a prosecutor could spin a story of a quid pro quo arrangement between Clinton and Planned Parenthood—or how a jury hostile to those parties' views (or to money in politics generally) might be willing to convict.

Indeed, as Clinton's speech shows, there is nothing unique about the fact that Sittenfeld's "love you but can't" comment could be understood to "impl[y] that negative consequences could result if [a potential donor] didn't come through" with donations. Pet.App.28a. Political donors are almost always

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[1] https://perma.cc/R5SE-HJNL.

[2] https://perma.cc/4WAY-CH97.

[3] https://perma.cc/HA65-M4RB.

[4] https://perma.cc/K9N5-A6ZZ.

motivated by a belief that their decision to support a particular candidate will lead to better outcomes—*that is the whole point*. Campaign donations "embody a central feature of democracy—that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014).

Unsurprisingly, then, politicians routinely assert in their fundraising messages to potential donors that they will be unable to achieve their goals—and advance the donors' interests—without donations. In other words, as donation appeals regularly exhort, "We can't do it without you."[5]

In a campaign call to potential donors, to take another example, then-President and First Lady Joe and Jill Biden explained that the most recent presidential campaign was "the most important election of their lives," and that if elected, Joe Biden (unlike his opponent) would "protect a woman's right to choose," "protect our children from gun violence, keep lowering the prescription drug cost," and "protect Social Security and Medicare."[6] But as he explained, "We need you," and "that's literal," because "[w]e can't do it without you."[7] In other words, like Sittenfeld, without donations, Biden would be forced to say "love you, but can't" if his supporters later asked him for help.

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[5] For examples of candidates making this pitch, *see, e.g.*, https://perma.cc/XEF3-5VM4; https://perma.cc/8BPS-9J8E.

[6] https://perma.cc/4WAY-CH97.

[7] *Id.*

These examples barely skim the surface of *public* campaign solicitations echoing the statements relied on to convict Sittenfeld. In private, politicians at all levels surely make even more targeted promises when talking one-on-one to supporters—often in the same conversations in which they solicit campaign contributions. Under the approach adopted below, all of these politicians are open to prosecution if they say anything during these often informal, unscripted conversations that can be read to even *hint* at a possible quid pro quo, no matter how ambiguous the statement or how vehemently the politician disclaims any intent to enter a quid pro quo agreement.

3. Even the most cautious politician is unlikely to be safe under this regime, because juries are all too willing to infer corruption from routine political activity. In one study, for example, researchers told a large, nationally representative sample of mock jurors that a politician and his donor "simply had background knowledge about the reciprocal interests of each other, and acted in accordance, without any direct or indirect contact between the parties." *See* Christopher Robertson *et al., The Appearance and Reality of* Quid Pro Quo *Corruption: An Empirical Investigation*, 8 J. LEGAL ANAL. 375 (2016). Quid pro quo bribery is plainly impossible under those circumstances. Yet after being given standard jury instructions, *nearly half* of the mock jurors were willing to convict a politician for bribery on these facts. *Id*. As that study shows and this case confirms, many jurors are willing to infer a corrupt bargain from pure First Amendment–protected activity. Absent strong judicial safeguards, then, every politician and donor risks conviction.

As a result, "[o]fficials might wonder whether they could respond to even the most commonplace requests for assistance, and citizens with legitimate concerns might shrink from participating in democratic discourse." *McDonnell v. United States*, 579 U.S. 550, 575 (2016). Similar concerns in other First Amendment contexts have led the Court to refuse to adopt "highly malleable standard[s]" that "would allow a jury to impose liability on the basis of the jurors' tastes or views, or perhaps on the basis of their dislike" of particular speech or a particular defendant. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011). That same rationale plainly requires clarity here, not simply deferring to jurors' judgments regarding what constitutes corruption.

