No. 25-49

In the Supreme Court of the United States

ALEXANDER SITTENFELD, A/K/A "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

BRIEF OF *AMICI CURIAE* FORMER FEDERAL PUBLIC CORRUPTION PROSECUTORS IN SUPPORT OF PETITIONER

DAVID A. O'NEIL
Counsel of Record
JOHN SULLIVAN BAKER
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Avenue N.W.
Washington, D.C. 20004
daoneil@debevoise.com
(202) 383-8000

BEATRICE A. WALTON
SCOTT J. WOODS
RAQUEL A. LESLIE
DEBEVOISE & PLIMPTON LLP
66 Hudson Blvd.
New York, New York 10001
(212) 909-6000

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are twelve former federal prosecutors and officials in the Department of Justice with decades of experience supervising and prosecuting some of the country's most significant public corruption cases, including prosecutions of elected officials. *Amici* have collectively served under both major parties in nearly every administration for the past twenty-five years. They include four former United States Attorneys, including the former United States Attorney for the District in which this case was charged; two former chiefs of the Public Corruption Unit at the U.S. Attorney's Office for the Southern District of New York; and former leadership of the Public Integrity Section at Main Justice. *Amici* have led and overseen federal investigations and established policies for prosecuting serious charges of bribery, fraud, extortion, money laundering, campaign finance violations, and violations of anti-corruption laws, among other offenses, working closely with the relevant law enforcement agencies, including the Federal Bureau of Investigation.

Amici have a strong interest in the constitutional and policy issues at the center of this case. Having devoted much of their careers to efforts to root out corruption from public office, they are deeply committed to law enforcement's critically important mission of

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[1] Pursuant to Sup. Ct. R. 37.6, counsel for *Amici* certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *Amici* and their counsel have contributed monetarily to preparing or submitting this brief. Counsel for *Amici* further certify that all parties were timely notified of *Amici*'s intent to file this brief in accordance with Sup. Ct. R. 37.2.

maintaining integrity in the political process. They are also acutely aware of the need to safeguard constitutional values and the public interest when pursuing such cases, including by carefully evaluating whether a criminal charge would intrude on constitutional values, disrupt legitimate and democratically important activity, and sow doubt in the fair enforcement of public integrity laws.

Amici accordingly submit this brief in support of the petition for writ of certiorari filed by Petitioner Alexander "P.G." Sittenfeld ("Sittenfeld") to offer their perspective—based on years of public service handling cases in this field—on why the conviction in this case is inconsistent with core constitutional principles. *Amici* agree with Petitioner, and indeed all three judges of the Sixth Circuit panel below, that lower courts require updated guidance on the application of these core constitutional principles to prosecutions involving campaign contributions to avoid—as in this case—unduly risking the criminalization of lawful conduct. *Amici* further write to explain why certain highly unusual features of this case render it an extreme outlier among campaign-finance bribery prosecutions, and indeed a precedent liable to chill legitimate political conduct and open the door to abuse.

SUMMARY OF ARGUMENT

Campaign-contribution bribery is perhaps the most fraught area of public integrity law. Our system of democratic government—elected of the people, by the people, and for the people—is also financed by the people. Since the founding, public officials have run on platforms and made campaign promises not only to obtain votes, but also to obtain money from voters to fund their campaigns. *See McCormick v. United*

States, 500 U.S. 257, 272 (1991). Indeed, this is a central feature of our political system: Citizens exercise basic "expressive and associational rights" when providing campaign contributions, making known their opinions and interests and helping to steer the political system in their preferred direction. *McCutcheon v. FEC*, 572 U.S. 185, 204–05 (2014); *see also FEC v. Cruz*, 596 U.S. 289, 303 (2022) ("The First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." (internal quotation marks omitted)); *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) ("[V]irtually every means of communicating ideas in today's mass society requires the expenditure of money."). Recognizing public officials' essential role in reflecting and responding to constituent interests, as well as in soliciting campaign contributions, this Court accordingly set an appropriately high threshold in *McCormick* for prosecutions of bribery, extortion, and related crimes in the political arena. 500 U.S. at 272–73.

