No. 25-49

In the Supreme Court of the United States

ALEXANDER SITTENFELD AKA P. G. SITTENFELD,

Petitioner,

v.

UNITED STATES,

Respondent.

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

BRIEF OF FORMER FEC COMMISSIONERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

OWEN B. SMITHERMAN
QUINN EMANUEL URQUHART & SULLIVAN, LLP
300 W. 6th St, Suite 2010
Austin, TX 78701
(737) 667-6101

CHRISTOPHER G. MICHEL
Counsel of Record
DEREK L. SHAFFER
MICHAEL J. SEBRING
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, NW
Washington, DC 20005
(202) 538-8000
christophermichel@quinnemanuel.com

August 14, 2025

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INTEREST OF *AMICI CURIAE*[1]

Amici are former Commissioners of the Federal Election Commission (FEC) who served across different administrations:

Bradley Smith served as a Commissioner from 2000 to 2005, including as Chairman in 2004.

Michael Toner served as a Commissioner from 2002 to 2007, including as Chairman in 2006.

Matthew Petersen served as a Commissioner from 2008 to 2019, including as Chairman in 2010 and 2016.

Allen Dickerson served as a Commissioner from 2020 to 2025, including as Chairman in 2022.

Amici have overseen the administration and enforcement of the Federal Election Campaign Act, the statutory scheme Congress created to regulate money in politics. In this capacity, *amici* have reviewed hundreds of enforcement matters, distinguishing between lawful political conduct and conduct that is legally impermissible.

Amici have an interest in ensuring a clear and bright line between vigorous, lawful campaign fundraising and criminal bribery. The Sixth Circuit's thrice-divided opinion highlights how the line governing legality and criminal conduct has been blurred and threatens to criminalize routine political activity. That misguided approach has the potential to invite politicized prosecutions and chills core First Amendment activity.

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[1] *Amici* notified counsel for all parties of their intention to file this brief more than 10 days prior to filing. S. Ct. R. 37.2. This brief was not authored in whole or in part by counsel for any party, and no person or entity other than *amici* or their counsel have made a monetary contribution to its preparation or submission. S. Ct. R. 37.6.

SUMMARY OF ARGUMENT

With decades of collective experience administering and enforcing the Federal Election Campaign Act, *amici* have a profound and practical interest in maintaining a clear, bright line between vigorous, lawful campaign fundraising and criminal bribery. In reviewing hundreds of enforcement matters, *amici* have been on the front lines of implementing statutes and regulations—as well as the Court's caselaw—to distinguish between permissible political conduct and unlawful activity. *Amici* respectfully submit that the Sixth Circuit's decision in this case blurs that critical line beyond recognition. It upholds a criminal conviction for bribery based not on an explicit promise of an official act, but on ambiguous statements redolent of innumerable campaign interactions involving no personal gain to petitioner. This approach dangerously expands the scope of federal bribery law, threatening to criminalize routine interactions between candidates and supporters that are essential to our democratic system.

Amici file this brief to offer their unique perspective on the need to restore the clear evidentiary standard this Court established in *McCormick v. United States*, 500 U.S. 257 (1991), and to protect the political process from the chilling effect of vague criminal laws. In *amici*'s view, this case provides a compelling vehicle for the Court to correct the misguided course charted by the government and the Sixth Circuit below and to reestablish a bright line rule for bribery prosecutions involving campaign activity.

ARGUMENT

I. *MCCORMICK'S* EXPLICIT *QUID PRO QUO* REQUIREMENT FOR POLITICAL CORRUPTION HAS BEEN ERODED.

For decades, this Court has carefully policed the line between illegal corruption and legitimate politics, repeatedly warning that vague legal theories must not be used to criminalize the routine interactions essential to democratic campaigns. The decision below demonstrates a dangerous retreat from that clear standard, threatening to chill the very political conduct this Court has long sought to protect. As former FEC Commissioners who have reviewed hundreds of enforcement matters, we can attest that the conviction in this case is deeply troubling.

