No. 12-357

In the Supreme Court of the United States

GIRIDHAR C. SEKHAR, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether petitioner attempted to obtain property by means of extortion, in violation of 18 U.S.C. 1951(a) and 18 U.S.C. 875(d), by seeking to exercise, through threats, the right of an attorney to make a recommendation to his client pertaining to a pension fund investment from which petitioner sought to profit.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 683 F.3d 436. The opinions of the district court denying petitioner's motion to dismiss the indictment (Pet. App. 14a-66a) and denying petitioner's motion for a judgment of acquittal (Pet. App. 67a-93a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 26, 2012. The petition for a writ of certiorari was filed on September 19, 2012, and was granted on January 11, 2013. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Northern District of New York, petitioner was

convicted on one count of attempted extortion, in violation of the Hobbs Act, 18 U.S.C. 1951(a), and five counts of interstate transmission of extortionate threats, in violation of 18 U.S.C. 875(d). Pet. App. 1a, 5a. He was sentenced to 15 months of imprisonment. *Id.* at 6a. The court of appeals affirmed. *Id.* at 1a-13a.

1. Petitioner was a managing partner of FA Technology Ventures, a firm that sought investments from New York's Common Retirement Fund (Fund), the employee pension fund for the State of New York and some of its local governments. Pet. App. 2a, 4a-5a. As the sole trustee of the Fund, the State Comptroller has final approval over all of the Fund's investments. *Ibid.* When the Comptroller approves an investment on behalf of the Fund, he issues a "Commitment." *Ibid.* A Commitment is necessary for an investment by the Fund to go forward, but not all Commitments result in an actual investment as the parties must first execute and close on a limited partnership agreement. *Ibid.*

In 2008, the Comptroller's Office issued a Commitment for a $35 million investment in one of FA Technology Ventures' funds. Pet. App. 2a. The investment (known as FA Tech II) never closed. *Id.* at 2a. The following year, in October 2009, the Comptroller's Office considered whether to issue a Commitment for another $35 million investment in FA Technology Ventures. *Id.* at 2a-3a. That investment (known as FA Tech III) was similar to the FA Tech II investment. *Id.* at 3a. Based on the proposed terms, FA Technology Ventures would have earned nearly $7.6 million in management fees from the proposed investment over ten years and could have earned more depending on the investment's performance. *Id.* at 2a-3a. In the initial stages of consideration, the investment received the backing of several

individuals within the Comptroller's Office, including members of the investment staff, a Senior Investment Officer who was in charge of the Fund's in-state investment program, and the First Deputy Comptroller. Gov't C.A. Br. 9-10.

In April 2009—after the Commitment on FA Tech II and before consideration of whether to invest in FA Tech III—the Comptroller's Office adopted a policy of no longer investing in funds marketed by placement agents. Pet. App. 3a. Although FA Technology Ventures had used a placement agent to market FA Tech II, it did not use one to market FA Tech III. *Ibid.* Nevertheless, while the Comptroller's Office was considering whether to invest in FA Tech III, the New York Attorney General's Office advised the Comptroller's General Counsel (Luke Bierman) that the placement agent FA Technology Ventures had used to market FA Tech II was under investigation and that the Comptroller's Office should avoid association with that agent. *Ibid.*; Gov't C.A. Br. 11. Although FA Technology Ventures had not used that placement agent (or any placement agent) in marketing FA Tech III, the two investments were in substance the same. Pet. App. 3a. Bierman therefore made a written recommendation to the Comptroller, based on information provided by the Attorney General's Office, not to invest in FA Tech III. *Ibid.* On November 13, 2009, after receiving Bierman's recommendation, the Comptroller decided not to approve the investment. *Ibid.* The First Deputy Comptroller communicated that decision to a managing partner at FA Technology Ventures (who was not petitioner). *Ibid.* That partner had already heard of Bierman's opposition to the investment; he had also heard rumors that Bierman was having an extramarital affair. *Ibid.*

On November 17, 2009, General Counsel Bierman received an anonymous e-mail at work purporting to be from a colleague in the Comptroller's Office. Pet. App. 4a; J.A. 56. The e-mail stated that the sender had "stumbled upon a serious ethical issue in the Comptroller's Office" and requested Bierman's personal e-mail address so that the sender could convey the information without fear of repercussions. *Ibid.* Bierman responded to the e-mail, noting his concern about the anonymous e-mailer's allegations and advising the e-mailer to contact the Inspector General. Pet. App. 4a; J.A. 57. Bierman also provided his own personal e-mail address, as requested. *Ibid.*