In the decades since *McCormick*, courts have continued to work out where exactly the line falls between legitimate political fundraising and improper exchanges amounting to campaign contribution bribery and related crimes. While this work is ongoing, federal prosecutors can, do, and must tread lightly in this area. Only the clearest cases involving obvious indicia of criminal wrongdoing warrant the grave step of a felony charge for the payment or solicitation of a campaign contribution to a public official or candidate. And to date, prosecutors have largely restricted their efforts (and the expenditure of finite public resources) to cases fitting that bill. *See infra*, Part III.A.

This case, however, illustrates that the status quo in the lower courts has become unworkable. Amidst confusion across the circuits as to the requirements for campaign contribution-linked prosecutions, the Sixth Circuit below adopted a formulation that significantly weakens the protections established by *McCormick*. Applied to the facts of Mr. Sittenfeld's case, the consequences were devastating: the upholding of a conviction for political conduct that likely was not criminal.

Several highly unusual aspects of Mr. Sittenfeld's case distinguish it from virtually all others and heighten the constitutional concern in his prosecution. First, Mr. Sittenfeld's conduct did not involve the typical signs of wrongdoing that prosecutors expect to see when a public official is engaged in a corrupt enterprise. Instead, the government's entire case reduced to the accusation that Mr. Sittenfeld agreed to advance a project that he had already supported before the investigation began. Second, this case resulted from a two-year sting operation specifically intended to uncover evidence of misconduct. The use of undercover agents is an appropriate and important tool of law enforcement. But it must be used carefully in campaign-contribution cases, and here, even after surreptitiously recording Mr. Sittenfeld and suggesting other kinds of wrongdoing to him, undercover government agents were unable to develop the kind of unambiguous and obvious evidence of corrupt intent that has been the hallmark of similar prosecutions.

Taken together, the Sixth Circuit's standard, applied to the barest and most equivocal evidence, unduly risked the criminalization of what ultimately was ordinary political behavior—exactly what *McCormick* sought to prevent. By blurring the line between unlawful and lawful influence, this case is thus likely to have significant and problematic collateral consequences extending beyond Mr. Sittenfeld's own conviction. These include chilling essential public servant-constituent interactions, undermining citizens' ability to financially contribute to campaigns, and eroding faith in the legitimacy of critical public corruption cases.

ARGUMENT

I. *McCormick* Drew a Critical Distinction Between Lawful and Unlawful Influence Deeply Rooted in Core Constitutional Values

The Supreme Court made clear in *McCormick*, 500 U.S. at 272–73, and related cases that there is a difference between lawful influence and access by campaign contributors, on the one hand, and corrupt agreements and exchanges between those contributors and public officials, on the other. Important constitutional and democratic values define this difference and set the standard by which to assess it.

In *McCormick*, the defendant state legislator was, like Mr. Sittenfeld, convicted of Hobbs Act extortion. The facts were not dissimilar: McCormick, a member of the West Virginia House of Delegates, allegedly received campaign contributions from a lobbying group and later sponsored legislation that benefited the lobbying group. *Id.* at 259–60. During his reelection campaign, McCormick allegedly solicited and received additional funds from the group, which he reported neither as campaign contributions nor as personal income. *Id.* at 260. After winning reelection, McCormick sponsored additional legislation that would benefit the group. He was ultimately convicted at trial of Hobbs Act extortion. *McCormick*, 500 U.S. at 265.

However, the Supreme Court reversed, holding that the receipt of campaign contributions violates the Hobbs Act "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. In explaining its holding, the Supreme Court reasoned that public officials can be *expected* to solicit campaign donations, meaning that courts cannot lightly assume Congress has criminalized that conduct:

> Whatever ethical considerations and appearances may indicate, to 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 by making it a crime to obtain property from another, with his consent, "under color of official right."

Id. at 272. To violate the Hobbs Act or other federal corruption laws,[2] a public official's solicitation or receipt of campaign contributions must instead cross a

[2] In addition to the Hobbs Act, courts have applied the "explicit" *quid pro quo* requirement of *McCormick* to prosecutions of campaign-contribution corruption under other statutes. *See, e.g.*, *United States v. Terry*, 707 F.3d 607, 612–13 (6th Cir. 2013) (bribery); *United States v. Pawlowski*, 351 F. Supp. 3d 840, 849–51 (E.D. Pa. 2018) (honest services fraud); *United States v. Donagher*, 520 F. Supp. 3d 1034, 1043–45 (N.D. Ill. 2021) (federal programs bribery).

clear line of impropriety. The reason is simple: A lower standard "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." *Id.*

The Supreme Court therefore marked the critical line between improper and proper campaign contributions at not merely *quid pro quo* arrangements, but "explicit" *quid pro quo* arrangements. *Id.* at 273–74. Where such an "explicit" arrangement exists, and the official "asserts that his official conduct will be controlled by the terms of the promise or undertaking," otherwise-lawful influence and access cross the boundary to bribery. *Id.* at 273.