A. This Court Has Repeatedly Warned Against Vague Corruption Theories That Criminalize Routine Campaign Interactions.

Campaigns are fundamental to politics and democracy. Our political arena is an open exchange where citizens seek to promote their interests and policy preferences and politicians seek support by making campaign promises and pledges. Intertwined with that dynamic is the concrete imperative of campaign fundraising. As this Court explained 40 years ago, "virtually every means of communicating ideas in today's mass society requires the expenditure of money." *FEC v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480, 494 (1985) (quoting *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (per curiam)). That observation has only grown in importance since. "Money is constantly being solicited on behalf of candidates, who run on platforms and who claim support on the basis of their views and what they intend to do or

have done." *McCormick*, 500 U.S. at 272. Such "conduct [] 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." *Id.*

At the same time, the close relationship between campaign funding and promises sparks concerns about corruption. The law accordingly treats "bribes as inherently corrupt and unlawful." *Snyder v. United States*, 603 U.S. 1, 6 (2024). It is that insidious corruption that Congress has repeatedly criminalized, including through the Hobbs Act, 18 U.S.C. § 1951, and statutes covering bribery of federal officials or other public officials concerning a program receiving federal funds, *id.* §§ 201, 666.

This Court's precedents have endeavored to ensure that the task of combating corruption does not inadvertently punish the legitimate mechanisms of politics. The Court has done so principally by ensuring that prosecutions and civil enforcement actions do not deviate from the core concern: *quid pro quo* corruption. *See McCutcheon v. FEC*, 572 U.S. 185, 192, 207, 227 (2014) (plurality). "The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *Nat'l Conservative Political Action Comm.*, 470 U.S. at 497. Reaching outside that context bleeds into political expression in violation of the First Amendment. *See McCutcheon*, 572 U.S. at 209 ("The line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights."). As such, "Congress may target only a specific type of corruption—'*quid pro quo*' corruption." *Id.* at 207. Where prosecutions deviate from this central danger, this Court has repeatedly corralled them back to the heartland.

McCormick is notable for articulating how this critical safeguard was to be put into practice. The Court held that Hobbs Act convictions based on campaign contributions must be based on proof of an "explicit" promise to perform an official act. 500 U.S. at 273. Where payments to officials are "campaign contributions, *proof* of a *quid pro quo* would be essential for an extortion conviction." *Id.* (emphasis added). A *quid pro quo*, as the Court defines it, occurs "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. In such situations *the official asserts that his official conduct will be controlled* by the terms of the promise or undertaking." *Id.* (emphasis added). To convict for campaign contribution bribery, the Court therefore requires clear proof that an official made an explicit promise.

The *McCormick* Court stated that its rule "defines the forbidden zone of conduct with sufficient clarity." *Id.* Outside that forbidden zone was the normal give and take of campaign interactions: "[T]o hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of what Congress could have meant." *Id.* at 272.

Since *McCormick*, the Court's focus on excluding unavoidable and routine political interactions from criminal prosecution has permeated its analysis across bribery, gratuity, and corruption statutes. It has reined in repeated attempts by federal prosecutors to expand these statutes, and each time the Court has cited as part of its reasoning that Congress did not include normal political interactions within the forbidden zone of conduct.

In *United States v. Sun-Diamond Growers of California*, the United States (through an independent counsel) prosecuted illegal gratuities made to "buy favor or generalized goodwill" under 18 U.S.C. § 201(c)(1)(A), without evidence of any specific official act made in exchange. 526 U.S. 398, 405-06 (1999). The Court rejected the government's contention and held instead that the government must prove a link between a thing of value and a specific official act. *Id.* at 414. Otherwise, all manner of innocent and legitimate political exchanges could be prosecuted: A "group of farmers would violate § 201(c)(1)(A) by providing a complimentary lunch for the Secretary of Agriculture in conjunction with his speech to the farmers concerning various matters of USDA policy—so long as the Secretary had before him, or had in prospect, matters affecting the farmers. Of course the Secretary of Agriculture *always* has before him or in prospect matters that affect farmers." *Id.* at 407 (citation omitted). The Court concluded that corruption statutes as a rule should be read with care: "[A] statute in this field that can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter." *Id.* at 412.

