

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
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**BRIEF OF AMICI CURIAE
BUSINESS AND CIVIC LEADERS
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Can a tacit “meeting of the minds” establish the explicit quid pro quo required by this Court’s precedent when federal bribery charges are based on lawful campaign contributions?

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INTEREST OF AMICI CURIAE¹

The following list of amici consists of individuals of diverse backgrounds and professional experiences participating in the political process at the local, state, and federal levels. That participation often includes both discussions with political candidates aimed at issue advocacy and making campaign contributions to support those candidates.

This group of amici shares a concern that under the Sixth Circuit’s decision below, an ambiguous discussion of policy interests and fundraising could be viewed as the “explicit quid pro quo” required for a federal bribery conviction. Such a broad interpretation of “explicit quid pro quo” risks criminalizing legitimate political engagement and will effectively chill the protected political speech of amici and others like them, who also stand subject to criminal prosecution for legitimate participation in the political process. Individual amici are listed below.

- **Tony Alexander**, Founder and Chief Executive Officer, Remote Vans.
- **Christopher Altchek**, Founder and Chief Executive Officer, Cadence.

1. No party’s counsel authored any part of this brief. No person or entity, other than amici and their counsel, paid for the brief’s preparation or submission. Amici appear in their individual capacities; institutional affiliations are provided here for identification purposes only. Notice of intent to file this amicus brief was provided to both parties on August 1, 2025.

- **Robert A. Axelrod**, President, Stavins & Axelrod Properties, Inc.
- **Ross Baird**, CEO, Blueprint Local.
- **Jean-François Flechet**, Founder and Chief Executive Officer, Taste of Belgium.
- **Dan Fleming**, Managing Partner, River Cities Capital.
- **Jeb Head**, President, Atkins & Pearce, Inc.
- **Alexander Heiman**, President, Standard Textile.
- **David Hoguet**, retired Chief Executive Officer, Globe Business Resources.
- **Dr. Jonathan Isaacsohn**, Founder and Chief Executive Officer of CinRx.
- **David Jeffrey**, retired Chairman, David Jeffrey Associates, LLC, and retired Director, The Jeffrey Company.
- **Lair Kennedy**, Founder & CEO, Westwood Management.
- **John LaMacchia**, retired Chief Executive Officer, Cincinnati Bell.

- **Timothy Maloney**, retired Chief Executive Officer, Carol Ann and Ralph V. Haile, Jr. Foundation.
- **Michael D. McCurry**, Former Assistant to the President and White House Press Secretary.
- **Sharon Janosik Mitchell**, Senior Vice President, Procter & Gamble.
- **Anne Morriss**, Founder, The Leadership Consortium.
- **Katherine Strauss Rosenthal**, retired Senior Director, Cincinnati Regional Chamber of Commerce.
- **Richard Rosenthal**, retired CEO, F+W Publications.
- **Jack Rouse**, Founder and retired Chief Executive Officer, Jack Rouse Associates (JRA).
- **Jesse Safir**, President, ABG Print.
- **Stephen Smith**, Founder & Principal, Model Group, Inc.
- **Jacob Warm**, Chief Executive Officer and Chairman, JDL Warm Construction LLC.
- **Josh Woodward**, Vice President, Google.

- **Jack Wyant**, Founder & Managing Director, Blue Chip Partners, and Director, Chase Law School Entrepreneurship Center.
- **Margaret Wyant**, Founder & CEO, Grandin Properties.

SUMMARY OF ARGUMENT

The essence of representative democracy is that elected officials are responsive to the will of the people. Elections are, of course, the most fundamental mechanism for holding representatives accountable, but a close second is that citizens are free to give or withhold their support depending on whether they approve of the actions and positions taken by a particular candidate. Politicians who need electoral support—*i.e.*, all politicians—are therefore incentivized to take popular positions and to act on those positions once in office.