The Supreme Court rested that standard on both pragmatic considerations and core constitutional values. The reality is "that campaigns must be run and financed [and that] [m]oney 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." *Id.* at 272. As a result, even closely timed exchanges may not reveal an improper or criminal exchange. *Id.* (cautioning against reliance on "whether the official acted in his official capacity at or near the time of the payment for the benefit of the payor" or "had supported legislation before the time of the payment"); *see also United States v. Siegelman*, 640 F.3d 1159, 1171 (11th Cir. 2011) (noting that "even a close-in-time relationship between the donation and the act will not suffice" to establish a *quid pro quo*).

Equally important, campaign contributions play a critical role in our democracy. Constituents voice their interests and support their preferred candidates in part through their pocketbooks. The fact that public officials are responsive to the views of those constituents, including those making campaign contributions, is therefore hardly unusual. *See McCormick*, 500 U.S. at 272 ("Serving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator."). As the Supreme Court put it in *McCutcheon*, a "central feature of democracy" is the interaction by which "constituents support candidates who share their beliefs and interests, and candidates who are elected . . . respon[d] to those concerns." 572 U.S. at 192; *see also Citizens United v. FEC*, 558 U.S. 310, 359 (2010) ("It is well understood that a substantial and legitimate reason . . . to make a contribution to[] one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors." (quoting *McConnell v. FEC*, 540 U.S. 93, 297 (2003) (Kennedy, J., concurring in part and dissenting in part))).

The First Amendment also protects the right of citizens to make campaign contributions. *See Cruz*, 596 U.S. at 307 ("The First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." (quotation marks omitted)); *Republican Party of Minn. v. White*, 536 U.S. 765, 781 (2002) ("Debate on the qualifications of candidates is at the core of our electoral process and of the First Amendment freedoms[.]" (quotation marks omitted)). Providing campaign contributions is "expressive and associational" activity—the exercise of the right to participate in public discussion and policy debate intricately tied up in the First Amendment. *McCutcheon*, 572 U.S. at 204; *see also id.* at 204–05 (suggesting campaign contributions are the most "realistic" form of participation in our current political system). Improper limitation to or chilling of the right of elected officials to state their position on issues that matter to voters, or the right of voters to promote those positions through campaign contributions, intrudes on the core function of the First Amendment.

In the context of political campaigns, it is therefore perfectly lawful—indeed, beneficial—for public officials and candidates to make certain promises to their constituents and for those constituents, in turn, to contribute funds to help those officials get elected. The difference lies in explicit *quid pro quo* arrangements. *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."). However difficult it may be to precisely draw that line, the criminal process must steer far wide of it to avoid penalizing defendants for lawful participation in American politics. *See Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 731 (7th Cir. 2014) ("To hold illegal [conduct] furthering the interests of some constituents shortly before or after campaign contributions are solicited and received '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[.]'" (quoting *McCormick*, 500 U.S. at 272)).

II. Lower Courts' Campaign-Contribution Bribery Jurisprudence Is Increasingly Confused and Risks Criminalizing Legitimate Political Activity

While jurisdictions agree that *McCormick* and related Supreme Court cases make clear the values at stake in regulating interactions between public officials and constituents, applying *McCormick* has proven more difficult in practice, prompting divisions among the circuits. *See* Pet.App.63a–64a (Murphy, J., concurring); *United States v. Ring*, 706 F.3d 460, 466 (D.C. Cir. 2013) ("[C]ourts have struggled to pin down the definition of an explicit quid pro quo in various contexts."); *United States v. Blandford*, 33 F.3d 685, 695 (6th Cir. 1994) (noting that how to apply *McCormick* in practice is "not altogether clear").

The first source of confusion concerns whether *Evans v. United States*, 504 U.S. 255 (1992), which addressed the ancillary issue of whether passive acceptance of a bribe suffices for Hobbs Act extortion, intended to limit *McCormick*. While the *Evans* opinion itself provides little guidance, Justice Kennedy's concurrence has attracted more attention. As he explained, "The 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 273 (Kennedy, J., concurring).