McDonnell v. United States, 579 U.S. 550 (2016), built on this standard to define what counts as an "official act" under 18 U.S.C. § 201(a). *McDonnell* made express the Court's commitment to narrowing federal political bribery charges to exclude "normal political interaction between public officials and their constituents." *Id.* at 571, 576. The Court rejected the government's "expansive interpretation," which would have resulted in "nearly anything a public official does—from arranging a meeting to inviting a guest to an event—count[ing] as a *quo*." *Id.* at 574-75. The Court unanimously determined such an interpretation would "raise significant constitutional

concerns." *Id.* at 574. Ultimately, the Court's opinion was grounded in its "concern . . . with the broader legal implications of the Government's boundless interpretation of the federal bribery statute," and was satisfied that "[a] more limited interpretation of the term 'official act' leaves ample room for prosecuting corruption." *Id.* at 580-81.

And most recently, in *Snyder*, the Court addressed attempts to make it a federal crime for state and local officials to accept gratuities for past official acts. 603 U.S. at 11. Again, the Court proscribed such prosecutions, reasoning in part that the government's interpretation would rope in regular interactions between officials and constituents: "The flaw in the Government's approach—and it is a very serious real-world problem—is that the Government does not identify any remotely clear lines separating an innocuous or obviously benign gratuity from a criminal gratuity." *Id.* at 15-16. Is "a $200 Nike gift card for a county commissioner who voted to fund new school athletic facilities" wrongful? *Id.* at 16. "[H]ow are state legislators [or] city council members . . . to know what is acceptable and what is criminalized by the Federal Government? They cannot." *Id.* "That is not how federal criminal law works." *Id.*

This consistent line of jurisprudence, stretching more than three decades from *McCormick* to *Snyder*, reveals a commitment to providing a durable bulwark against the criminalization of ordinary politics. By demanding proof of an explicit *quid pro quo*, narrowly defining an "official act," and rejecting boundless interpretations of federal statutes, the Court has affirmed that the government retains ample power to prosecute true corruption but cannot be allowed to deploy vague criminal laws that would paralyze the essential, everyday interactions between elected officials and the constituents they serve.

B. The Sixth Circuit's *Evans* "Gloss" Dilutes *McCormick's* Explicit *Quid Pro Quo* Requirement.

In this case, prosecutors obtained a criminal conviction for accepting a legal campaign contribution without any explicit evidence of a *quid pro quo*. The Sixth Circuit's affirmance of that conviction is a warning sign that the law has deviated from the Court's holdings.

The source is clear. Drawing on the solo concurrence of Justice Kennedy in *Evans v. United States*, 504 U.S. 255 (1992), prosecutors have sought to expand public-corruption statutes to include legal campaign contributions without explicit evidence of a *quid pro quo* agreement, thereby criminalizing routine fundraising interactions. In *Evans*, the Court held that *quid pro quo* extortion under 18 U.S.C. § 1951 could be initiated (or induced) by a payor rather than demanded by the official in the first instance. 504 U.S. at 258-59. Addressing a question not presented, Justice Kennedy's concurrence opined that "[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." *Id.* at 274.

The Sixth Circuit below "interpreted Justice Kennedy's concurrence as a gloss on the *McCormick* Court's use of the word 'explicit' to qualify [the] *quid pro quo* requirement." Pet. App. 21a (quotation marks and citation omitted). Accordingly, the Sixth Circuit read "*Evans* to mean that by explicit *McCormick* did not mean express," and therefore "do[es] not require unambiguous evidence, so long as the jury can infer the content of the *quid pro quo*." *Id.* (quotation marks and citation omitted).

That "gloss" threatens to capsize the central holding of *McCormick* that defined *quid pro quo* to include only

payments "made in return for *an explicit promise*" where "the official asserts that his official conduct *will be controlled* by the terms of the promise or undertaking." 500 U.S. at 273 (emphasis added). Petitioner's conviction is proof of the dangerously broad range of that theory, as the facts here bear little resemblance to the heartland of *quid pro quo* corruption that the Court has insisted upon.

As Judge Bush noted below, the majority affirmed a conviction of "a politician who 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." Pet. App. 77a-78a. And petitioner correctly informed his would-be-donor that he could not agree to any *quid pro quo* arrangement. Pet. App. 9a ("[A]s you know, obviously nothing can be illegal . . . nothing can be a [] *quid pro quo*.").

