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 a Writ of Certiorari to the
U.S. Court of Appeals for the Sixth Circuit

BRIEF OF *AMICI CURIAE* ROBERT MCDONNELL, BRIDGET KELLY, AND JOSEPH PERCOCO IN SUPPORT OF PETITIONER

Daniel S. Noble
Counsel of Record
Vlad Shafran
Chandini Jha
KKL LLP
350 5th Avenue, 77th Floor
New York, NY 10118
(212) 390-9550
Daniel.Noble@KKLllp.com

Howard S. Master
Nardello & Co. LLC
1212 6th Avenue
New York, NY 10036

Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes, Rules and Regulations

Other Authorities

STATEMENT OF INTEREST[1]

Amici curiae Robert F. McDonnell, Bridget A. Kelly, and Joseph Percoco are the prevailing petitioners in *McDonnell v. United States*, 579 U.S. 550 (2016), *Kelly v. United States*, 590 U.S. 391 (2020), and *Percoco v. United States*, 598 U.S. 319 (2023), respectively.

Previously, Governor McDonnell served as the 71st Governor of Virginia. Ms. Kelly served as Deputy Chief of Staff to former New Jersey Governor Chris Christie. Mr. Percoco served as former New York Governor Andrew Cuomo's Executive Deputy Secretary and campaign manager.

All three *amici* were convicted under theories of federal criminal liability that this Court subsequently found—unanimously—were extremely overbroad and incorrect. As such, *amici* have first-hand insight into the personal and practical impacts of interpretations of federal criminal law that infringe on due process rights, individual liberties, and principles of federalism.

[1] No counsel for a party authored this brief in whole or in part and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rule 37.2, all parties have been timely notified of our intent to file this brief.

SUMMARY OF ARGUMENT

Over the course of the past decade, this Court unanimously overturned the criminal convictions of all three *amici*. In doing so, the Court admonished—repeatedly—that federal public corruption law is not an area in which prosecutors should be afforded discretion to "cast a pall of potential prosecution" over "commonplace" interactions between constituents and public officials, *McDonnell*, 579 U.S. at 575, even those involving "particularly well-connected and effective lobbyists," *Percoco*, 598 U.S. at 330–31. Nor is it a means through which prosecutors should be permitted to "set[ ] standards of disclosure and good government for local and state officials." *Kelly*, 590 U.S. at 399 (quoting *McNally v. United States,* 483 U.S. 350, 360 (1987)).

The Court's pronouncements have even more force where, as here, political speech and conduct are implicated. A fundamental precept of our democratic system is that the First Amendment protects campaign donors' and other supporters' efforts to influence candidates, as well as candidates' and elected officials' responsiveness to their donors and supporters. *See Citizens United v. FEC*, 558 U.S. 310, 359–60 (2010); *FEC v. Cruz*, 596 U.S. 289, 306 (2022).

In accordance with these principles, more than three decades ago, this Court established a standard for quid pro quo bribery prosecutions involving campaign contributions in *McCormick v. United States*, 500 U.S. 257 (1991). That standard, which required proof of an "explicit" quid pro quo when the "quid" is a

campaign contribution, was meant to prevent prosecutors from "open[ing] 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.* at 272.

Yet, relying on this Court's decision only a year later in *Evans v. United States*, 504 U.S. 255 (1992), several Circuits—including the Sixth Circuit in this case—have eviscerated the guardrails that this Court intended to establish in *McCormick*, campaign finance cases such as *Citizens United* and *Cruz*, and *amici*'s own cases. In doing so, these Circuits have paved the way for federal prosecutors to rely on capacious interpretations of federal criminal law to select their targets from among a broad group of state and local donors, candidates, and public officials engaging in commonplace political activity. The result is that core First Amendment rights are threatened, officials such as the Petitioner are at risk of losing their liberty and suffering significant reputational damage based on routine political conduct, and states and localities lose their constitutionally-protected ability to regulate their own affairs.

This case demonstrates why this Court's intervention is sorely needed. The federal government, through a sting operation involving a "commonplace" interaction between a campaign donor and a local official, brought criminal charges against Petitioner even though he did not receive anything of personal value and even though the underlying evidence was entirely ambiguous as to whether there was any quid pro quo.

As the dissenting judge observed below, "[t]his case presents the most troubling context for application of the bribery and extortion laws." *United States v. Sittenfeld*, 128 F.4th 752, 798 (6th Cir. 2025) (Bush, J., dissenting).