Justice Kennedy's concurrence, however, by no means simply replaced the *McCormick* standard. For one, *Evans*'s holding did not address campaign contributions, and Justice Kennedy's opinion is nonprecedential. But more importantly, it is doubtful that the standard applicable in everyday bribery and extortion cases under *Evans* can at all protect the constitutional interests unique to campaign contributions identified in *McCormick*. *Cf.* Pet.App.65a–66a (Murphy, J., concurring) (explaining that an *Evans*-inspired standard would catch legitimate First Amendment-protected conduct). After all, the *McCormick* majority *reversed* the conviction before it—reasoning that the circumstantial evidence presented was insufficient to prove the requisite "explicit" *quid pro quo*. 504 U.S. at 271–72.

Several circuits have accordingly continued to apply *McCormick* as written—imposing a higher standard for campaign contribution prosecutions than in normal bribery cases subject to *Evans*. *See United States v. McDonough*, 727 F.3d 143, 155 n.4 (1st Cir. 2013) ("[W]e have held that *McCormick* applies only in the context of campaign contributions."); *United States v. Taylor*, 993 F.2d 382, 385 (4th Cir. 1993) (setting out the distinct standards applicable to campaign-contribution linked charges and charges outside of the campaign contribution context); *United States v. Chastain*, 979 F.3d 586, 591 (8th Cir. 2020) ("Outside of the campaign contribution context, an explicit quid pro quo is not required."); *United States v. Martinez*, 14 F.3d 543, 553 (11th Cir. 1994); *Ring*, 706 F.3d at 466; *Siegelman*, 640 F.3d at 1171. Other circuits have recently changed their view, resulting in a clear split. *See, e.g.*, *United States v. Benjamin*, 95 F.4th 60, 72–73 (2d Cir. 2024).

For its part, the Sixth Circuit adopted Justice Kennedy's concurrence as a "gloss on the *McCormick* Court's use of the word 'explicit'" in *United States v. Blandford*—which incidentally also did not involve campaign contribution-linked bribery. Pet.App.21a (quoting *Blandford*, 33 F.3d at 696). The Sixth Circuit's precedent in *Blandford* in turn led the panel below to reach the related but counterintuitive conclusion that "by 'explicit' *McCormick* did not mean 'express.'" *Id.* (quoting *Blandford*, 33 F.3d at 696). The confusion in this formulation, however, is manifold: "Explicit" and "express" are essentially synonyms, *see* Pet.App.64a (Murphy, J., concurring), and it is unclear how an "explicit" agreement can be "implicit" in the circumstances, *cf. McCormick*, 500 U.S. at 282 (Stevens, J., dissenting) (lamenting that the *McCormick* majority required an "explicit rather than implicit" *quid pro quo* for campaign contribution bribery). In any event, it is deeply unlikely that a jury "would understand this subtle distinction." *See* Pet.App.64a (Murphy, J., concurring).

The Sixth Circuit also adopted a floor for the "*quo*" requirement that maximizes the constitutional concern in campaign contribution cases. According to the majority, even the most nebulous *quo* suffices—for example, a legislator committing to enact an agenda on which she campaigned and fundraised. *See* Pet.App.22a ("That consideration may simply be 'because of this gift I will now be sure to keep my campaign-trail promise.'"). *Contra McCormick*, 500 U.S. at 273 (requiring evidence that the candidate or legislator be "controlled by" the terms of the agreement).

Most concerningly, the panel below held that even "ambiguous" evidence can satisfy *McCormick*'s *quid pro quo* requirement. *Cf.* Pet.App.21a ("[W]e do not require unambiguous evidence[.]"). This conclusion is nowhere found in *Evans*, let alone squarable with *McCormick*. Nor do other circuits—several of which have instead adopted a "clear and *unambiguous*" evidentiary requirement in campaign contribution cases—seem to follow it. *See, e.g.*, *United States v. Carpenter*, 961 F.2d 824, 827 (9th Cir. 1992); *United States v. Davis*, 841 F. App'x 375, 379 (3d Cir. 2021); *United States v. Tomblin*, 46 F.3d 1369, 1381 (5th Cir. 1995).