Yet, the Sixth Circuit justified the prosecution based on a single admittedly ambiguous statement: "love you but can't." Pet. App. 27a. But even the majority recognized the implications of a prosecution on such meager evidence, stating whether judges "ought to require more of the government given the First Amendment interests and the realities of our political system is a question for the Supreme Court." Pet. App. 27a n.8.

C. Petitioner's Conviction Highlights The Dangers Of A Retreat From *McCormick's* Explicit Evidentiary Standard.

As former FEC Commissioners, *amici* have reviewed and decided scores of campaign finance enforcement cases. In our collective experience, criminal referrals are reserved for serious cases with aggravating

circumstances concerning conduct that demonstrates clear corrupt intent. For example, referrals can involve contributions made in the name of another, knowing acceptance and use of foreign national contributions, use of campaign funds for personal use, and explicit evidence of a *quid pro quo* exchange.

By comparison, petitioner's conduct was mundane and unobjectionable. The conduct here would not have been prioritized for even civil enforcement, let alone a criminal referral. It involved legally permissible solicitations for and contributions to a PAC, with no evidence of personal enrichment or an explicit agreement to take official action. Frankly, under this standard, it is possible that half of Congress or more could potentially be subject to politicized prosecutions. Five factors evident from the undisputed record place petitioner's normal political interactions and conduct outside the forbidden zone of conduct barred by federal statute.

(1) Deliberate Compliance with Campaign Finance Law: By insisting on donations that complied with federal law and explicitly refusing cash, petitioner showed a commitment to legal transparency, not criminal corruption. Our democratic system relies on legal donations to campaigns and PACs. Congress created an entire apparatus of campaign funding reporting and disclosure transparency to funnel donations into the open. Indeed, these activities are heavily regulated by campaign finance laws and FEC rules, requiring public disclosure and restricting how funds are used. That petitioner insisted upon compliance is a notable counter-indicator of corruption.

(2) Core Democratic Campaign Functions: Petitioner's discussions with a potential donor were not criminal acts but rather the central concept animating

democratic campaigns. This is the everyday reality of American politics: Candidates seek support by aligning with donors' principles, and donors contribute to candidates they trust to act on issues they care about. These were run-of-the-mill conversations and exactly the type of conduct the Court carved out from overzealous prosecution in *McCormick*. "To hold otherwise 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.

(3) No Personal Enrichment: As former FEC Commissioners, a key indicator that *amici* look for when distinguishing legal fundraising from illicit bribery is personal enrichment. It is naive to think a donor parts with money to support a candidate regardless of their platform. Donors—like voters—in every case desire *something* from the candidate they support. But the *McCormick* standard, properly interpreted, emphasizes that corruption requires that that 'something' must be more than good government and some agreement on legislative priorities. The language of the statute and the purpose of criminalizing *quid pro quo* corruption are not to stifle seeking and obtaining support for parallel priorities, but to deter inducement of official acts by corrupt means, which in nearly all cases means personal enrichment. The differentiating factor is whether the candidate uses the funds corruptly for personal use or for funds to run a campaign to promote the policies desired by donor and candidate. *See* Pet. App. 3a ("When the bribery involves money flowing to a politician for his personal use, the crime is straightforward. But when a politician is

accused of accepting campaign funds in exchange for the promise of official action, the line becomes blurrier."). In this case, the evidence is clear: The funds were repeatedly directed to the campaign with petitioner refusing to take personal gifts. The funds were for bona fide campaign-related purposes, not personal use, distinguishing them from classic bribery cases.

(4) Express *Quid Pro Quo* Disavowal: When petitioner expressly refused to engage in a *quid pro quo*, he drew a bright, unambiguous line between legal fundraising and criminal bribery. This was not a knowing wink or nod, not a vague or coded conversation; it was a direct disavowal of a corrupt bargain.

(5) No Explicit Evidence Of *Quid Pro Quo*: The prosecution provided no explicit evidence of an exchange, relying instead on interpretations of a single ambiguous statement made in the course of weeks of a sting operation. "Ingratiation and access are not corruption. They 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*, 572 U.S. at 192 (internal quotation marks and citation omitted). Politics is inescapably a game of give and take; a loose criminal standard cannot be squared with that dynamic.