On November 18, 2009, the anonymous author sent an e-mail to Bierman's personal e-mail address. Pet. App. 4a; J.A. 59-62. The e-mail opened by stating: "I am glad we are handling this ethics situation through your personal email, because this ethics issue involves YOU." J.A. 59. The e-mail went on to state: "Last week u did something that was wrong. U blackballed a recommendation on a fund from the investment staff becuz they had a relationship with a friend of mine." *Ibid.* The e-mail then stated that the sender was aware that Bierman was having an extramarital affair and threatened to expose that fact to, *inter alia*, Bierman's wife, the Inspector General, then-New York Attorney General Andrew Cuomo, and the *Albany Times Union* newspaper. J.A. 60-61. In order to avoid such exposure, the e-mailer demanded that Bierman inform his coworkers by November 20 that he had "had a change of heart" about FA Tech III and that he "now recommend[s] moving forward with this fund and accepting the decision of the investment staff." Pet. App. 4a; J.A. 60. The e-mail instructed Bierman to explain his change of heart

by claiming that, upon a review of the files, he had realized "that this fund is very important to the In State investing program" and that "to not do this fund would cause terrible disaster to the In State investing program." *Ibid.* The e-mail closed by stating that the sender had undertaken these efforts because he "just want[ed] [the Comptroller's] office to function normally." J.A. 61.

Approximately ten hours later, the anonymous e-mailer sent another e-mail, warning Bierman that he had "36 hours left" in which to "make the wrong right." J.A. 63. A similar e-mail followed the next morning, advising Bierman that he had "24 hours left." J.A. 64. On the afternoon of November 19, the e-mailer sent another e-mail to Bierman (at both his home and work e-mail addresses), purporting to ask for advice on a letter he had drafted to Attorney General Cuomo exposing the alleged extramarital affair. J.A. 65-66. The e-mail stated that Bierman is "an expert in the law" and asked for comments on the letter, which the e-mailer threatened to send "next week." J.A. 65. It also stated that if Bierman did not like the draft letter, he "should go forward with the other solution" suggested in the previous e-mails. *Ibid.* The "draft letter" to Attorney General Cuomo identified seven problems allegedly caused by the extramarital affair, including the "creation of enemies list holding up approval of wise investments vetted by the investment staff." J.A. 69.

On the advice of law enforcement agents, on November 20, 2009, the General Counsel responded to the e-mailer asking for more time. Pet. App. 4a; J.A. 67. On Monday, November 23, the e-mailer assured the General Counsel that he would "never hear about this again" if he could "get this fixed by Wednesday," November 25.

Pet. App. 4a; J.A. 70. On December 1, the anonymous e-mailer sent a final message, this time referring to Tiger Woods and stating, "who would have thought that a woman could get that upset . . . and over what?" J.A. 73.

The Federal Bureau of Investigation traced some of the e-mails to petitioner's home in Brookline, Massachusetts. Pet. App. 4a. After law enforcement officers executed a search warrant at petitioner's home, petitioner admitted to sending the anonymous e-mails and a forensic examination confirmed that petitioner's computer was the source of the e-mails. *Id.* at 5a.

2. Petitioner was indicted on one count of attempted extortion, in violation of the Hobbs Act, 18 U.S.C. 1951(a), and six counts of interstate transmission of extortionate threats, in violation of 18 U.S.C. 875(d). Under the Hobbs Act, an individual is criminally liable if he "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do." 18 U.S.C. 1951(a). The Act defines "extortion" to mean "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. 1951(b)(2). Under 18 U.S.C. 875(d), an individual is criminally liable if he, "with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee." The parties in this case agreed that the Hobbs Act's definition of "extortion" also applies to Section 875(d)'s use of the word "extort."

Pet. App. 7a (citing *United States* v. *Jackson*, 180 F.3d 55, 70 (2d Cir. 1999)).

The indictment alleged that petitioner wrongfully attempted to obtain (1) the General Counsel's recommendation to the State Comptroller to approve the Commitment to invest in FA Tech III; (2) the Comptroller's approval of the Commitment; and (3) the Commitment itself. Pet. App. 5a. Before trial, petitioner filed a motion to dismiss the indictment, arguing, *inter alia*, that the indictment failed to state an offense because General Counsel Bierman's recommendation is not "property" within the meaning of Section 1951(b)(2) and because the indictment did not allege that petitioner had threatened any person who had power to issue the Commitment. See *ibid.* The district court denied the motion, explaining that "the General Counsel's right to make professional decisions without outside pressure is an intangible property right," *id.* at 24a, and that the indictment sufficiently alleged that petitioner "interfered with the General Counsel's intangible right for the sake of his own enrichment, thus constituting both a deprivation and an attempt to acquire property under the Hobbs Act," *id.* at 25a.