Taken together, it is clear that lower courts require further guidance on the application of *McCormick*. It is equally certain, as all three judges of the Sixth Circuit panel recognized, that the formulation adopted below has significant conceptual difficulties and even more significant First Amendment implications worthy of this Court's consideration.[3]

Nor are the consequences of this confusion and weakening the *McCormick* standard containable to Mr. Sittenfeld's case. As this Court has previously explained, by failing to give sufficient room for legitimate public official-constituent interactions, a chilling effect may reach much farther, damaging normal democratic operations. *See McDonnell*, 579 U.S. at 575 (explaining that the prosecution in that case risked casting "a pall of potential prosecution" over relationships between constituents and public officials). Indeed, with the threat of prosecution hanging over their heads, officials might, for example, "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*, 579 U.S. at 575. Qualified and involved citizens whom the country

[3] *See* Pet.App.27a n.8 ("[W]hether we ought to require more of the government given the First Amendment interests . . . is a question for the Supreme Court. . . . [I]t may be time for the Court to revisit or refine this doctrine."); *id.* at 68a (Murphy, J., concurring) ("[T]he current reading of the Hobbs Act raises First Amendment concerns . . . . Only that Court can resolve what it meant by its '*quid pro quo*' element, what it meant by 'explicit,' and how these elements comport with the Hobbs Act's text."); *id.* at 98a (Bush, J., dissenting) ("Because the prosecuted conduct here is solely a purported campaign contribution, this case falls in the danger zone that surrounds the sufficiency line of bribery and extortion cases. . . . [I]t would be helpful for the Supreme Court to provide guidance here."). Since the decision below, another Sixth Circuit judge "join[ed] the chorus of judges encouraging the Supreme Court to revisit *Evans*" due to the "serious First Amendment issues" it raises. *United States v. Householder*, 137 F.4th 454, 491 (6th Cir. 2025) (Thapar, J., concurring).

needs as public servants might also decide not to participate in the political process for fear that an overzealous prosecutor will mischaracterize their words and actions, putting their very liberty at risk.

III. *McCormick* Was Intended to Prevent Convictions in Cases Like This

As courts have worked out where exactly to draw the line between lawful and unlawful influence, political corruption prosecutions have generally respected the threshold set out in *McCormick* by focusing on cases presenting obvious signs of wrongdoing—that is, conduct falling unambiguously on the unlawful side of the line.

This case, however, did not involve such conduct. To the contrary, this case is striking for the confluence of factors that render it an outlier among campaign-contribution prosecutions and that implicate the concerns *McCormick* was intended to address.

A. This Case Lacks the Unambiguous Signs of Wrongdoing that Characterize Corrupt Conduct

First, an act of campaign-contribution bribery is usually just one in a series of crimes that a corrupt official commits during an investigation. As a practical matter, corrupt officials tend not to limit their wrongdoing to a single discrete offense. Wary of the government's watchful eye, they often attempt to hide illicit proceeds by failing to disclose them, or they trip themselves up by lying to the government in a subsequent investigation. Thus, a typical criminal corruption scheme will involve not merely an isolated Hobbs Act charge but also an array of associated charges for related conduct—such as money laundering, obstruction of justice, or making false statements.[4]

In this case, however, the government did not charge Mr. Sittenfeld with any other criminal acts. The government did not allege that Mr. Sittenfeld was using the campaign contributions he received—either to his political action committee or to his own campaign fund—illegally or for personal gain. *Cf. United States v. Blagojevich*, 794 F.3d 729, 733–34 (7th Cir. 2015) (defendant governor, who had decided not to run for reelection, disguised requests for personal payment as "campaign contributions"). Nor is there any allegation that Mr. Sittenfeld improperly accepted any cash, personal payments, or harder-to-trace kickbacks. *See* Pet.App.13a, 29a (noting that Mr. Sittenfeld "obsessed over the form of Rob's donation," "decided not to take the [donation as] cash," and "told Rob he could not take the donation through money orders"); *id.* at 79a (Bush, J., dissenting) (noting that this case is "unusual . . . among bribery or extortion cases that involve campaign contributions" because Mr. Sittenfeld did not "receive[] personal gifts (cash, vacations, dinners, etc.) in addition to campaign contributions"); *cf. Evans*, 504 U.S. at 257; *Blandford*, 33 F.3d at 698 (defendant state legislator accepted cash payments from a lobbyist without "any legitimate claim" to them); *United States v. Correia*, 55 F.4th 12, 21–25 (1st Cir. 2022) (defendant mayor accepted cash