In our modern world, “support” takes many forms, but they can all be construed as being “corrupt” by sufficiently creative, or sufficiently motivated, prosecutors. Does a legislator *really* oppose right-to-work laws or is he buying off the AFL-CIO members who will knock on doors in his next campaign? Perhaps a school board member’s endorsement from religious leaders was purchased by her vote to include biblical passages in a high-school English curriculum. Or—as is the case here—might a mayoral candidate’s longstanding support for urban renewal *actually* be consideration for campaign contributions from property developers?

Decades ago, this Court recognized the danger that federal statutes targeting political corruption could be used to criminalize ordinary politics, and in response adopted a bright-line rule requiring an explicit quid pro quo if campaign contributions—or, presumably, other forms of electoral support—are to support federal bribery charges. That rule establishes a buffer zone where politicians can engage in legitimate political discourse with their supporters, prevents the fear of arbitrary enforcement from chilling political speech, and protects against politically motivated prosecution.

In the intervening years, this Court’s campaign finance precedents have become increasingly protective of political speech, but decisions in the criminal context have weakened the explicit quid pro quo requirement beyond recognition. Indeed, the decision below effectively held that a tacit meeting of the minds can be an “explicit” quid pro quo. At a minimum, further guidance is needed so that ordinary and law-abiding Americans like amici will be able to engage in the political process without fear of prosecution.

ARGUMENT

This Court has long recognized that campaign contributions are a form of political speech afforded First Amendment protections as an expression of a contributor’s viewpoint and a contributor’s freedom of association with a candidate. *See Buckley v. Valeo*, 424 U.S. 1, 21 (1976) (“A contribution serves as a general expression of support for the candidate and his views. . . . Making a contribution, like joining a political party, serves to affiliate a person with a candidate.”). These First Amendment freedoms are

essential to the bedrock of representative democracy—that government officials broadly represent the views of their constituents. *Stromberg v. California*, 283 U.S. 359, 369 (1931) (“The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . is a fundamental principle of our constitutional system.”). Indeed, political “influence” embodies “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.” *FEC v. Cruz*, 596 U.S. 289, 308 (2022). This is why “government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies.” *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014).

This Court’s precedents have recognized these First Amendment interests by drawing a sharp line separating constitutionally protected campaign contributions, including contributions intended to influence official action, from criminal bribes. Under *McCormick v. United States*, 500 U.S. 257 (1991), federal bribery charges require the government to prove that campaign contributions were “made in return for an **explicit** promise or undertaking by the official to perform or not to perform an official act.” *Id.* at 273 (emphasis added). Anything less than an explicit quid pro quo requirement “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.” *Id.* at 272. Because “[m]oney is constantly being solicited on behalf of candidates” based on “what they intend to do or have done,” honest public officials will inevitably “act

for the benefit of constituents . . . shortly before or after campaign contributions are solicited and received from those beneficiaries.” *Id.*

The decision below, however, would make *McCormick*’s requirement a dead letter. According to the Sixth Circuit, an “explicit” agreement requires nothing more than an entirely unspoken and unwritten “meeting of the minds.” *United States v. Sittenfeld*, 128 F.4th 752, 770 (6th Cir. 2025). This sort of “explicit-in-name-only” quid pro quo requirement does nothing to shield constitutionally protected political speech as *McCormick* requires, and it allows overzealous or partisan prosecutions to obtain convictions from juries already sour on the prevalence of money in politics by ascribing unsavory motives to politicians who are responsive to the concerns of their supporters.

I. Faithful Application of *McCormick*’s Unambiguous Quid Pro Quo Requirement Is Vital to Safeguarding Constitutionally Protected Political Speech.

Review by this Court is necessary to ensure the salutary effects of the *McCormick* rule—preserving the functions essential for representative democracy by establishing a buffer zone for legitimate dialogue among politicians and their supporters, preventing fear of arbitrary enforcement from chilling political speech, and protecting against politically motivated prosecution.