While prosecutors could ideally help curb the risk of improper convictions, prosecutorial discretion is far from a complete answer. "[A]s this Court has said time and again, the Court 'cannot construe a criminal statute on the assumption that the Government will use it responsibly.'" *Snyder v. United States*, 603 U.S. 1, 17 (2024). After all, prosecutors may well "pursue their personal predilections" if courts "rely upon prosecutorial discretion to narrow the otherwise wide-ranging scope" of a criminal statute. *Marinello v. United States*, 584 U.S. 1, 11 (2018). Relying upon prosecutorial discretion is particularly dangerous where, as here, the speech at issue is inherently political. It is easy to see how the "personal predilections" of a prosecutor (whether political bias or personal ambition) could affect prosecutorial discretion in this context, where federal prosecutors can make their careers by prosecuting such cases.

State and local officials are especially at risk because, unlike federal officials, they rarely have professional fundraisers to serve as intermediaries. Instead, as here, they largely fundraise in direct, unscripted conversations with supporters. When courts leave federal bribery law's "outer boundaries ambiguous," they empower federal prosecutors to "set[] standards of . . . good government for local and state officials"—a clear federalism problem. *McNally v. United State*s, 483 U.S. 350, 360 (1987).

In short, without clear lines in this area—and without vigilant judicial policing of those lines— core First Amendment speech is threatened.

4. One origin of the confusion on this issue appears to be a misreading of *Evans v. United States*, 504 U.S. 255 (1992). This Court's holding in *Evans* has at best marginal relevance—the Court decided only that a politician need not affirmatively solicit a bribe in order to be convicted of Hobbs Act extortion; simply accepting a bribe is sufficient. *Id.* at 267. And the case is inapposite for another reason—the "bribes" alleged there involved both campaign contributions *and* personal benefits, so the case did not raise the First Amendment concerns that arise based on campaign contributions alone. *Id.*

While the majority's holding in *Evans* thus sheds little light on this case, Justice Kennedy authored a partial concurrence that the Sixth Circuit (and many lower courts) "interpreted…as a 'gloss on the *McCormick* Court's use of the word "explicit" to qualify [the] quid pro quo requirement.'" Pet.App.21a (citing *United States v. Blandford*, 33 F.3d 685, 696 (6th Cir. 1994)). Specifically, Justice Kennedy explained that

he understood the Court to "require[] a quid pro quo as an element of the Government's case," but that in his view, "[t]he official and the payor need not state the *quid pro quo* in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods." *Evans*, 504 U.S. at 272, 274 (Kennedy, J., concurring). Justice Kennedy never used the word "explicit" or purported to explain the use of that term in *McCormick*. Nor did he explain whether the principles he was describing applied in the context of cases founded solely on campaign contributions, a question not presented in *Evans*. Nonetheless, the Sixth Circuit relied on this partial concurrence to reject Sittenfeld's interpretation of *McCormick*.

Like Justice Kennedy, the panel majority below was concerned that an unambiguous evidence standard would be too high a bar, because campaign contributions "will almost always have an inherent 'legitimate alternative explanation.'" Pet.App.24a. But by the same token, *legitimate* campaign contributions will almost always have an alternative *corrupt* explanation. That is precisely why, if prosecutors and jurors are allowed to infer a quid pro quo from a campaign donation based on nothing more than ambiguous evidence and a creative narrative about corruption, core First Amendment speech is at serious risk of being recast as illegal.

B. Courts Must Require Unambiguous Evidence to Avoid These Serious Concerns.

"[I]n drawing th[e] line" "between *quid pro quo* corruption" and protected speech, "the First Amendment requires [courts] to err on the side of

protecting political speech rather than suppressing it." *McCutcheon*, 572 U.S. at 209. But the decision below does exactly the opposite: it allows a jury to convict even if "the government's evidence [does] not rule out [the] reasonable, alternative hypothes[i]s" that the defendant engaged only in protected First Amendment speech. Pet.App.24a-25a. It thus systematically errs on the side of upholding convictions premised on core protected speech.