After a jury trial, petitioner was convicted on the attempted extortion count and on five of the six interstate-transmission counts. Pet. App. 5a-6a. The jury noted on the verdict form that the property petitioner attempted to extort was Bierman's "recommendation to approve the Commitment." J.A. 141-145. Petitioner filed a motion for judgment of acquittal or a new trial based on the alleged insufficiency of the evidence. Pet. App. 6a. The district court denied the motion, finding sufficient evidence that petitioner intended to deprive the General Counsel of "his property right to freely exercise his

independent professional judgment," *id.* at 79a; that petitioner attempted to obtain control of that right for himself, *id.* at 83a; that petitioner believed that his blackmail scheme would lead to a Commitment, *id.* at 85a-86a; and that a Commitment would benefit petitioner financially, *id.* at 87a.

3. On appeal, petitioner again argued that the indictment failed to state an offense and that the evidence was insufficient to support his convictions. See Pet. App. 6a. In support of both contentions, petitioner argued that his conduct did not constitute extortion because the General Counsel's recommendation was not property under the Hobbs Act. *Ibid.* The court of appeals rejected petitioner's arguments. *Id.* at 6a-13a.

The court of appeals observed that the Hobbs Act defines "[t]he term 'extortion' [to] mean[] the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." Pet. App. 7a (quoting 18 U.S.C. 1951(b)(2)). In order to determine whether a defendant has "obtain[ed]" or attempted to obtain "property," the court explained that it must undertake a two-part inquiry, determining both "whether the defendant is (1) alleged to have carried out (or, in the case of attempted extortion, attempted to carry out) the deprivation of a property right from another," and whether the defendant did so "with (2) the intent to exercise, sell, transfer, or take some other analogous action with respect to that right." *Id.* at 7a-8a (quoting *United States* v. *Gotti*, 459 F.3d 296, 324 (2d Cir. 2006), cert. denied, 551 U.S. 1144 (2007)). The court further noted that the term "property" under the Hobbs Act "is not limited to physical or tangible property or things, but includes, in a broad sense, any valuable right con-

sidered as a source or element of wealth." *Id.* at 8a (quoting *United States* v. *Tropiano*, 418 F.2d 1069, 1075 (2d Cir. 1969), cert. denied, 397 U.S. 1021 (1970)). The court of appeals specifically noted that "[t]he right to pursue a lawful business . . . has long been recognized as a property right," *ibid.* (quoting *Tropiano*, 418 F.2d at 1076), as has the right to "conduct a business free from threats" and "to make various business decisions . . . free from outside pressure." *Ibid.* (quoting *United States* v. *Arena*, 180 F.3d 380, 394 (2d Cir. 1999), cert. denied, 531 U.S. 811 (2000), and *Gotti*, 459 F.3d at 327).

The court of appeals concluded that General Counsel Bierman "had a property right in rendering sound legal advice to the Comptroller and, specifically, to recommend—free from threats—whether the Comptroller should issue a Commitment for FA Tech III." Pet. App. 8a-9a. The court rejected petitioner's argument that Bierman's recommendation was not a "source or element of wealth" for Bierman, observing that "[t]he value and worth of a lawyer's services may be said generally to depend on freedom from conflict, including a conflict created by personal blackmail." *Id.* at 9a. In any event, the court noted that a property right need not be a source of wealth to the target of the extortion as long as it has value for the extortionist. *Id.* at 9a-10a.

The court of appeals rejected petitioner's argument that he had not pursued something of value that he could exercise, transfer, or sell. Pet. App. 11a-13a. The court concluded that petitioner not only had attempted to deprive Bierman of his right to make a recommendation to the Comptroller free from blackmail, but also had "attempted to exercise that right by forcing the General Counsel to make a recommendation determined by [pe-

titioner]." *Id.* at 12a. The court acknowledged that a positive recommendation from Bierman would not have guaranteed a Commitment and that a Commitment would not have guaranteed an investment in FA Tech III. *Ibid.* But the court explained that the benefit conferred on the extortionist need not be "direct"; it is sufficient, the court stated, if the extortionist exercises the extorted right for the purpose of obtaining the benefit. *Id.* at 12a-13a. Here, the court concluded that "the evidence showed that a positive recommendation by the General Counsel would have increased the chances the Comptroller would issue a Commitment; a Commitment was necessary for FA Tech III to receive a Pension Fund investment; and an investment would have resulted in management fees for FA Technology and profit for [petitioner], as a managing partner." *Id.* at 13a. Accordingly, the court held, the evidence was sufficient to show that petitioner, "in order to profit, attempted to exercise the General Counsel's property right to make recommendations." *Ibid.*

SUMMARY OF ARGUMENT

Petitioner violated the Hobbs Act by extortion because he attempted to "obtain[] property from another, with his consent, induced by wrongful use of actual or threatened * * * fear." 18 U.S.C. 1951(b)(2).