A. Representative Democracy Requires Clear Rules So That Essential Dialogue Between Representatives and Constituents May Not Be Prosecuted as “Corruption.”

Our government is a representative democracy, and “to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives.” *E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961); accord *United States v. Cruikshank*, 92 U.S. 542, 552 (1875) (“The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.”); James Wilson, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 30-31 (1792) (“Representation is the chain of communication between the people, and those to whom they have committed the exercise of the powers of government. This case may consist of one or more links; but in all cases it should be sufficiently strong and discernible.”); The Federalist No. 57, at 386 (James Madison) (J. Cooke ed. 1961) (discussing “that communion of interests and sympathy of sentiments” connecting elected representatives to the people); see also *Gravel v. United States*, 408 U.S. 606, 661 (1972) (Brennan, J., dissenting) (“The dialogue between Congress and people has been recognized, from the days of our founding, as one of the necessary elements of a representative system.”). There is always a danger, however, that if citizens make their wishes known and support politicians who act on those wishes, some will allege that those acts constitute “corruption.” See *Noerr Motor Freight, Inc.*, 365 U.S. at 139 (“It is neither unusual nor illegal for people to seek

action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors.”).

To preserve the essential dialogue between representatives and their constituents, there must be a clear rule separating lawful attempts to influence lawmakers through material support for their campaigns from corrupt attempts to bribe them. *McCutcheon v. FEC*, 572 U.S. 185, 209 (2014) (“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.”). And when stating and applying such a rule, “the First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it.” *Id.*

B. The *McCormick* Rule Provides a Buffer Zone That Protects Campaign Contributors’ Engagement in Legitimate Political Discourse With Candidates.

The U.S. campaign finance system allows for nearly unlimited spending, and donors are broadly motivated to donate to or in support of candidates with whom they agree on policy or platform. “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. Democracy is premised on responsiveness.” *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (quoting *McConnell v. FEC*, 540 U.S. 93, 297 (2003) (opinion of Kennedy, J.)); see also Peter J. Henning, *Public Corruption: A Comparative Analysis*

of International Corruption Conventions and United States Law, 18 ARIZ. J. INT’L & COMP. L. 793, 853 (2001) (“[C]ampaign contributions are, by their nature, given to influence or reward the candidate.”); John L. Diamond, *Reviving Lenity and Honest Belief at the Boundaries of Criminal Law*, 44 U. MICH. J. L. REFORM 1, 18 (2010) (“[U]nder our political system, campaign contributions are routinely used to reward public officials who cast legislative votes or make executive decisions favored by the contributor.”).

In the 2024 federal election cycle, presidential candidates raised over \$2 billion, congressional candidates raised \$3.8 billion, and party committees raised nearly \$2.75 billion. Federal Election Commission, *Statistical Summary of 24-Month Campaign Activity of the 2023-2024 Election Cycle* (Apr. 23, 2025), <https://www.fec.gov/updates/statistical-summary-of-24-month-campaign-activity-of-the-2023-2024-election-cycle/>. It is reasonable to expect that individuals spending money on elections do so with an implicit or tacit expectation that it will help their chosen candidate and that chosen candidate has taken or will take actions the person supports. These contributions are not facially illegal; on the contrary, they are protected under settled Supreme Court precedent aimed at preserving core First Amendment principles.

In this case, in early conversations with the cooperator, Mr. Sittenfeld noted that he had *always* been “super pro-development and revitalization,” to the point that, in his words: “in seven years I have voted in favor of every single development deal that’s ever been put in front of me.” 128 F.4th at 764. He was making the same argument that motivates any contributor—that an elected official’s

record is an indication of future likelihood of taking positions that the contributor supports.