Amici previously stood in Petitioner's shoes when they were prosecuted and convicted based on overbroad theories of criminality that implicated routine political activity, constitutionally-protected individual liberties, and principles of federalism. All three *amici* suffered significant hardship during several years of investigation and litigation before this Court ultimately overturned their convictions, finding the government's theories untenable. Notwithstanding the Court's unanimous rulings in *amici*'s favor, defending their criminal cases both at trial and on appeal diverted them from their public duties, imposed substantial personal costs, and caused irreparable injuries to their reputations.

Amici's and the Petitioner's cases have shown that only clear rulings and guardrails from this Court will protect donors, candidates, and public officials from being targeted by federal prosecutors for interactions that are commonplace—indeed, unavoidable—in our political system, which relies on private donors to fund political campaigns by candidates who may in the future be in a position to act on matters of interest to the donors. The vague laws and overbroad theories currently wielded by the federal government in bribery cases involving state and local political contributions fail to articulate standards of behavior "with sufficient definiteness that ordinary people can understand what conduct is prohibited," *Percoco*, 598 U.S. at

331 (*quoting McDonnell*, 579 U.S. at 576), and indeed "cast a pall of potential prosecution," *McDonnell*, 579 U.S. at 575, over routine, innocuous interactions. Unless constrained, these prosecutions risk consigning the realm of politics to candidates who are independently wealthy and need not rely on donors to finance their campaigns. They also risk deterring donors from exercising their right to petition public officials whose campaigns they supported for fear of criminal investigation and prosecution.

Amici respectfully ask this Court to clarify that only unambiguous evidence of a quid pro quo may sustain a federal bribery conviction involving campaign contributions. As it did in *amici*'s cases, this Court should grant the Petition in order to safeguard individual liberties and protect state and local officials from federal prosecutorial overreach.

ARGUMENT

I. The Sixth Circuit's Capacious Interpretation of *McCormick*'s "Explicit" Quid Pro Quo Requirement Threatens Core First Amendment Rights

A. Criminal Statutes Must Be Interpreted to Minimize First Amendment Concerns

Time and again, this Court has interpreted criminal statutes to avoid infringing on fundamental First Amendment rights. As this Court pronounced more than half a century ago: "The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth." *Smith v.*

California, 361 U.S. 147, 155 (1959) (quoting *Roth v. United States*, 354 U.S. 476, 488 (1957)). Accordingly, the "door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests." *Id.*

That principle has even more force when the law targets political speech and campaigns. *See Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271–72 (1971) ("The First Amendment . . . has its fullest and most urgent application precisely to the conduct of campaigns for political office"). Indeed, this Court has repeatedly cautioned against broad interpretations of federal laws that may target constitutionally-protected interactions between officials and their constituents. For "it is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors." *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (quoting *McConnell v. FEC*, 540 U.S. 93, 297 (2003) (Kennedy, J., concurring)).

As a result, in the context of campaign contributions, the "First Amendment . . . prohibits . . . attempts to tamper with the right of citizens to choose who shall govern them." *FEC v. Cruz*, 596 U.S. 289, 306 (2022) (internal citations and quotation marks omitted); *see also id.* at 308 ("influence and access '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.'" (quoting *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014))).

This Court followed these principles when it overturned *amici*'s convictions in *McDonnell v. United States*, 579 U.S. 550 (2016) and *Percoco v. United States*, 598 U.S. 319 (2023). As the Court noted in *McDonnell*: "[t]he basic compact underlying representative government *assumes* that public officials will hear from their constituents and act appropriately on their concerns—whether it is the union official worried about a plant closing or the homeowners who wonder why it took five days to restore power to the neighborhood after a storm." 579 U.S. at 575. In *Percoco*, this Court was concerned that a vague, overly broad prosecution theory could potentially infringe on a host of First Amendment rights, including the rights of influential private individuals to petition their government. *See* Tr. of Oral Arg. at 49, *Percoco* (No. 21-1158) (Alito, J.) (noting a concern that "interpreting th[e] [relevant] statute" as proposed by the government would "sweep in lobbying"). Thus, in both cases, this Court adopted a limiting interpretation of the federal laws at issue to avoid a reading that would "cast a pall of potential prosecution" over commonplace political conduct. *McDonnell*, 579 U.S. at 575; *see also Percoco*, 598 U.S. at 330.