A. 1. The word "property" has long been understood to include more than just concrete, tangible things. Early dictionary definitions, other secondary sources, and cases from this Court universally defined property to include intangible rights with economic value. Those intangible rights include the exclusive right to use a patented invention, even though the invention is merely the product of the inventor's brain; the right to maintain the viability of a business; the right to pursue a vocation;

the right to acquire property by honest labor; and the right of union members to elect their representatives.

The Hobbs Act, enacted in 1946, was modeled on New York's existing extortion statute and this Court has relied on New York state courts' interpretation of the state law in construing terms in the Hobbs Act. Before 1946, New York courts consistently construed the term "property" in the state extortion statute to include intangible rights with economic value. As early as 1892, New York's highest court explicitly rejected the argument (advanced by petitioner in this case) that property should be limited to tangible articles alone. Instead, the court construed the term to encompass valuable intangible rights such as the right to run a business and the right to labor.

When Congress enacted the Hobbs Act, it did so against the well-established background principle that property is a broad legal term that includes certain intangible rights. Federal courts of appeals applying the Hobbs Act have consistently interpreted the law to cover extortion involving intangible property, including valuable rights considered as a source or element of wealth. That is consistent with this Court's more recent view of the term "property," as used in the federal mail fraud statute. *Carpenter* v. *United States*, 484 U.S. 19 (1987). Nothing in the text, structure, or enactment history of the Hobbs Act indicates a congressional intent to depart from that broad meaning of the word "property."

2. The term "property" encompasses the intangible right to pursue one's existing business or occupation free from improper interference. The right to work in order to earn a living is among the most important intangible rights protected as property, as a variety of

sources of law recognize. And applying that understanding to the Hobbs Act, as courts of appeals uniformly have done, accords with New York courts' view of the pre-1946 state extortion law on which the Hobbs Act was modeled.

If the Court were to agree with petitioner that property under the Hobbs Act does not encompass valuable intangible economic rights such as the right to run a business or to labor, it would frustrate one of Congress's core objectives in enacting the Act: to fight racketeering. Organized crime often uses extortion to usurp control of legitimate businesses and labor unions. The Hobbs Act was aimed at that conduct and petitioner's theory could exclude it.

3. General Counsel Bierman was employed to give disinterested legal advice to the New York State Comptroller. His ability to provide that advice to earn a living is a property right under the Hobbs Act. A lawyer's advice is the product he sells to his client; it is the source of his livelihood. The recommendation and the lawyer's right to make the recommendation represent the same property right, *i.e.*, the right to engage in his profession by giving disinterested legal advice to his client. When petitioner attempted to use blackmail to direct the content of Bierman's recommendation, he attempted to exercise Bierman's right to control his own labor. That is extortion.

B. Petitioner also satisfied the Hobbs Act's requirement that he obtain or attempt to obtain the property in question. An extortionist may obtain property even though it is intangible as long as he seeks to exercise, transfer, or sell the valuable right that is the property. In this case, petitioner sought to direct the substance of Bierman's recommendation to the Comptroller, thereby

attempting to obtain and exercise Bierman's intangible property right to give his own disinterested legal advice to his client.

The Hobbs Act's requirements that an extortionist attempt to "obtain[]" the property in question, and that he use "wrongful" threats of force, violence, or fear avoid the hypotheticals petitioner fears, *e.g.*, that any labor negotiation or social protest could be prosecuted as extortion. A labor union legitimately negotiating for higher wages does not use wrongful threats to do so. And anti-segregation protestors were not trying to obtain anyone's property by, for example, forcing restaurant owners to serve them without charging a fee.

For the same reason, construing property in the Hobbs Act to include intangible rights does not eradiate the distinction that existed in 1946 between the New York laws of extortion and coercion. Extortion includes coercion because every extortion requires that a defendant use coercive means. But if a defendant does not obtain property—either because his scheme does not involve property that is obtainable or because obtaining property is not the object of the defendant's coercive scheme—then he is not guilty of extortion. Here, petitioner's effort to obtain Bierman's right to control the substance of his own recommendation places petitioner's crimes on the extortion side of the line.