Because politicians receive contributions from all sorts of interested parties, public officials will inevitably confer a benefit to someone who financially supported their campaign; this common exchange does not render ordinary political business “corrupt.” See Albert W. Alschuler, *Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse*, 84 *FORDHAM L. REV.* 463, 483 (2015); see also *United States v. Brewster*, 408 U.S. 501, 558 (1972) (White, J., dissenting) (“A legislator must maintain a working relationship with his constituents not only to garner votes to maintain his office but to generate financial support for his campaigns Thus, mutuality of support between legislator and constituent is inevitable. Constituent contributions to a Congressman and his support of constituent interests will repeatedly coincide in time or closely follow one another. It will be the rare Congressman who never accepts campaign contributions from persons or interests whose view he has supported or will support”). The only way to avoid such appearances would be to reject all campaign contributions, which is only feasible for the very wealthy, as a self-funded candidate. See Joseph R. Weeks, *Bribes, Gratuities, and the Congress: The Institutionalized Corruption of the Political Process, the Impotence of Criminal Law to Reach it, and a Proposal for Change*, 13 *NOTRE DAME J. LEGIS.* 123, 143 (1986) (“If a congressman will not accept the PAC and other special interest contributions and support their agendas in return, they will find someone else who will, and this person might well be the congressman’s next opponent.”).

So long as contributions remain an unavoidable and necessary part of the campaign finance system, the acts of politicians once elected to office will continue to incidentally benefit contributors, and attempting to separate “bad” contributors seeking “undue” influence from “good” actors engaged in ordinary politics would not be easy. See Stephen E. Sachs, *Corruption, Clients, and Political Machines: A Response to Professor Issacharoff*, 124 HARV. L. REV. 62, 63 (2010) (“[T]he law is too blunt an instrument to divide bad contributors from good ones[.]”); see also *Citizens United*, 558 U.S. at 359 (“Reliance on a ‘generic favoritism or influence theory [of corruption] is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.’”).

Instead of permitting lower courts or legislators to engage in difficult and value-laden assessments of how much influence is too much, this Court has taken a bright-line approach; preventing quid pro quo corruption and its appearance is permissible, but “other legislative aims,” including the desire “to limit the general influence a contributor may have over an elected official” are not. *FEC v. Cruz*, 596 U.S. 289, 305 (2022).

That bright-line approach was established in this Court’s decision in *McCormick*. West Virginia Delegate Robert L. McCormick was a leading advocate for an annual legislative program supported by foreign-trained doctors. *McCormick*, 500 U.S. at 259. Delegate McCormick had an ambiguous conversation with those doctors’ lobbyist; he highlighted his past support for the program and said that, despite his support, he had received no donations from the lobbyist’s doctor clients, possibly threatening to withhold legislative support in the future. *Id.* at 260. The doctors

thereafter donated to Mr. McCormick in cash, and the donations were not reported as campaign contributions. *Id.* Mr. McCormick then sponsored new legislation that would permanently enact the doctor-supported program, which passed. *Id.* Two weeks after the legislation was enacted, the doctors made another contribution. *Id.*

The district court instructed the jury that a conviction required only that the payment was made “with the expectation that such payment would influence Mr. McCormick’s official conduct, and with knowledge on the part of Mr. McCormick that they were paid to him with that expectation by virtue of the office he held.” *Id.* at 265.

This Court, however, reversed the consequent conviction, holding that it was not enough that donors expected their payment to influence Mr. McCormick’s conduct and for him to understand that expectation. Instead, it held that campaign contributions may qualify as a “receipt of money by an elected official under color of official right” in violation of 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 (emphasis added).

McCormick thus demarcated a “forbidden zone of conduct” and gave clear and practical guidance to public officials: illegal contributions are made pursuant to an explicit quid pro quo, while contributions not so made—even in expectation of future benefit—are legitimate. *Id.*; see also *Snyder v. United States*, 603 U.S. 1, 17 (2024) (“When construing a statute like this that regulates state and local officials, this Court’s precedents caution against leaving the statute’s ‘outer boundaries ambiguous’ and

involving the ‘Federal Government in setting standards of good government for local and state officials.’”) (citation omitted). Absent such guidance, any campaign contribution might constitute a violation of federal law punishable by a decade in prison.