B. The Sixth's Circuit Reading of McCormick *and* Evans *Interferes with Political Discourse and Constrains Officials From Performing Their Duties*

In *McCormick*, this Court emphasized the significant concerns stemming from bribery prosecutions involving campaign contributions. The Court explained that "campaigns must be run and financed," and that "[s]erving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator." *McCormick v. United States*, 500 U.S. 257, 272 (1991). In order to avoid criminalizing "conduct that has long been thought to be within the law" and "that in a very real sense is unavoidable as long as election campaigns are financed by private contributions or expenditures," this Court held that, in a prosecution involving allegations of bribery related to campaign contributions, the government must demonstrate that the defendant agreed "to perform or not to perform an official act" "in return for an *explicit* promise or undertaking" in order to secure a conviction. *Id.* at 272–73 (emphasis added).

The following year, the Court decided *Evans*, a case that involved a prosecution under the Hobbs Act of a public official's receipt of a personal cash payment in addition to a campaign contribution. *Evans v. United States*, 504 U.S. 255, 257–58 (1992). The Court held that the prosecution in that case required only "that a public official . . . obtain[] a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Id.* at 268. In a concurring opinion, Justice Kennedy observed 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 (Kennedy, J., concurring in part and concurring in the judgment).

In this case, Petitioner argued, and the Sixth Circuit agreed, that the government failed to demonstrate "explicit evidence of an agreement and *unambiguous evidence* of the quid pro quo." *United States v. Sittenfeld*, 128 F.4th 752, 771 (6th Cir. 2025) (emphasis added). The Sixth Circuit nonetheless affirmed Petitioner's conviction, reading *Evans* as modifying *McCormick* and finding that "explicit . . . did not mean express, and therefore," the government was not required to show "unambiguous evidence . . . so long as the jury can *infer* the content of the quid pro quo." *Id.* at 769 (emphasis added) (internal citations and quotation marks omitted). As a result, the lower court affirmed Petitioner's conviction after concluding that "unambiguous evidence is not required, circumstantial evidence can prove an agreement, and though an explicit agreement must be present, it need not be express." *Id.* at 772.

In arriving at this holding, the Sixth Circuit joined several other Courts of Appeals in eroding the First Amendment protections that this Court attempted to establish in *McCormick* and that it has repeatedly reaffirmed in both *amici*'s cases and its decisions related to campaign finance. Many of the same dangers that this Court emphasized in those cases are present here: the Sixth Circuit's approach, which allows federal prosecutors to rely on ambiguous evi-

dence to convict officials receiving campaign contributions, undoubtedly discourages candidates from participating in innocuous political activities that have traditionally been the hallmarks of our system of governance. As the concurring judge in this case noted, the Sixth Circuit has interpreted the quid pro quo requirement in a manner that "maximizes (rather than minimizes) the constitutional concerns" presented by this prosecution. *Sittenfeld*, 128 F.4th at 787 (Murphy, J., concurring). As in *McDonnell*, officials will be left wondering "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.

This Court and other *amici* have, over the last decade, repeatedly sought to prevent federal prosecutors from chilling First Amendment-protected interactions between public officials and their constituents. As one of the *amicus* briefs filed by former U.S. Attorneys General, as well as former White House Counsel who served under every President from Reagan to Obama, in support of Governor McDonnell explained: the "breathtaking expansion of public-corruption law . . . chill[s] federal officials' interactions with the people they serve" which "damage[s] their ability to effectively perform their duties." Brief of Former Federal Officials as *Amici Curiae* at 6, *McDonnell v. United States*, 579 U.S. 550 (2016) (No. 15-474); *see also* Brief of Former Virginia Attorneys General as *Amici Curiae* at 1–2, 16, *McDonnell v. United States*, 579 U.S. 550 (2016) (No. 15-474); Brief of Former State Attorneys General as *Amici Curiae* at 1–2, *McDonnell v. United States*, 579 U.S. 550 (2016) (No. 15-474); Tr. of Oral

Arg. at 32, *McDonnell* (No. 15-474) (Breyer, J.) ("to give that kind of power to a criminal prosecutor, who is virtually uncontrollable, is dangerous"). Still, federal prosecutors and lower courts have failed to heed these repeated admonitions.