That is inconsistent with how this Court treats ambiguous evidence of unlawful agreement even in far less sensitive contexts. In the antitrust context, for example, this Court has held that "conduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy"—instead, a plaintiff "must present evidence 'that tends to exclude the possibility'" of lawful conduct. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

That approach makes sense. As the Court has explained, the facts alleged to support an antitrust claim are often "consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy" that is entirely lawful. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007). As Judge Bush noted in dissent, "[s]witch 'political strategy' for 'business strategy' and one can see *our* problem: it is perfectly normal—and legal—for politicians and their donors to have shared interests and act on them in parallel, yet it is illegal to make an unambiguous agreement exchanging official acts for campaign contributions." Pet.App.86a.

Moreover, while the Court has noted that "mistaken inferences in [antitrust] cases…are especially costly, because they chill the very conduct the antitrust laws are designed to protect," *Matsushita*, 475 U.S. at 594, "mistaken inferences in prosecutions of campaign contributions" are even *more* costly "because they chill conduct the First Amendment protects." Pet.App.86a. Indeed, the blurry line here casts a pall over a wide range of core political campaign activity. And "the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough because First Amendment freedoms need breathing space to survive." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 618-19 (2021).

The solution this Court devised in the antitrust context is to "limit[] the range of permissible inferences from ambiguous evidence." *Matsushita*, 475 U.S. at 588. This prevents jurors from incorrectly inferring illegality from desirable competitive behavior. The same approach is needed here—there is no reason civil antitrust claims should face greater judicial scrutiny than criminal bribery charges.

Similarly, in a variety of First Amendment contexts, this Court has emphasized that "appellate court[s] ha[ve] an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984). Again, the same type of scrutiny is called for here—judges cannot outsource the responsibility to

enforce the First Amendment to juries. Instead, judges must rigorously police the line by requiring unambiguous evidence to support a conviction.

* * *

In short, if campaign contributions can constitute bribery, protecting the core First Amendment interests at issue requires placing the burden on the Government to produce unambiguous evidence of a quid pro quo conditioning some official act on the campaign contributions. By failing to require such evidence, the panel below made virtually every elected official and donor in the country vulnerable to prosecution—just what *McCormick* was intended to prevent.

II. AS ALL THREE MEMBERS OF THE PANEL BELOW ACKNOWLEDGED, LOWER COURTS REQUIRE GUIDANCE FOLLOWING *MCCORMICK*.

Lower courts have struggled to give content to *McCormick*'s requirement of an "explicit" quid pro quo when it comes to campaign donations. Indeed, as the decision below illustrates, many courts have been so loose in allowing inferences of corruption that they have diluted *McCormick* to the point of impotence.

All three members of the panel below agreed that this Court's guidance is needed. In his opinion for the panel majority, Judge Nalbandian recognized that the court was required to "apply the law as it exists," and thus declined to address "whether we ought to require more of the government given the First Amendment interests and the realities of our political system." Pet.App.26a n.8. Those questions, he explained, are "for the Supreme Court." *Id*.

Judge Murphy's concurrence, meanwhile, was even more direct, noting that "*McCormick* is an opaque decision" and that the "subtle distinction" the panel majority drew from *McCormick* and *Evans* is one he "doubt[ed] many jurors would understand." Pet.App.64a. While leaving it up to the jury to make sense of this vague guidance "raises First Amendment concerns," Judge Murphy concluded that only the Supreme Court is "the right court to address [those] concerns." Pet.App.68a.

In dissent, Judge Bush reasoned that *McCormick* already precludes the conviction here, but noted that "this case falls in the danger zone that surrounds the sufficiency line of bribery and extortion cases." Pet.App.98a. "Given that concern, and given post-*McCormick* caselaw that more strongly protects campaign contributions under the First Amendment, it would be helpful for the Supreme Court to provide guidance here," because "lower courts need to know the extent of *McCormick*'s protections in cases where the only allegation of illegality relates to corrupt, but otherwise lawful, campaign contributions." *Id*. He also highlighted that "further Supreme Court guidance" would be "particularly" helpful "for cases like this one where there is no unambiguous evidence of a quid pro quo and no independent indicia of corrupt intent, like personal gifts or a connection to an independently criminal scheme." Pet.App.100a.