C. The *McCormick* Rule Prevents Fear of Arbitrary Prosecution From Chilling Political Speech.

The concerns underlying *McCormick* are shared by respected scholars. Professor John L. Diamond, for example, has cautioned that “there should be a clearer rule to give prosecutors better guidance before they level expensive, politically career-destroying allegations, given that ‘[n]o politician who knows the identity and business interests of his campaign contributors is ever devoid of knowledge as to the inspiration behind the donation.’” Diamond, *supra*, at 25-26 (quoting *United States v. Brewster*, 506 F.2d 62, 81 (D.C. Cir. 1984)). Professor Brian F. Jordan has similarly warned that, given the important role of private campaign contributions in campaign finance, “any reform in this area needs to be carefully executed to avoid chilling constitutionally protected political speech or stifling campaign contributions.” Brian F. Jordan, *Disclosing Bribes in Disguise: Campaign Contributions as Implicit Bribery and Enforcing Violations Impartially*, 17 U. PA. J. CONST. L. 1435, 1446–47; *see also* Eric D. Weissman, *McCormick v. United States: The Quid Pro Quo Requirement in Hobbs Act Extortion under Color of Official Right*, 42 CATH. U. L. REV. 433, 460 (1993) (“The quid pro quo requirement adopted in *McCormick* is valuable because it preserves the legitimacy of political fundraising. Absent such a

requirement, the process of financing private political campaigns, a tradition in this country since its inception, would become chaotic.”).

Even a scrupulous public official with a long track record of supporting particular legislation might be found guilty based on the sort of explicit-but-tacit quid pro quo theory endorsed by the Sixth Circuit in the case at bar. Professor Albert W. Alschuler provides an illustrative hypothetical:

Whenever an elected official adheres to the positions that prompted contributors to support him, he exhibits a pattern of favoritism for these contributors. This pattern may bespeak conviction, not corruption. Ambitious prosecutors and cynical jurors, however, can easily infer a corrupt agreement from the common pattern. When an official has supported widget subsidies after accepting large contributions from widget manufacturers, for example, prosecutors and jurors may infer that there must have been an implicit understanding.

Alschuler, *supra*, at 483.

Under such a standard, prosecutors may arbitrarily charge, and jurors may convict, anyone based solely on a pattern of the identity of the contributor and the voting record of the elected official. Indeed, in a 2016 study led by Professor Christopher Robertson, mock grand jurors were presented with a hypothetical scenario describing political conduct which, lacking an explicit quid pro quo

agreement, could not have legally amounted to bribery. Christopher Robertson, D. Alex Winkelman, Kelly Bergstrand & Darren Modzewlewski, *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. LEGAL ANALYSIS 375, 395 (2016) (describing “a case . . . in which a regulated industry sought from a Congressman a deregulatory rider” where “[t]he purported exchange, if any, was extremely indirect, as the two defendants . . . never met directly, but instead only dealt through a lobbyist” and where no “witness testified that they were aware of any agreement to exchange one thing for the other”). The scenario was “designed to mimic ubiquitous behavior that virtually any of the 535 Members of Congress engage in every day.” *Id.* at 380. This study found that “the vast majority of . . . [mock] grand jurors were willing to indict such everyday behavior under the federal bribery statute.”

Based on these findings, it is no exaggeration to say that prosecutors may be able to indict and convict public officials for bribery based on the ordinary and expected exercise of representative democracy. An indictment alone may end a political hopeful’s career, removing important and constitutionally protected political speech from political discourse. To avoid the enforcement risk, politicians and contributors may forego protected speech entirely. The only way to safeguard the First Amendment from such threats is for judges to uphold *McCormick*’s explicit quid pro quo requirement.