Moreover, candidates and public officials are not the only individuals adversely affected by lower courts' lack of adherence to *McCormick*'s and *McDonnell*'s holdings and reasoning. Under the Sixth Circuit's expansive reading of the quid pro quo requirement, donors will be deterred from contributing to their preferred campaigns or interacting with officials whom they have supported politically for fear that a skeptical prosecutor would interpret their contributions as an attempt to bribe the official. But as this Court has repeatedly emphasized, an individual's prerogative to contribute to the campaign of an official who would act on, and promote, the constituent's favored policy is a core First Amendment right that is central to our system of governance. *See McCormick*, 500 U.S. at 272.

Finally, the overbroad interpretation of the quid pro quo requirement adopted by some courts will result in inequities in political participation and representation. The candidates who rely most on constituents' campaign contributions are those who lack the personal funds to finance their own campaigns. Because the current state of the law deters both candidates who seek funding and constituents who wish to support candidates from participating in the political process, our political system risks becoming increasingly skewed towards candidates who can self-fund

and thereby avoid the risk that prosecutors will second-guess commonplace donor-candidate interactions. This could lead to a greater concentration of political authority in a small number of wealthy individuals who do not face the "pall of potential prosecution" presented by the Sixth Circuit's ruling. This state of the law cannot be what this Court envisioned in *McCormick*.

II. The Current State of the Law Fails to Provide Fair Notice in Bribery Prosecutions Involving Campaign Contributions

Fundamental precepts of due process are violated when a criminal law is "so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *United States v. Davis*, 558 U.S. 445, 448 (2019). Indeed, "the Constitution's promise of due process does not tolerate . . . uncertainty in our laws—especially when criminal sanctions loom." *Percoco*, 598 U.S. at 332 (Gorsuch, J., concurring in the judgment). Vague laws impermissibly "hand off the legislature's responsibility for defining criminal behavior to unelected prosecutors and judges, and they leave people with no way to know what consequences will attach to their conduct." *Id.* (internal citations and quotation marks omitted). A statute "[must] [thus] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Skilling v. United States*, 561 U.S. 358, 402–03 (2010) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).

The current state of the law governing campaign finance-related bribery prosecutions fails to provide officials and their constituents notice as to the line between criminal and innocuous conduct. In the decades since *McCormick* and *Evans* were decided, the Courts of Appeals have split on the government's burden of proof in prosecuting defendants for bribery involving campaign contributions.[2] As a result, the law has become so muddled that candidates, public officials, and donors have no clear and certain way of knowing which acts in the political arena constitute criminal conduct. Moreover, much of the disagreement regarding the applicable standard rests on the difference between the terms "express" and "explicit," a "subtle distinction" that jurors as well as donors, candidates, and public officials are unlikely to understand or be able to implement in practice with any consistency. *See Sittenfeld*, 128 F.4th at 790 (Murphy, J., concurring).

---

[2] The Second, Third, Fifth, Sixth, Seventh, and Eleventh Circuits have stated that *Evans* modified *McCormick*'s "explicit" requirement. *See United States v. Benjamin*, 95 F.4th 60, 71–72 (2d Cir. 2024); *United States v. Allinson*, 27 F.4th 913, 925 (3d Cir. 2022); *United States v. Whitfield*, 590 F.3d 325, 349 (5th Cir. 2009); *Sittenfeld*, 128 F.4th at 771–72; *United States v. Giles*, 246 F.3d 966, 972 (7th Cir. 2001); *United States v. Siegelman*, 640 F.3d 1159, 1171–72 (11th Cir. 2011). Other circuits, however, have indicated that a prosecution for bribery involving campaign contributions requires something more than implied conduct to prove an explicit quid pro quo. *See, e.g.*, *United States v. McDonough*, 727 F.3d 143, 155 n.4 (1st Cir. 2013); *United States v. Taylor*, 993 F.2d 382, 385 (4th Cir. 1993); *United States v. Chastain*, 979 F.3d 586, 591 (8th Cir. 2020); *United States v. Kincaid-Chauncey*, 556 F.3d 923, 936–37 (9th Cir. 2009)