Conviction on these facts tells public officials that even their attempts to follow the law are not sufficient to protect them from criminal jail time. It essentially makes one-on-one conversations with donors fraught with legal uncertainty and potential criminal law exposure. Like routine meetings with potential donors, "conscientious public officials arrange meetings for constituents, contact other officials on their behalf, and include them in events

all the time" without engendering concerns about corruption and bribery. *McDonnell*, 579 U.S. at 575. Public officials must also be permitted to discuss their platform with potential donors without running the risk of years of prison.

The law is drifting in the wrong direction. For petitioner to be indicted and convicted on these facts, something is badly amiss.

II. THE COURT SHOULD GRANT REVIEW TO RE-ESTABLISH A BRIGHT-LINE RULE THAT PROTECTS FIRST AMENDMENT RIGHTS AND PREVENTS IMPROPER PROSECUTIONS.

A vague standard for bribery such as that employed by the Sixth Circuit below is out of step with this Court's modern constitutional jurisprudence and leads to chilled speech and self-censorship. A bright-line rule is needed to correct this departure and eliminate the possibility of arbitrary or discriminatory prosecutions, including for political reasons. This case provides a compelling vehicle for this Court to re-establish that bright line.

A. A Vague Standard For Bribery Imposes A Severe Chill On Core Political Speech And Association.

McCormick and *Evans* were decided in the early 1990s. In the three decades since, this Court has repeatedly reinforced constitutional protections for political campaign activities.

Affirming the proposition that "the First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office," *FEC v. Cruz*, 596 U.S. 289, 302 (2022) (quotation omitted), the Court has consistently struck down abridgments of the right to free speech in the campaign context. "In a series of cases over

the past 40 years," the Court has "spelled out how to draw the constitutional line between the permissible goal of avoiding corruption in the political process and the impermissible desire simply to limit political speech." *McCutcheon*, 572 U.S. at 192; *see, e.g.*, *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Davis v. FEC*, 554 U.S. 724 (2008); *FEC v. Wis. Right To Life, Inc.* ("*WRTL II*"), 551 U.S. 449 (2007); *Randall v. Sorrell*, 548 U.S. 230 (2006); *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604 (1996). As relevant here, when applying the sometimes vague line between protected and unprotected political speech, the Court has made clear that the Constitution requires courts to err on the side of "protecting" speech, "rather than suppressing it." *Cruz*, 596 U.S. at 308 (quoting *McCutcheon*, 572 U.S. at 209); *see WRTL II*, 551 U.S. at 457 (same).

Framed against that backdrop of increased concern for the "essential mechanism" of political speech, *Citizens United*, 558 U.S. at 339, the vague standard that the Sixth Circuit drew from Justice Kennedy's solo concurrence in *Evans* stands as a doctrinal anomaly. *See* Pet. App. 67a-69a (Murphy, J., concurring). In its disregard for individual rights and delegation of substantial discretion to prosecutors and juries, the standard applied below appears to err on the side of "suppressing" speech, not "protecting" it. *Contra Cruz*, 596 U.S. at 308. That approach runs afoul of the First Amendment as consistently construed by this Court. *Cf.* Pet. App. 90a (Bush, J., dissenting) ("[W]hile the majority hesitates to police [the line between protected and unprotected political speech], I believe that is precisely what the Constitution requires us to do.").

This anomaly is especially offensive to the Constitution because it is a vague standard backed by harsh

criminal penalties. *See* 18 U.S.C. § 666(a) (permitting up to 10 years imprisonment); *id.* § 1951(a) (up to 20 years imprisonment). The application of such a standard to the political context produces chill and self-censorship. *See Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 244 (2002) ("[w]hile even minor punishments can chill protected speech," "severe" penalties are particularly burdensome); *see also Counterman v. Colorado*, 600 U.S. 66, 75 (2023) ("A speaker may be unsure about the side of a line on which his speech falls. Or he may worry that the legal system will err, and count speech that is permissible as instead not. . . . The result is 'self censorship.'"). For example, officials may avoid meeting with their supporters for fear of incurring criminal liability, and their supporters may avoid making contributions for the same reason. The result is a severance of the link between public representatives and their constituents, which ultimately harms our democratic process. *See McDonnell*, 579 U.S. at 575 (expressing a similar concern); *cf. Citizens United*, 558 U.S. at 339 ("The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government . . . .").