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[4] For examples of campaign contribution prosecutions involving lying to the government, see *United States v. Blagojevich*, 794 F.3d 729, 733–34 (7th Cir. 2015); *Blandford*, 33 F.3d at 704–06; *United States v. Turner*, 684 F.3d 244, 246, 251–52 (1st Cir. 2012); *United States v. Pawlowski*, 27 F.4th 897, 909–10 (3d Cir. 2022); *United States v. Hedgepeth*, 418 F.3d 411, 413–14 (4th Cir. 2005); *United States v. Moreno*, 44 F. App'x 836, 838 (9th Cir. 2002); *United States v. Benjamin*, 95 F.4th 60, 63 (2d Cir. 2024).

payments for licenses to sell marijuana); *United States v. Farley*, 2 F.3d 645, 648–50 (6th Cir. 1993) (defendants, a deputy sheriff and associates, sold commissions for personal payments); *United States v. Pawlowski*, 27 F.4th 897, 904–05 (3d Cir. 2022) (defendant mayor, among other acts, accepted a steak dinner and football tickets in exchange for directing a revenue contract toward a contractor); *United States v. Lee*, 919 F.3d 340, 343–44 (6th Cir. 2019) (defendant city council member accepted cash in exchange for helping get a criminal case dismissed). And there is no allegation that Mr. Sittenfeld failed to properly report any campaign contributions. *See* Pet.App.4a–14a; *cf. United States v. Beldini*, 443 F. App'x 709, 711–12 (3d Cir. 2011) (official reported a $10,000 cash contribution as several smaller contributions from straw donors).

Indeed, Mr. Sittenfeld's prosecution relates entirely to his support for a development project that he had already supported before the government's investigation began. *See* Trial Tr. at 10-96–10-99, United States v. Sittenfeld, No. 1:20-cr-00142-DRC (S.D. Ohio 2022) (No. 269). That project aimed to address a dilapidated structure that had for years blighted the Cincinnati downtown district. *See* Pet.App.5a. And it was precisely the kind of development proposal that Mr. Sittenfeld had supported as a city councilman. *See* Pet.App.58a (Murphy, J., concurring).

While it is possible in theory to find a *quid pro quo* exchange where an official has previously expressed support or intent to carry out certain actions that are later the subject of an alleged bribe, rarely will the facts bear out such an exchange. Charging a case based solely on the continuation of such pre-existing support instead strongly risks prosecuting conduct falling on the clearly lawful side of the *McCormick* line, where a public servant simply follows through on public positions for which he is known and has been selected. *Cf.* Pet.App.4a–14a; *id.* at 79a (Bush, J., dissenting) (observing that where indicia of bad faith are present, there is less "risk of the jury mistakenly finding that the defendant had corrupt intent").

In any event, Mr. Sittenfeld's prosecution presents an even more problematic variant of the pre-existing support scenario: Not only had Mr. Sittenfeld expressed broad support for the economic development projects—he had also expressed support for addressing the blighted parcel at root of this case. *See* Trial Tr. at 10-96–10-99, United States v. Sittenfeld, No. 1:20-cr-00142-DRC (S.D. Ohio 2022) (No. 269). By the time the undercover agents entered the scene, they were thus pitching Mr. Sittenfeld on a project he was already behind.

Mr. Sittenfeld's existing support for the project makes this case highly anomalous. In its papers below, the government does not cite any cases in which a prior public corruption prosecution rested *solely* on an official's agreement to take action to advance a project that he already supported. Rather, the case law is replete with officials going considerably out of their way to take corrupt action. For example, in a recent Sixth Circuit case, the defendant local official inserted herself into a criminal prosecution in which she otherwise had no interest, pressuring a prosecutor to drop charges against the briber's relative. *See Lee*, 919 F.3d at 357. And in another, a state judge accepted a bribe in exchange for denying two motions, even though he had not read the motions. *See United States v. Terry,* 707 F.3d 607, 610 (6th Cir. 2013). Nor did the Sixth Circuit identify any contrary case law in its opinion. It cites, for example, *United States v. Benjamin*, which was decided while the appeal was pending. *See* Pet.App.25a–26a. But *Benjamin* cleanly fits the pattern: The defendant there "allegedly attempted to conceal the arrangement by falsifying campaign forms, misleading regulators, and providing false information during [a] background check."[5] 95 F.4th 60, 63 (2d Cir. 2024).