Similar concerns animated this Court in *amici*'s cases when, by unanimous opinion in each case, it limited the reach of the applicable federal statute. Here, as in *McDonnell*, "[u]nder the standardless sweep of the Government's reading, public officials could be subject to prosecution, without fair notice, for the most prosaic interactions." 579 U.S. at 576 (internal citations and quotation marks omitted). And as in *Percoco*, the promulgated standard is "too vague" and "does not . . . define . . . with sufficient definiteness that ordinary people can understand what conduct is prohibited." *Percoco*, 598 U.S. at 331 (internal citations and quotation marks omitted); *see also Kelly*, 590 U.S. at 398, 403–04 (noting that a limiting construction of the wire fraud statute is required to avoid vagueness concerns and to avoid "criminalizing all acts of dishonesty by state and local officials"). Accordingly, "a more constrained interpretation" of the quid pro quo requirement is necessary to "'comport with the Constitution's guarantee of due process'" and "avoid[ ] this 'vagueness shoal'" *McDonnell*, 579 U.S. at 576 (first quoting *Johnson v. United States*, 576 U.S. 591, 602 (2015); then quoting *Skilling*, 561 U.S. at 368).

The Sixth Circuit's interpretation improperly promotes arbitrary enforcement and selective prosecutions, which are particularly significant concerns in cases involving alleged public corruption. *See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1983) ("The degree of vagueness that the Constitution [allows] . . . depends in part on the nature of the enactment."); *Sittenfeld*, 128 F.4th at 771 (permitting a jury to decide whether ambiguous evidence may demonstrate a corrupt quid pro quo in the campaign finance context). In the political arena,

candidates and public officials may take positions that provoke controversy and strong dissent. In the absence of clear standards of enforcement, prosecutors and juries may exercise their discretion to target these officials based on political ideology and their own proclivities, rather than objective measures of guilt.

Because the Sixth Circuit's approach leaves officials and candidates guessing whether they could be prosecuted for being responsive to their political supporters, and donors guessing whether they could petition candidates and officials whom they have supported, the ruling below cannot survive scrutiny. As it did in *amici*'s cases, this Court should clarify the law by confirming that a campaign contribution cannot be treated as a bribe in the absence of unambiguous proof of a quid pro quo.

III. The Sixth Circuit's Expansive Interpretation Opens the Door to Prosecutorial Overreach

Prosecutorial discretion in the politically charged arena of public corruption cases must be cabined by clearly imposed limits. Applying this guiding principle, this Court has affirmed—time and time again, including in *amici*'s cases—that federal corruption statutes should be given a "a narrow, rather than a sweeping," interpretation.[3] *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 409 (1999). "[A]

[3] Concerns about prosecutorial overreach have animated the limitations imposed by this Court in numerous cases involving federal public corruption statutes. *See McNally*, 483 U.S. at 360; *Sun-Diamond*, 526 U.S. at 406–07; *Cleveland v. United States*,

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. The government's track record in interpreting these statutes expansively—especially in cases of high profile public official defendants—is well documented. Just last year, this Court reiterated that it "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) (quoting *McDonnell*, 579 U.S. at 576); *see also id.* at 21 (Gorsuch, J., concurring) ("[C]ourts cannot 'rely upon prosecutorial discretion to narrow the' scope of an 'otherwise wide-ranging' criminal law." (quoting *Marinello v. United States*, 584 U.S. 1, 11 (2018))); Tr. of Oral Arg. at 32, *McDonnell* (No. 15-474) (Breyer, J.) (expressing concern that under an expansive interpretation of corruption laws potentially implicating campaign activities, the "Department of Justice in the Executive Branch becomes the ultimate arbiter of how public officials are behaving in the United States, State, local, and national.").

Nor are the dangers wrought by broad prosecutorial discretion in cases implicating the political process of purely academic concern to *amici*. Governor McDonnell's prosecution was initiated by the Depart-

---

531 U.S. 12, 23 (2000); *Skilling*, 561 U.S. at 408–11; *McDonnell*, 579 U.S. at 576; *Kelly*, 530 U.S. at 404; *Ciminelli v. United States*, 598 U.S. 306, 315–16 (2023); *Percoco*, 598 U.S. at 331; *Snyder v. United States*, 603 U.S. 1, 17–18 (2024).

ment of Justice while he was being considered as a potential Presidential candidate.[4] Mr. Percoco was prosecuted after a far-reaching investigation into former New York Governor Andrew Cuomo's inner circle that spanned more than two years.[5] And Ms. Kelly was indicted after a far-reaching probe into former New Jersey Governor Chris Christie that was the subject of significant press attention.[6] In each of *amici*'s cases, this Court found that prosecutors had creatively interpreted ambiguous federal laws to target conduct that may not have been criminal.