C. Interpreting property under the Hobbs Act to include intangible rights, such as those at issue here, would not violate federalism principles. Congress well knew that the Hobbs Act reaches conduct already punishable under state law, but sought to use its powers under the Commerce Clause to the fullest extent possible. Petitioner's artificial limitations would frustrate, not further, Congress's objective.

Similarly, the rule of lenity has no role to play in this case. That tie-breaking rule comes into play only when competing interpretations of a statute are in equipoise. Here, the traditional meaning of the word "property" in federal law—and, more importantly, in New York cases interpreting the state extortion law on which the Hobbs Act was modeled—demonstrate that the term "property" in the Hobbs Act encompasses valuable intangible property rights, including General Counsel Bierman's right to give disinterested legal advice to his client.

ARGUMENT

PETITIONER ATTEMPTED EXTORTION UNDER THE HOBBS ACT WHEN HE SOUGHT TO GAIN CONTROL OF THE GENERAL COUNSEL'S RECOMMENDATION TO THE STATE COMPTROLLER THROUGH BLACKMAIL

The Hobbs Act provides criminal penalties for anyone who "in any way or degree obstructs, delays, or affects commerce * * * by robbery or extortion or attempts or conspires so to do." 18 U.S.C. 1951(a). The Act defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. 1951(b)(2). No one disputes that petitioner's means (*i.e.*, blackmail) were extortionate. See *United States* v. *Nardello*, 393 U.S. 286, 295-296 (1969) (holding that scheme to lure individuals into compromising situation and then blackmail them with threat of exposure to obtain money "f[e]ll within the generic term extortion"). Petitioner argues instead that he did not commit extortion because he did not attempt through his blackmail scheme to "obtain[] property," as required by Section 1951(b)(2). Petitioner is incorrect. Property under the Hobbs Act includes both tangible and intangible property, including the

right to run a business, to labor, and to engage in one's chosen profession. A defendant obtains, or attempts to obtain, a victim's property when he uses blackmail to obtain, with the victim's consent, the victim's right to perform his professional duties, including by dictating the substance of a lawyer's legal advice to a client.[1]

A. The General Counsel's Right To Give Disinterested Legal Advice To The State Comptroller Free From Threats Is Property Under The Hobbs Act

The Hobbs Act does not define the term "property." But when the Hobbs Act was enacted in 1946, Congress would have understood the term to be expansive, covering tangible items and intangible rights with economic value. This Court has recognized, moreover, that because the Hobbs Act was modeled on the State of New York's extortion law, it should be construed against the

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[1] Petitioner was also convicted on five counts of transmitting in interstate commerce a communication threatening to injure the reputation of the addressee with the intent to extort from any person "any money or other thing of value," in violation of 18 U.S.C. 875(d). The parties conceded, as the Second Circuit had previously held, that the term "extort" in Section 875(d) is coextensive with the concept of "extortion" as used in Section 1951(b)(2). See Pet. App. 7a (citing *United States* v. *Jackson*, 180 F.3d 55, 70 (2d Cir. 1999)). That makes sense in light of the Second Circuit's broad—and correct—interpretation of the word "property" in Section 1951(b)(2). If this Court agrees that the term property in the Hobbs Act includes intangible rights with economic value, that would support affirmance of all of petitioner's counts of conviction. If the Court does not agree, it should leave open for another case the question whether the term "extort" in Section 875(d) does embrace such intangible rights. As noted, Section 875(d) refers to the extortion of "any money or other thing of value." Even if the Court were to hold that property in the Hobbs Act does not carry its ordinary broad meaning, that would not require a holding that "thing of value" in Section 875(d) is similarly limited.

backdrop of New York state cases interpreting that law. *Scheidler* v. *NOW*, 537 U.S. 393, 403 (2003); *Evans* v. *United States*, 504 U.S. 255, 261 n.9 (1992); *United States* v. *Enmons*, 410 U.S. 396, 406 n.16 (1973). Those cases make clear that "property," as used in New York's extortion law, encompasses General Counsel Bierman's recommendation—and his right to make his own recommendation—about whether the Comptroller should invest in petitioner's company's fund.