And the panel below is far from alone. Indeed, since Sittenfeld's conviction was affirmed, Judge Thapar has in a separate case "join[ed] the chorus of judges encouraging the Supreme Court to revisit" its precedents in this area. *Householder*, 137 F.4th at 491 (Thapar, J., concurring). As Judge Thapar explained,

some lower courts' readings of *McCormick* and *Evans* are "inconsistent with the Constitution's ironclad protection of political speech" and thus "raise[] serious First Amendment issues" that only this Court can solve. *Id*. at 490-91.

The disarray goes far beyond the Sixth Circuit. Lower courts cannot even reach consistent conclusions about whether *McCormick* and *Evans* describe the same standard or distinct tests, with *McCormick* applying a heightened test for alleged campaign-finance bribes and *Evans* applying to other types of alleged bribes. *Compare United States v. Chastain*, 979 F.3d 586, 591 (8th Cir. 2020) (distinguishing the "campaign contribution context," where *McCormick* requires "an explicit quid pro quo," from other bribery charges governed by *Evans*), and *United States v. McDonough*, 727 F.3d 143, 155 n.4 (1st Cir. 2013) (*McCormick*'s heightened requirements apply only in the campaign-contribution context), *with United States v. Benjamin*, 95 F.4th 60, 72-73 (2d Cir. 2024) (rejecting as dicta earlier precedent requiring heightened showing for campaign contributions).

Moreover, some attempts to make sense of the standard are simply incoherent: several courts have "reasoned that, while an agreement must be 'explicit,' it need not be 'express.'" Pet.App.64a (Murphy, J., concurring) (quoting *Blandford*, 33 F.3d at 696). But as Judge Murphy observed, "these two words are synonyms"—*Webster's New International Dictionary of the English Language* defines "explicit" to mean "in plain language," "clear," or "express." *Id*.

Unsurprisingly, like Judges Nalbandian, Murphy, Bush, and Thapar, many judges outside the Sixth

Circuit have recognized that *McCormick*'s standard requires clarification. *See, e.g.*, *United States v. Ring*, 706 F.3d 460, 466 (D.C. Cir. 2013) ("The *McCormick* Court failed to clarify what it meant by 'explicit,' and subsequent courts have struggled to pin down the definition of an explicit quid pro quo."); *United States v. Benjamin*, No. 21-CR-706, 2022 WL 17417038, at *13 (S.D.N.Y. Dec. 5, 2022) (Oetken, J.) ("[T]here is confusion among the courts about…the *McCormick* standard."), *rev'd and remanded*, 95 F.4th 60 (2d Cir. 2024); *United States v. McGregor*, 879 F. Supp. 2d 1308, 1314 (M.D. Ala. 2012) ("The *McCormick* Court, however, did not expand on what constitutes an 'explicit promise or undertaking.' The definition of 'explicit' remains hotly contested.").

III. THIS IS AN IDEAL VEHICLE TO CLARIFY *MCCORMICK*.

This is a uniquely suitable vehicle to clarify *McCormick* and address the substantial First Amendment issues posed by the unclear line between core political speech and illegal bribery.

To start, every relevant conversation at the heart of the Government's case was recorded. There is thus no dispute over what was said; indeed, the key exchanges are reproduced verbatim above. In other words, this is not a case where a defendant denies taking a bribe that a witness insists was expressly discussed. Instead, the sole dispute is whether the conversations at issue—which are at most ambiguous as to whether Sittenfeld intended to enter a quid pro quo arrangement or intended only core First Amendment speech—are sufficient to send Sittenfeld to prison.

Moreover, there are no indicia of corruption that could even theoretically overcome the lack of an express agreement in those recordings: Sittenfeld received no personal benefits as part the alleged "bribe," apart from otherwise-lawful campaign contributions. To the contrary, during the years-long sting, Sittenfeld repeatedly rebuffed personal benefits offered by undercover agents.