In *amici*'s cases, this Court warned about the dangers of interpreting federal criminal law in a manner that could criminalize routine political conduct. In *McDonnell*, the Court expressed great concern with the "broader legal implications of the Government's boundless interpretation of the federal bribery statute." 579 U.S. at 575. In *Kelly*, the Court reminded

---

[4] *See* Rehain Salam, *Will Bob McDonnell be a presidential contender?*, CNN (Feb. 27, 2013), available at https://www.cnn.com/2013/02/26/opinion/salam-bob-mcdonnell.

[5] *See* Jimmy Vielkind, *Cuomo Allies Charged in Corruption Scheme*, Politico (Sept. 22, 2016), available at https://www.politico.com/states/new-york/albany/story/2016/09/cuomo-aide-percoco-charges-105711.

[6] *See* David W. Chen, *In Inquiry, It's Christie Against Prosecutor*, N.Y. Times (Feb. 10, 2014), available at https://www.nytimes.com/2014/02/10/nyregion/in-inquiry-its-christie-against-prosecutor.html.

federal prosecutors that their power to police the ethical behavior of state and local officials is not without limits, since "not every corrupt act by state or local officials is a federal crime." 590 U.S. at 404. And in *Percoco*, this Court expressed skepticism about jury instructions that lacked clarity regarding acceptable and prohibited conduct, asking: "what does that [jury instruction] mean in concrete terms? Is it enough if an elected official almost always heeds the advice of a long-time political adviser? Is it enough if an officeholder leans very heavily on recommendations provided by a highly respected predecessor, family member, or old friend?" 598 U.S. at 331. Judicial constraint is especially appropriate when, as in *amici*'s cases and in Petitioner's case, state and local laws and regulations already define what is appropriate in the political sphere for their jurisdictions.

This case reflects that federal prosecutors have not yet received the message that this Court has repeatedly conveyed in *amici*'s cases and others with its concise analysis and clear legal standards. Petitioner's conviction involved only lawful campaign contributions—an activity which is protected by the First Amendment—and commonplace political interactions between campaign supporters and candidates.[7] *See*

[7] The prosecutors in this case relied on ambiguous conversations between Petitioner and undercover agents during which Petitioner expressed support for a development project prior to a conversation about fundraising. Pet. Br. 8. Petitioner explicitly disavowed an illegal quid pro quo when communicating with the agent. *See* Pet. Br. 9 ("nothing can be illegal . . . nothing can be [ ] quid pro quo"). Moreover, Petitioner did not seek any pecuniary again, declining personal gifts and repeatedly refusing the

Sittenfeld, 128 F.4th at 798 (Bush, J., dissenting) (noting that "a prosecution based on a campaign contribution alone, such as the one here," rests on "thin legal ice" (internal citations and quotation marks omitted)). This Court should grant the Petition and remind federal prosecutors—once again—that they should not attempt regulation by prosecution of the "vague" distinction between constitutionally-protected and unlawful conduct in the area of campaign finance. *Cruz*, 596 U.S. at 308.

IV. An Expansive Interpretation of the Quid Pro Quo Requirement Threatens Federalism

The Sixth Circuit's vague and expansive reading of the quid pro quo requirement also undermines core federalism principles. After all, federalism demands respect for authority of states to "regulate the permissible scope of interactions between state officials and their constituents." *McDonnell*, 579 U.S. at 576–77; *see also id.* (declining to "'construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards' of 'good government for local and state officials.'" (quoting *McNally*, 483 U.S. at 360)); *Kelly*, 590 U.S. at 399 (same).

Respect for this bedrock constitutional principle animated this Court's approach in *amici*'s cases. Justice Breyer aptly noted, in Governor McDonnell's case, the need to avoid having "[t]he Department of Justice

---

agent's offer of campaign contributions that did not comply with the law. *See Sittenfeld*, 128 F.4th at 798 (Bush, J., dissenting).

in the Executive Branch become the ultimate arbiter of how public officials are behaving in the United States." Tr. of Oral Arg. at 32, *McDonnell* (No. 15-474). Justice Thomas raised a similar concern during oral argument in *amicus* Mr. Percoco's case, questioning whether "we are using a federal law to impose ethical standards on state activity." Tr. of Oral Arg. at 36, *Percoco* (No. 21-1158). And in *Kelly*, this Court noted the danger of the federal government improperly "us[ing] the criminal law to enforce (its view of) integrity in broad swaths of state and local policymaking." 590 U.S. at 404.