1. Property under the Hobbs Act is not limited to tangible property, but includes intangible rights with economic value

Petitioner suggests (see Br. 26, 34-35) that this Court should limit the meaning of the term "property," as used in the Hobbs Act, to include only "concrete" or tangible property. That suggestion is inconsistent with the well-recognized legal meaning of the term, with this Court's pre-Hobbs-Act treatment of it, and with New York courts' pre-1946 interpretation of the New York extortion law on which the Hobbs Act was based.

a. Property has traditionally been understood to include intangible rights with economic value

When Congress enacted the Hobbs Act, the common understanding of the term "property" was expansive. *Webster's Dictionary* defined the term in "a broad sense" to include "any valuable right or interest considered primarily as a source or element of wealth." *Webster's New International Dictionary of the English Language* 1718 (1917) (*Webster's Dictionary*).[2] *Black's Law Dictionary* similarly defined "property" to "extend

[2] The second edition of *Webster's New International Dictionary* published in 1958, contained the same definition.

to every species of valuable right and interest." *Black's Law Dictionary* 1446 (3d ed. 1933); see 50 C.J. *Property* § 2, at 729 (1930) ("[T]he term 'property' is, in law, a generic term of extensive application. It is a term of large import, of broad and exceedingly complex meaning, of the broadest and most extensive signification, a very comprehensive word, and is the most comprehensive of all terms which can be used.").

Property was widely understood to include both tangible property and intangible property. *Webster's Dictionary* specified that property "include[s] various incorporeal rights." *Webster's Dictionary* 1718. The Restatement of the Law of Property noted that property may include "an intangible," including "right[s], privilege[s], power[s] and immunit[ies]." Restatement of the Law of Property ch. 1, intro. note (1936) (internal quotation marks omitted). And *Corpus Juris* specified that "property may be classified as either corporeal or incorporeal, or as tangible or intangible." 50 C.J. *Property* § 15, at 744 (1930).

b. This Court has long held that property includes intangible rights with economic value

By 1946, this Court's cases had also established that the term "property" is not limited to tangible objects such as real property and personal property. In 1888, for example, the Court recognized that the issuance of a patent on an invention creates a property interest in the invention even though the invention itself "is the product of the inventor's brain." *Marsh* v. *Nichols, Shepard & Co.*, 128 U.S. 605, 612. The property acknowledged in *Marsh* was not the physical piece of paper issuing the patent—the patent itself was merely "evidence of" and "created" the property, which the Court described as

the inventor's "exclusive right to the use of the invention." *Ibid.*

The Court has, in a variety of contexts, declared an array of intangible interests to be property. For purposes of the Due Process Clause, for example, property includes such intangibles as the viability of an individual's business as well as "free access for employees, owner, and customers to his place of business." *Truax* v. *Corrigan*, 257 U.S. 312, 327 (1921); see *Dent* v. *West Va.*, 129 U.S. 114, 121-122 (1889) (noting that the right to pursue one's vocation is of great value to its possessor and cannot be deprived without due process "any more than [one's] real or personal property can be thus taken"). Similarly, in applying the rule that a court of equity's jurisdiction is limited to the protection of "property rights," the Court has held that a newspaper's intangible "right to acquire property by honest labor or the conduct of a lawful business" is property. *International News Serv.* v. *The Associated Press*, 248 U.S. 215, 236 (1918).

The Court took a similarly broad view of property in interpreting the Clayton Act, which authorized injunctions only when necessary to prevent injury "to property, or to a property right." 29 U.S.C. 52. In such cases, the Court found the requisite property or property right in the intangible ability of employees to select their labor representatives, *Texas & New Orleans R.R. Co.* v. *Brotherhood of Ry. & Steamship Clerks*, 281 U.S. 548, 571 (1930); in a businessman's intangible "unrestrained access to the channels of interstate commerce," which were obstructed by a labor boycott, *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 465 (1921); and in an employer's intangible ability to ensure that its employees have access to its business premises, *American Steel*

Foundries v. *Tri-City Cent. Trades Council*, 257 U.S. 184, 204-205 (1921).

Even when the Court has used the word "property" to refer to a physical thing, moreover, the Court has made clear that it also referred to the intangible rights "inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it." *United States* v. *General Motors Corp.*, 323 U.S. 373, 378 (1945). The Court explained in that case that the more limited approach of construing property to apply only to tangible items amounts to using the term in "its vulgar and untechnical sense" rather than "in a more accurate sense to denote the" intangible interests associated with ownership of tangible things. *Id.* at 377-378. Indeed, the Court has noted that it is "elementary" that "[p]roperty is more than the mere thing which a person owns." *Buchanan* v. *Warley*, 245 U.S. 60, 74 (1917). Rather, it "consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land." *Ibid.* (quoting 1 William Blackstone, *Commentaries* *134); see *Crane* v. *Commissioner*, 331 U.S. 1, 6 (1947) (noting that the "ordinary, everyday" understanding of "property" includes "the aggregate of the owner's rights to control and dispose of [a physical] thing"); see also *Dobbins* v. *Los Angeles*, 195 U.S. 223, 236 (1904) (describing constitutional rights "to use and enjoy property").

c. Before 1946, New York courts construing the State's extortion law interpreted property to include intangible rights with economic value