D. The *McCormick* Rule Also Protects Against Politically Motivated Prosecutions.

Another salutary effect of the explicit quid pro quo requirement is that it prevents selective enforcement by federal prosecutors, including potentially politically motivated prosecutions (or sting operations) designed to influence election outcomes, rather than to bring about justice. *McCormick*, 500 U.S. at 272; see Brief Amicus Curiae of Former Attorneys General in Support of Petitioner, *Siegelman v. United States*, No. 11-955, 2012 WL 691661, at *4 (U.S. Mar. 1, 2012). Conversely, the Sixth Circuit’s ruling that a tacit “understanding” can satisfy that requirement would expose essentially all political candidates—other than those that are solely self-financed—to federal criminal charges. Brief of Former Attorneys General at *4 (“Every President of the United States who nominates a contributor to an Ambassadorship could be subject to prosecution. Any United States Senator who publicly endorses a cause advocated by a contributor is at risk.”). Broadening the facts and circumstances that may be encompassed by the federal bribery statutes gives prosecutors unbridled discretion to allege that any contributory conduct constitutes criminal activity, which would be ripe for abuse. See Brief of Law Professors as Amici Curiae in Support of Petitioner, *Siegelman v. United States*, No. 11-955, 2012 WL 727249, at *3 (U.S. Mar. 5, 2012) (arguing that an implicit quid pro quo standard would afford prosecutors “dangerously spacious latitude” to target “politicians and contributors whom they desire to silence.”); see also *Snyder*, 603 U.S. at 17 (“[A]s this Court has said time and again, the Court ‘cannot construe a criminal statute on the assumption that the Government will use it responsibly.’”). A clear, judicially enforced legal standard

is necessary to prevent FBI agents, prosecutors, and their often politically motivated supervisors from abusing their otherwise unbridled authority when initiating sting operations or bringing federal bribery charges.

In this case, as the Sixth Circuit noted, all of the individuals involved in the scheme, other than Sittenfeld, “were paid actors working to incriminate Sittenfeld.” *Sittenfeld*, 128 F.4th at 761. The FBI engaged in an 18-month-long sting operation, which “didn’t yield overwhelming evidence.” *Id.* Where prosecutors and FBI agents are ultimately responsible to sitting officeholders with an interest in the outcome of the next election, the law should leave little uncertainty as to what constitutes illegal conduct, so as to avoid a misuse of the powers of the criminal justice system to achieve political ends.

II. Supreme Court Guidance is Needed to Prevent Chilling Effects on Protected Speech.

Numerous jurists, including all three judges on the panel below, have recognized that clarification is necessary in this area of the law, and review by this Court is the only way clarity can be achieved. If distinguished jurists cannot discern how to separate lawful campaign contributions from conduct that may be deemed to be unlawful “corruption,” laypeople like amici have no hope of doing so and therefore cannot exercise their First Amendment rights without fear of prosecution.

A. Judges Agree That Guidance From This Court is Necessary.

Requests for guidance on how to reconcile *McCormick*, this Court’s subsequent decision in *Evans v. United States*, 504 U.S. 255 (1992), and the First Amendment have come from all directions. Judges, academics, lawyers, and even some Supreme Court Justices have requested that the Court provide such guidance. Amici here—as laypeople subject to a hopelessly unclear standard and with political interests they must either navigate at their peril or refrain from political participation altogether—respectfully echo those requests.