This case presents yet another troubling assertion of federal prosecutorial authority over areas traditionally regulated by state and local governments, which have already established a complex, tailored scheme of laws and regulations that govern campaign activity and public corruption in their jurisdictions.[8] Indeed, although Ohio law already regulates bribery and the conduct of public officials in connection with political campaigns, *see, e.g.*, Ohio Rev. Code Ann. § 2921.02, the state did not charge Petitioner with any violations. *Cf.* Tr. of Oral Arg. at 34, *Percoco* (No. 21-1158) (Thomas, J.) (noting a concern that the "State of

[8] *See, e.g.*, *Campaign Finance Regulation: State Comparisons, National Conference of State Legislatures* (Oct. 24, 2022), available at https://www.ncsl.org/elections-and-campaigns/campaign-finance-regulation-state-comparisons; Thomas F. McInerney, *The Regulation of Bribery in the United States*, 73 Int'l Rev. of Penal L. 81, 100 (2002) (noting existence of laws and constitutional provisions related to bribery in all fifty states).

New York doesn't seem to be upset about" Mr. Percoco's conduct).

Thus, "a narrow, rather than a sweeping, prohibition is more compatible" with our constitutional structure given the "intricate web of regulations, both administrative and criminal," governing the political arena in the states. *Sun-Diamond*, 526 U.S. at 409; *see also Bond v. United States*, 572 U.S. 844, 856–57 (2014) (rejecting an interpretation that "would dramatically intrude upon traditional state criminal jurisdiction," and holding that statutes must be read to "avoid" having "such reach in the absence of a clear indication that they do."); *see also id.* at 856 (noting that criminal statutes "must be read consistent with principles of federalism inherent in our constitutional structure").

Without this Court's intervention, federal prosecutors will continue to substitute their standards of ethical conduct in state and local campaign finance for those reflected in the laws duly adopted by the states.[9] Over the years, *amici* from across the political spectrum have submitted numerous briefs before this Court and the various Courts of Appeals highlighting the dangers of permitting federal prosecutors to police

[9] Ensuring that federal prosecutors do not infringe on state administrative and criminal regulation of campaign finance is all the more important now, when federal "prosecution of state and local corruption cases have risen disproportionately in comparison to" cases involving alleged federal corruption. David Y. Kwok, *Trends in Prosecution of Federal and State Public Corruption*, 2 Stetson Bus. L. Rev. 30, 33 (2022).

the state and local political arena through their exercise of prosecutorial discretion.[10] This Court should heed their call and grant the Petition in order to constrain federal bribery prosecutions implicating campaign contributions within proper limits.

[10] *See, e.g.*, Brief of Current and Former Elected Officials as *Amici Curiae*, *Blagojevich v. United States*, 136 S. Ct. 1491 (No. 17-658); Brief of Members and Former Members of the Virginia General Assembly as *Amici Curiae*, *United States v. McDonnell*, 792 F.3d 478 (4th Cir. 2015); Brief of Former Attorneys General as *Amici Curiae*, *Siegelman v. United States*, 561 F.3d 1215 (11th Cir. 2009); Brief of Current and Former New York Elected Government Officials as *Amici Curiae*, *Benjamin v. United States*, 145 S. Ct. 982 (No. 22-3091).

CONCLUSION

This Court has attempted, through unanimous rulings in *amici*'s cases dating back a decade, to ensure that federal corruption prosecutions are consistent with due process rights, individual liberties, and principles of federalism. Petitioner's case shows that prosecutors have failed to heed this Court's admonitions and need another reminder from this Court to protect state and local participants in the political process from federal prosecutorial overreach.

For the foregoing reasons, and for the reasons stated in the Petition, the Court should grant the Petition for a Writ of Certiorari.

Dated: August 14, 2025

Respectfully submitted,

DANIEL S. NOBLE
Counsel of Record
VLAD SHAFRAN
CHANDINI JHA
KKL LLP
350 5th Avenue, 77th Floor
New York, NY 10118
(212) 390-9550
Daniel.Noble@KKLllp.com

HOWARD S. MASTER
NARDELLO & CO. LLC
1212 6th Avenue
New York, NY 10036

Counsel for Amici Curiae