As this Court has recognized, Congress modeled the Hobbs Act on New York's then-existing extortion statute, N.Y. Penal Law §§ 850, 851 (Consol. 1909), and on a 19th-century model penal code known as the Field Code,

Commissioners of the Code, *The Penal Code of the State of New York* §§ 613, 614 (1865) (Field Code). See *Scheidler*, 537 U.S. at 403; *Evans*, 504 U.S. at 261 n.9; *Enmons*, 410 U.S. at 406 n.16. Like the Hobbs Act does now, both the New York statute and the Field Code defined extortion as "the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right." N.Y. Penal Law § 850 (Consol. 1909); Field Code § 613. Both codes also provided that the requisite "fear" in the extortion provisions "may be induced by a threat * * * [t]o do an unlawful injury to * * * property." N.Y. Penal Law § 851 (Consol. 1909); Field Code § 614. This Court has repeatedly looked to New York's pre-1946 "[j]udicial construction of the New York statute" when interpreting the scope of the extortionate acts prohibited by the Hobbs Act. *Enmons*, 410 U.S. at 406 n.16; see also *Scheidler*, 537 U.S. at 403-404; *Evans*, 504 U.S. at 261 n.9. The consistent judicial construction of the term "property," as used in the New York extortion law, encompassed intangible interests that had economic value.[3]

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[3] As noted, the New York Code used the term "property" twice in defining the crime of extortion—first to describe what an extortionist obtains and then to describe one type of threat (a threat to injure property) that an extortionist may employ. N.Y. Penal Law §§ 850, 851 (Consol. 1909). In construing the meaning of the term "property," New York courts generally have not drawn a distinction between the two uses. See, *e.g.*, *People ex rel. Short* v. *Warden of City Prison*, 130 N.Y.S. 698, 700 (N.Y. App. Div. 1911) (construing "property" as used in both Sections 850 and 851 to include labor and the right to labor), aff'd, 99 N.E. 1116 (N.Y. 1912). Nor is there any basis in the statute to do so. Indeed, after the enactment of the Hobbs Act, New York's highest court held (relying on *People* v. *Barondess*, 31 N.E. 240, 242 (N.Y. 1892), and *Short*, 130 N.Y.S. at 698), that it was "not

In *People* v. *Barondess*, 31 N.E. 240, 242 (N.Y. 1892), New York's highest court explained that the term "property" should be understood "in its broad and unrestricted sense." The court considered whether property referred only to the physical place and possessions of a business rather than to the business owner's intangible right to operate the business without suspension or interruption. *Id.* at 241-242. And the court held that "[t]here would obviously be no reason" to limit the term "to tangible articles" alone. *Id.* at 242. A year later, relying on *Barondess*, the same court held that a threat to compel customers to withdraw from a business was "a threat to do an unlawful injury to property." *People* v. *Hughes*, 32 N.E. 1105, 1107-1108 (N.Y. 1893). The property at issue in that case was again the victim's business—not in the sense of his tangible place of work, but in the sense of his intangible ability to operate his company for a profit without undue interference.

The principle that property in the extortion context includes intangible interests with economic value was reaffirmed in *People ex rel. Short* v. *Warden*, 130 N.Y.S. 698 (N.Y. App. Div. 1911), aff'd, 99 N.E. 1116 (N.Y. 1912), which held that the term "embrace[s] every species of valuable right and interest." *Id.* at 700. The intermediate appellate court explained that "whatever tends in any degree, no matter how small, to deprive one of that right, or interest, deprives him of his property." *Ibid.* Applying a broad conception of property to the facts of the case, the court held that a house painter's employment qualified as property such that a threatened loss of his job was a threat to injure property

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disposed" to construe "property" to mean different things in each provision. *People* v. *Spatarella*, 313 N.E.2d 38, 39-40 (N.Y. 1974).

within the meaning of the law. *Id.* at 701.[4] Since the enactment of the Hobbs Act, New York courts have continued to interpret the term "property" in the State's traditional extortion law and its more modern larceny laws (which now encompass the crime of extortion, see N.Y. Penal Law § 155.05(e) (McKinney 2013)) to include such intangible rights. See, *e.g.*, *People* v. *Capparelli*, 603 N.Y.S.2d 99, 105 (N.Y. Sup. Ct. 1993) (holding that a construction contract qualified as property); *People* v. *Capaldo*, 572 N.Y.S.2d 989, 992 (N.Y. Sup. Ct. 1991) (holding that property includes a union contract); *People* v. *Garland*, 505 N.E.2d 239, 239-240 (N.Y. 1987) (holding that a tenant's right to occupy and possess an apartment is property that may be the subject of larceny by extortion); *People* v. *Spatarella*, 313 N.E.2d 38, 40-41 (N.Y. 1974) (holding that property includes a business arrangement with a customer); *People* v. *Wisch*, 296 N.Y.S.2d 882, 885-886 (N.Y. Tr. Term 1969) (rejecting argument that property is limited to tangible property in holding that a milk route constitutes property).