Each of the three Sixth Circuit judges who heard this case issued an opinion and, for different reasons, each suggested that it would be appropriate for this Court to reiterate the *McCormick* standard

. Writing for the majority, Judge Nalbandian expressed misgivings about the panel’s holding, but concluded that it was required by binding circuit precedent absent this Court’s intervention. 128 F.4th at 772 n.8 (“The dissent’s proposed standard—although perhaps wise, or even one we might adopt if we were writing on a blank slate—is simply the heightened standard that we have already rejected. . . . [W]hether we 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. At this point, *McCormick* and *Evans* are nearly 35 years old and it may be time for the Court to revisit or refine the doctrine.”). In his concurring opinion, Judge Murphy expressed more serious doubts: “I agree with Sittenfeld that the current reading of the Hobbs Act

raises First Amendment concerns. I disagree, though, that we are the right court to address the concerns. For one thing, the Supreme Court created this dilemma by adopting an ambiguous test seemingly tied to policy rather than text. 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.” 128 F.4th at 792. Judge Bush, who dissented, was even more direct with his plea for guidance:

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. Given that concern, and given post-*McCormick* caselaw that more strongly protects campaign contributions under the First Amendment, it would be helpful for the Supreme Court to provide guidance here. The lower courts need to know the extent of *McCormick*’s protections in cases where the only allegation of illegality relates to corrupt, but otherwise lawful, campaign contributions.

To understand the danger here, consider the majority’s assertion that *McCormick* would condemn a politician who says, “because of this gift I will now be sure to keep my campaign-trail promise.” If a court can reach this conclusion based on the logic of *McCormick*, then perhaps the Supreme Court should clarify the reasoning of that decision.

128 F.4th at 806 (citation and footnote omitted).

Less than three months after the Sixth Circuit issued its opinion in this case, Judge Thapar “join[ed] the chorus of judges encouraging the Supreme Court to revisit *Evans*.” *United States v. Householder*, 137 F.4th 454, 491 (6th Cir. 2025) (Thapar, J., concurring). That “chorus” includes, in addition to four Sixth Circuit judges, Justices Gorsuch and Thomas, *Silver v. United States*, 141 S. Ct. 656 (2021) (dissenting from denial of cert.), and former-Justice Breyer. *Ocasio v. United States*, 578 U.S. 282, 300 (2016) (Breyer, J., concurring); *see also United States v. Turner*, 684 F.3d 244, 254 (1st Cir. 2012) (“The Supreme Court has not had the occasion to address this since *Evans*.”); *United States v. Whitfield*, 590 F.3d 325, 349 (5th Cir. 2009) (“*McCormick* and *Evans* left open the question of what level of specificity is required to prove a *quid pro quo* in regard to the ‘*quo*’ or agreed-upon official act.”); Eugene Temchenko, Note, *A First Amendment Right to Corrupt Your Politician*, 103 CORNELL L. REV. 465, 488 n.159 (2018) (describing disagreement among circuit courts regarding the scope of *Evans*). This Court should therefore grant certiorari to provide much-needed guidance.

B. Ordinary Americans Need Guidance So They Can Exercise Their First Amendments Rights Without Fear of Criminal Prosecution.

Just like district judges, amici and other laypeople cannot predict whether campaign contributions will be deemed protected speech or prosecuted as criminal activity, and the threat of criminal punishment therefore chills their constitutionally protected speech. *See Citizens United*, 558 U.S. at 324 (“Prolix laws chill speech for the same reason that vague laws chill speech: People ‘of

common intelligence must necessarily guess at [the law’s] meaning and differ as to its application.” (alteration in original)). After all, federal statutes targeting political corruption allow for the prosecution of individuals who contribute to political campaigns, not just the politicians who receive those contributions. *See, e.g., United States v. Donagher*, 520 F. Supp. 3d 1034, 1046 (N.D. Ill. 2021) (dismissing bribery charges against donors based on campaign contributions because those charges did not allege an explicit quid pro quo); *United States v. Menendez*, 132 F. Supp. 3d 635, 639 (D.N.J. 2015) (denying a contributor’s motion to dismiss bribery charges because “[t]he government has adequately alleged that [defendant] made contributions in an effort to control the exercise of [Senator] Menendez’s official duties, and the truth of these allegations is a question of fact”). Thus, it is not only politicians like Sittenfeld who are at risk of criminal prosecution for engaging in politically protected speech; it is also everyday Americans like amici. This arguably poses an even graver danger to a robust representative democracy.