In these ways, the highly equivocal evidence against Mr. Sittenfeld stands in stark contrast to the above-discussed cases. *Cf.* Pet.App.79a (Bush, J., dissenting) ("Perhaps every [bribery or extortion] case" upheld on appeal after *McCormick* has involved either "(1) the defendant received personal gifts (cash, vacations, dinners, etc.) in addition to campaign contributions, (2) the government proved that the campaign contributions were part of an independently criminal scheme, or (3) there was direct, unambiguous evidence of a *quid pro quo*. Sittenfeld's case has none of them.").

B. The Government Failed to Identify Unambiguously Corrupt Conduct Even After a Two-Year Sting Operation

The fact that the government identified no obvious pattern of wrongdoing is unusual among campaign-finance prosecutions. But another feature of this case makes that fact all the more striking: The government spent two years on a sting operation that

[5] Similarly, in *United States v. Householder*, decided after *Sittenfeld*, the defendant "tried to conceal his tracks" with a "web of secret 501(c)(4) entities," "tried to cajole another representative into deleting text messages," and "gave 'unequivocally false' testimony." 137 F.4th 454, 477–78 (6th Cir. 2025).

was *designed* to identify such a pattern. *See* Pet.App.91a (Bush, J., dissenting) ("For the immense effort the FBI put into this sting, it found scant proof to support its case that Sittenfeld agreed to a corrupt bargain.").

As a general matter, sting operations can be an important investigative tool and are often an appropriate way to identify wrongdoing. At the same time, they must be used carefully given their potential to complicate the important mental ("*pro*") element in a "*quid pro quo*." Sting operations sit astride the realms of fact and fiction, blending real-world relationships with choreographed interactions; the government sets the stage, rehearses its lines, and blocks the movements. Other elements of the story predate the operation. As difficult as questions of intent and the existence of a *quid pro quo* agreement are to assess on facts that arise in the real world, they are thus even more difficult to assess on facts that do not.

Previous successful corruption prosecutions stemming from sting operations have involved unambiguous evidence of corruption. In *United States v. Carpenter*, 961 F.2d 824, 828 (9th Cir. 1992), a large sting operation resulted in an undercover agent specifically asking how much it would cost to get the state legislator to change a state law, to which the defendant responded with a dollar-number figure. And in *United States v. Freeman*, 6 F.3d 586, 588 (9th Cir. 1993), an undercover agent paid the defendant staffers to push through special-interest legislation that would have exclusive benefits for his company. One defendant reportedly "required a contribution of $5,000 to [his] campaign committee," as well as "a $500 cash payment" that could be paid "straight cash under the table." *Id.* at 589. The defendant ultimately received the campaign checks undated to "conceal the timing" and "avoid the appearance of bribery." *Id.* at 590.

In some examples, defendants have also acted corruptly before a sting operation has begun. For example, in *United States v. Loftus*, the FBI planned a sting operation after receiving a credible tip that the defendant local official had openly suggested his amenability to a *quid pro quo*. 992 F.2d 793, 795 (8th Cir. 1993). The investigation yielded recordings of Loftus saying he would support the project "if he made some cash" and suggesting that he would not have supported the project without the payoff. *Id.* The operation culminated in a video recording of Loftus taking a $5,000 bribe.[6] *Id.*

In contrast with those precedents, the government did not allege any pre-existing or ongoing pattern of corrupt criminal activity—despite testing Mr. Sittenfeld on the type of things that would have indicated obvious wrongdoing, such as solicitation of cash payments.[7] Moreover, the undercover agents in this case encountered behavior affirmatively *inconsistent* with the inference that Mr. Sittenfeld was engaged in

[6] Likewise, in *Freeman*, the FBI began investigating after one defendant indicated to an FBI informant "that special interest legislation could be purchased . . . and that he expected to be paid for his efforts[.]" 6 F.3d at 588.