In other contexts, the Court has recognized the dangers of and taken a reinvigorated approach to combat the impact of vagueness on individual conduct. In *United States v. Davis*, 588 U.S. 445 (2019), this Court held the enforcement of vague laws contravenes both "due process and separation of powers." *Id.* at 451, 470. For such laws do not provide "people of common intelligence fair notice of what the law demands of them." *Id.* at 451 (quotation omitted). Thus, the "void-for-vagueness doctrine" prohibits the use of vagueness in criminal laws. *Sessions v. Dimaya*, 584 U.S. 148, 155-56 (2018) (plurality); *see, e.g.*, *Snyder*, 603 U.S. at 15 (rejecting an interpretation of

Section 666 that would "create traps for unwary state and local officials"); *McDonnell*, 579 U.S. at 576 (interpreting another federal bribery statute so as to "avoid[] [a] 'vagueness shoal'") (citation omitted).

The force of such decisions should apply equally in this case, if not more. Though petitioner was convicted under a vague criminal standard, bringing the Due Process Clause into play, his conduct involved political speech, also implicating the First Amendment. *See Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) ("[W]here a vague statute abut(s) upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of (those) freedoms.") (quotations omitted); *cf. NAACP v. Button*, 371 U.S. 415, 433 (1963) ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."). The combined threat to these constitutional protections chills speech all the more and should heighten the Court's concern. *See Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 807 (2011) (Alito, J., concurring in the judgment) ("The lack of [] notice in a law that regulates expression 'raises special First Amendment concerns because of its obvious chilling effect on free speech.'") (quoting *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997)).

Accordingly, the Court should grant review to bring this area of law in line with the rest of its modern political speech precedent. Among other things, the Court should clarify that the standard taken from Justice Kennedy's concurrence in *Evans* is insufficiently protective of constitutional rights (including the First Amendment and Due Process Clause). In its place, the Court should re-establish that criminal prosecutions in this protected sphere should target the heartland of verboten activities featuring personal slush funds and explicitly corrupt deals, not

the periphery based on routine candidate-donor speech and interactions and ambiguous evidence.

B. A Bright-Line Rule Is Necessary To Prevent Politicized And Unpredictable Prosecutions.

Not only does the standard applied by the Sixth Circuit give inadequate weight to a defendant's individual rights, but it is also unenforceable in any coherent and consistent manner, given the substantial discretion inherently involved in filing complaints and pursuing enforcement actions (our particular expertise) and current public perceptions of corruption in politics.

With over a quarter century of combined experience at the FEC, *amici* have decided hundreds of cases, sitting in essentially the same position as jurors. *Amici* do not believe the standard adopted by the Sixth Circuit can be consistently applied by individual juries, each hearing a single case. Even assuming jurors act in good faith and with diligence, inconsistent verdicts would tear at public trust in the electoral machinery and confidence in the results. This would, in turn, damage the essential communication and relationship between officeholders and constituents.

As Justice Robert Jackson once observed, prosecutors wield substantial power over the "life, liberty, and reputation" of private individuals. Robert H. Jackson, *The Federal Prosecutor*, 31 J. Crim. L. & Criminology 3, 3 (1940). Perhaps for that reason, this Court has long expressed concern about vague laws that allow prosecutors to exercise their power in an arbitrary and discriminatory manner. *See Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (criticizing a statute that "allows policemen, prosecutors, and juries to pursue their personal predilections"). As

relevant here, the Court has noted that clear rules exist as much to constrain the actions of prosecutors and other officials as to provide notice to individuals. *See Dimaya*, 584 U.S. at 156 (explaining that the void-for-vagueness doctrine "guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges"); *cf. Grayned*, 408 U.S. at 108-09 ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis").

Thus, when the government has responded to objections about the improper enforcement of vague laws with some variant of "trust us," the Court has repeatedly declined. As it has said "time and again," the Court "cannot construe a criminal statute on the assumption that the Government will use it responsibly." *Snyder*, 603 U.S. at 17 (quoting *McDonnell*, 579 U.S. at 576); *see id.* (collecting cases). When it comes to vague or unbounded laws, prosecutorial discretion "cannot be accepted as a substitute for a sufficient law." Herbert Wechsler, *The Challenge of A Model Penal Code*, 65 Harv. L. Rev. 1097, 1102 (1952); *cf. United States v. Stevens*, 559 U.S. 460, 480 (2010) ("[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*.").