It is well-established that the “assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded” in the First Amendment context, *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965), and in any event, jurors cannot be reasonably expected to parse the subtle differences between an “express” quid pro quo and an “explicit” one. *Sittenfeld*, 128 F.4th at 790 (Murphy, J. concurring). Instead, jurors will be left confused by equivocal instructions and, with no clear judicial guidance, may just go along with the loudest voices in the room.

Worse still, jurors are likely to come to the jury room with pre-existing biases regarding public officials' tendency for corruption and the influence of campaign contributions. *See, e.g.*, Robertson, *supra* at 395; YouGov, YouGov Survey: Corruption at 1 (2025) (80% of Americans view corruption as a very serious or somewhat serious problem among members of Congress); *id.* at 2 (60% for Supreme Court Justices); Carroll Doherty et al., PEW RESEARCH CENTER, *Americans' Dismal Views of the Nation's Politics* at 7 (2023) ("When asked to sum up their feelings about politics in a word or phrase, very few (2%) use positive terms; 79% use negative or critical words, with 'divisive' and 'corrupt' coming up most frequently."); *id.* at 13 ("[M]ajorities say all or most politicians are motivated by selfish reasons, including 63% who say all or most ran for office to make a lot of money."); *id.* at 46 ("References to the influence of money and concerns about corruption are some of the most frequently cited critiques of the political system, and many Americans see monetary gain as a reason why most elected officials seek office to begin with."). Indeed, 80% of U.S. adults believe that people who donate "a lot of money" to a congressional candidate's campaign have too much influence on the candidate's subsequent decision-making; 73% believe that lobbyists and special interest groups have too much influence; and 61% believe large employers in a candidate's district have too much influence. *Id.* (noting that these opinions persist across the political spectrum). Similarly, 80% of adults in a 2015 nationwide poll agreed that campaign contributions influenced elected officials, with at least half of them believing that said influence is large. AP-NORC CTR. FOR PUB. AFFS., *AMERICANS' VIEWS ON MONEY IN POLITICS* 1 (2015).

The key finding here is that the *vast* majority of the American public, regardless of party affiliation, believes that the decision-making of elected officials is influenced by campaign contributions, and hold strong negative views toward the influence of money in politics. *See generally Polling Tracker: Americans' Opinions of Oligarchy and Corruption*, REVOLVING DOOR PROJECT, <http://therevolvingdoorproject.org/americans-opinions-corruption-oligarchy/> (last visited Aug. 11, 2025). Eighty-two percent of registered voters go so far as to opine that the influence of money in politics poses a threat to American democracy itself. *New Survey: Voters View the Influence of Money in Politics as a Threat to Democracy, Want Constitutional Amendment To Limit Spending*, American Promise (Oct. 30, 2024), <https://americanpromise.net/new-survey-voters-want-constitutional-amendment-to-limit-spending>.

Americans' distaste for money in politics cannot be overstated, and has real impacts on juror decisions implementing ambiguous rules—putting at risk the purportedly strong First Amendment protections for campaign contributions. The same AP-NORC Center study above showed that Americans are sharply divided over whether they perceive campaign contributions as protected speech: about 50% believe that it is protected speech, while about 48% do not. *Id.* at 4. There is some divide here by political affiliation as well, with 61% of Republicans believing that campaign contributions are protected speech, compared to 45% of Democrats and only 39% of Independents. *Id.*

Without a bright-line rule that jurors can understand and implement—and which judges can use to facilitate

review—particularly in an area rife with strong preconceived notions, defendants may be deprived from receiving a trial “by an impartial jury” as required by the Sixth Amendment. In light of the risk of juror bias bleeding into verdicts in the absence of a clear bright-line instruction identifying what is legitimate political participation and what is bribery, this Court should provide clear guidance for candidates, contributors, judges, and jurors.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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