Similarly, Sittenfeld repeatedly refused attempts to give him *illegal* campaign contributions, insisting that campaign-finance laws be followed to a tee. And there is no suggestion that Sittenfeld changed his position in response to the alleged bribe, or even offered to do so—the official act Sittenfeld was allegedly bribed to take was supporting a development deal he supported before the sting even began, consistent with his unbroken pro-development record. As Sittenfeld explained to undercover agents, "in seven years I have voted in favor of every single development deal that's ever been put in front of me." Pet.App.9a.

But the Court need not take Sittenfeld's word for it. *Sixteen* former federal prosecutors and DOJ officials with experience overseeing public-corruption cases agreed as amici that Sittenfeld's conviction is unwarranted. *See* ECF35. So did another group of former high-level federal officials, including three former Attorneys General and two former federal judges. *See* ECF33. Elected officials, business leaders, and law professors also submitted amicus briefs, all concerned about the precedent set by Sittenfeld's conviction. *See* ECF27, 31, 37-2.

Even more unusually, all three panel members below agreed this case cries out for certiorari. Judge Nalbandian's majority opinion noted it was "hard" to decide whether the "blurr[y]" legal line was crossed here; Judge Murphy's concurrence "doubt[ed]… courts should be sending people to prison" on these facts; and Judge Bush's dissent described "the government's proof of Sittenfeld's alleged corrupt intent [as] entirely consistent with his having a lawful motive." This Court should grant certiorari to answer these Judges and the larger "chorus of judges" seeking clarification of federal bribery law. *Householder*, 137 F.4th at 491 (Thapar, J., concurring).

IV. CERTIORARI IS WARRANTED DESPITE SITTENFELD'S PARDON.

None of the above is changed by the recent presidential pardon for the convictions at issue here. The pardon does not erase Sittenfeld's convictions or otherwise moot this appeal. *See, e.g.*, *Lorance v. Commandant, U.S. Disciplinary Barracks*, 13 F.4th 1150, 1160-61 (pardon did not moot collateral challenge to conviction); *Robson v. United States*, 526 F.2d 1145, 1147 (1st Cir. 1975) (same).

To start, the pardon does not return the $40,000 fine Sittenfeld paid. *See Knote*, 95 U.S. at 154 ("power of pardon" "cannot touch moneys in the treasury"). This Court can thus afford concrete relief by reversing the convictions and ordering a refund. *See Nelson v. Colorado*, 581 U.S. 128, 130, 136 (2017) (due process requires refund of "conviction-related assessments" after reversal); *United States v. Sun Growers of California*, 212 F.3d 603, 604 (D.C. Cir. 2000) (affirming refund of fine after reversal of conviction).

Sittenfeld also faces collateral consequences from his convictions. The City of Cincinnati is demanding that he repay over $80,000 of his councilman salary due to the convictions. Additionally, because his pardon is not expressly based on a finding of "rehabilitat[ion]" or "innocence," his convictions remain potentially admissible for purposes of impeachment in any future case. Fed. R. Evid. 609(c); *see also United States v. Benton*, 98 F.4th 1119, 1129 (D.C. Cir. 2024) (pardoned conviction admissible). Similarly, his convictions could enhance his sentence in any future proceedings. *See* U.S.S.G. § 4A1.2(j) cmt. n.10; *Carlesi v. New York*, 233 U.S. 51, 59 (1914) (courts can "tak[e] into consideration" pardoned offenses in sentencing). These collateral consequences, too, prevent mootness. *See Sibron*, 392 U.S. at 57 ("[A] criminal case is moot only if it is shown that there is no possibility [of] any collateral legal consequences.").

In any event, if this case were to become moot, the proper course would be vacatur under *United States v. Munsingwear*, 340 U.S. 36, 39 (1950). *See United States v. Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001) (per curiam); *United States v. Vaughn*, No. 24-5615, 2025 WL 748309, at *1 (6th Cir. Mar. 5, 2025).

CONCLUSION

The Court should grant the petition.

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