[7] The only cases the government cites *without* such behavior instead involved misconduct that was unquestionably corrupt on its face. *See, e.g.*, *United States v. Terry*, 707 F.3d 607, 615 (6th Cir. 2013) ("No subtle winks and nods were needed. Russo straight up asked Terry to deny the bank's motions . . . . And he did, within hours of the conversation."); *United States v. Pawlowski*, 27 F.4th 897, 903–08 (3d Cir. 2022) (upholding convictions for a sprawling corruption conspiracy involving seven donors and a conspiracy to fire an official who refused to cooperate).

criminal activity. These "subsequent statements and dealings" should have "clarified that [Mr. Sittenfeld's] aim was to obtain a legitimate contribution, not an improper payment." Pet.App.77a (Bush, J., dissenting). For example, Mr. Sittenfeld refused a donation check for breaking a rule that even the undercover agent himself apparently had not realized violated the law. *See* Pet.App.248a. And perhaps most glaring, Mr. Sittenfeld invited the undercovers—his alleged criminal co-conspirators—to have dinner at his home with the then-sitting United States Attorney. *See* Trial Tr. at 10-94, United States v. Sittenfeld, No. 1:20-cr-00142-DRC (S.D. Ohio 2022) (No. 269).

Taken together, these facts are simply not facts consistent with a corrupt bargain, let alone a clearly corrupt bargain of the sort envisioned by *McCormick*. *Cf.* Pet.App.97a (Bush, J., dissenting) (noting there is "no proof that Sittenfeld himself viewed the campaign contribution" as part of a corrupt bargain but ample evidence to the contrary).

* * *

Based on many years of experience considering the interplay between the constitutional values at stake in campaign contribution prosecutions and the criminal process, *Amici* accordingly submit that this Court should grant Mr. Sittenfeld's Petition, vacate his conviction, and, in doing so, seize a critical opportunity to clarify an area of the law with severe consequences for the First Amendment and our system of politics.

At bottom, Mr. Sittenfeld's conduct proved to be the type of constituent-politician interaction

McCormick was intended to protect. And it proved as much even after the government made enormous efforts to identify obvious corruption. The Sixth Circuit opinion upholding Mr. Sittenfeld's conviction accordingly illustrates the widespread and dangerous uncertainty that has developed in this area of law, and that is now ripe for this Court's intervention.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

DAVID A. O'NEIL
Counsel of Record
JOHN SULLIVAN BAKER
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Avenue N.W.
Washington, D.C. 20004
(202) 383-8000
daoneil@debevoise.com

BEATRICE A. WALTON
SCOTT J. WOODS
RAQUEL A. LESLIE
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, NY 10001
(212) 909-6000

Counsel for Amici Curiae

August 14, 2025

APPENDIX

TABLE OF APPENDICES

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List of *Amici Curiae* Former Federal Public Corruption Prosecutors

Russell Capone served as an Assistant U.S. Attorney for the Southern District of New York from 2011 to 2021, including as Chief of the Public Corruption Unit from 2017 to 2020.

Steven G. Glickman served as a U.S. Department of Justice Trial Attorney for the Criminal Division and Special Assistant U.S. Attorney for the District of Columbia from 2005 to 2007.

Mark A. Godsey served as an Assistant U.S. Attorney for the Southern District of New York from 1995 to 2001.

Andrew Goldstein served as an Assistant U.S. Attorney for the Southern District of New York from 2010 to 2017, including as Chief of the Public Corruption Unit.

Jessie K. Liu served as U.S. Attorney for the District of Columbia from 2017 to 2020.

William M. McSwain served as U.S. Attorney for the Eastern District of Pennsylvania from 2018 to 2021.

Ryan Patrick served as U.S. Attorney for the Southern District of Texas from 2018 to 2021.

Jeannie S. Rhee served as Deputy Assistant Attorney General for the Office of Legal Counsel from 2009 to 2011 and as an Assistant U.S. Attorney for the District of Columbia from 2000 to 2006.

Daniel A. Schwager served as a trial attorney in the Public Integrity Section at the U.S. Department of Justice from 2003 to 2009.

Justin Shur served in the U.S. Department of Justice from 2008 to 2012, including as Deputy Chief of the Public Integrity Section from 2010 to 2012.

Carter M. Stewart served as U.S. Attorney for the Southern District of Ohio from 2009 to 2016.

Douglas S. Zolkind served as an Assistant U.S. Attorney for the Southern District of New York from 2014 to 2021, including as a senior member of the Public Corruption Unit.