In the context of prosecutions of public officials for corruption or similar conduct, the issue of enforcement discretion is only amplified. Evincing the known pitfalls, the Department of Justice manual expressly forbids the consideration of "political association, activities, or beliefs" in charging decisions. U.S. Dep't of Just., Just. Manual § 9-27.260 (2018); *cf. Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 812 (1987) (discussing

"[s]ociety's interest in disinterested prosecution"). Yet legal scholars have repeatedly demonstrated how political considerations can at least appear to shape federal prosecutions of public officials. *See, e.g.*, Jamie Bologna Pavlik, *Political Importance and Its Relation to the Federal Prosecution of Public Corruption*, 28 Const. Pol. Econ. 346 (2017) (concluding that federal prosecutors convict more individuals of corruption crimes in politically significant states); Sanford C. Gordon, *Assessing Partisan Bias in Federal Public Corruption Prosecutions*, 103 Am. Pol. Sci. Rev. 534 (2009) (concluding that federal prosecutors file weaker cases against their political opponents compared to their political allies); Brendan Nyhan & M. Marit Rehavi, *Tipping the Scales? Testing for Political Influence on Public Corruption Prosecutions* (Oct. 2018) (unpublished manuscript) (concluding that federal prosecutors bring more cases against their political opponents before elections than afterwards).[2] Given this evidence, a bright-line rule is needed to prevent the potential manipulation of vague standards for inappropriate ends.

Nor can juries protect defendants from improper prosecutions based on invalid theories. Juries also can be influenced by bias or prejudice. *See Skilling v. United States*, 561 U.S. 358, 378 (2010). And in the specific context of prosecutions for fundraising conduct, juries may be susceptible to narratives that align with their preconceived notions about money in politics. Opinion polls show that many Americans are deeply skeptical of what they see as "the role of money in American politics," Andy Cerda & Andrew Daniller, *7 Facts about Americans' Views of Money in Politics*, Pew Research Center (Oct.

[2] https://tinyurl.com/dsdn44u2j.

23, 2023),[3] and view their public officials as corrupt, *see* Taylor Orth, *Most Americans See Corruption among Politicians, Judges, and Executives as Serious Problems*, YouGov (Jan. 17, 2025).[4] Indeed, a large-scale empirical experiment has shown that many Americans will find criminally liable certain actions which this Court has indicated are constitutionally protected. *See* Christopher Robertson et al., *The Appearance and Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. Legal Anal. 375, 395-416 (2016); *see also id.* at 416 ("Although our qualitative data show the grand jurors taking their roles very seriously and deliberating in earnest, we found that the institution provides no real hurdle to prosecutors who sought to indict everyday political behavior as bribery."). All of the above suggests that a vague standard enables prosecutors—unimpeded by jury opposition—to build a case on public cynicism about politics, rather than on hard evidence of a corrupt bargain.

Judges, too, are ill-equipped to make case-by-case determinations about whether particular activity was corrupt. As exhibited by the multiple opinions below, *see* Pet. App. 2a-105a, and the inconsistency in application among other courts outside of the Sixth Circuit, *see* Pet. 34-35 (collecting cases), courts cannot agree what the relevant standard even requires. The Court should accordingly take this case to affirm that *McCormick's* explicit *quid pro quo* requirement provides a clear, objective, and evidence-based standard. Such a bright-line standard will cabin prosecutorial discretion to the heartland of genuine corruption, rather than the periphery of routine political

[3] https://tinyurl.com/83jdh4ngn.

[4] https://tinyurl.com/31qdsn4e.

engagement, and protect defendants from the influence of extralegal views about the American political process.

CONCLUSION

The Court should grant review.

Respectfully submitted,

OWEN B. SMITHERMAN
QUINN EMANUEL URQUHART & SULLIVAN, LLP
300 W. 6th St, Suite 2010
Austin, TX 78701
(737) 667-6101

CHRISTOPHER G. MICHEL
Counsel of Record
DEREK L. SHAFFER
MICHAEL J. SEBRING
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, NW
Washington, DC 20005
(202) 538-8000
christophermichel@quinnemanuel.com

Counsel for *Amici Curiae* Former FEC Commissioners

August 14, 2025