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[4] Other pre-Hobbs-Act decisions of the New York courts also held that the extortion statute protects intangible property rights. See *People* v. *Sheridan*, 174 N.Y.S. 327, 329 (N.Y. App. Div. 1919) (depriving victim of use of elevator on his business premises would be injury to property); *People* v. *Weinseimer*, 102 N.Y.S. 579, 587 (N.Y. App. Div. 1907) (preventing union members from doing plumbing work on building project would be injury to property), aff'd, 83 N.E. 1129 (N.Y. 1907). And in other contexts before 1946, the New York courts recognized as property such intangible rights as the unimpeded exercise of the functions of an elected union office, *Bianco* v. *Eisen*, 75 N.Y.S.2d 914, 916 (N.Y. Sup. Ct. 1944); "work and the right to earn a living," *Canfield* v. *Moreschi*, 40 N.Y.S.2d 757, 762 (N.Y. Sup. Ct. 1943); and the right to participate in a union election, *Dusing* v. *Nuzzo*, 29 N.Y.S.2d 882, 884 (N.Y. Sup. Ct. 1941), aff'd, 31 N.Y.S.2d 849 (N.Y. App. Div. 1941).

d. Property in the Hobbs Act includes intangible rights with economic value

The term "property" in the Hobbs Act should be given the same broad construction. When Congress enacted the Hobbs Act, it legislated against a well-established background principle—recognized in this Court's cases, in New York state cases, in contemporary dictionaries, and in foundational sources such as Blacktsone's *Commentaries*—that property includes intangible interests with economic value. Consistent with that understanding, in the first appellate decision to consider the issue under the Hobbs Act, the Second Circuit held that defendants who threatened owners of a garbage-removal company with physical violence unless they stopped soliciting customers in certain areas—customers who had previously used the defendant's garbage-removal services—were guilty of extorting the owners' intangible property "right to solicit business from anyone in any area without any territorial restrictions" imposed by defendants. *United States* v. *Tropiano*, 418 F.2d 1069, 1076 (2d Cir. 1969), cert. denied, 397 U.S. 1021 (1970). The Second Circuit explained that property extends beyond tangible things to include "any valuable right considered as a source or element of wealth." *Id.* at 1075 (citing *Bianchi* v. *United States*, 219 F.2d 182 (8th Cir.), cert. denied, 349 U.S. 915 (1955)). Every court of appeals that has considered the question has held that property in the Hobbs Act includes intangible rights with economic value.[5]

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[5] See, *e.g.*, *United States* v. *Cain*, 671 F.3d 271, 282 (2d Cir.), petition for cert. pending, No. 12-9125 (filed Mar. 6, 2013), cert. denied, 132 S. Ct. 1872 (2012); *United States* v. *Thompson*, 647 F.3d 180, 186 (5th Cir. 2011); *United States* v. *Vigil*, 523 F.3d 1258, 1264 (10th Cir.), cert. denied, 555 U.S. 886 (2008); *United States* v. *Gotti*, 459 F.3d 296,

Although this Court has not yet passed on the scope of property protected by the Hobbs Act, it has made clear in an analogous context that the term "property" embraces intangible rights as well as tangible things. In *Carpenter* v. *United States*, 484 U.S. 19, 25 (1987), the Court declined to hold that the term "property," as used in the mail fraud statute, 18 U.S.C. 1341, is limited to tangible property. The Court instead noted that intangible "[c]onfidential business information has long been recognized as property" and held that a newspaper "had a property right in keeping confidential and making exclusive use, prior to publication, of the schedule and contents" of such confidential information. *Carpenter*, 484 U.S. at 26; see *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1000-1004 (1984) (for purposes of the Takings Clause, property includes "intangible" right to control confidential business information such as trade secrets). Petitioner is certainly correct (see Br. 24-25) that the term "property" does not encompass all intangible

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323 (2d Cir. 2006), cert. denied, 551 U.S. 1144 (2007); *United States* v. *Pellicano*, 135 Fed. Appx. 44, 46 & n.2 (9th Cir. 2005); *Libertad* v. *Welch*, 53 F.3d 428, 444 n.13 (1st Cir. 1995); *United States* v. *Debs*, 949 F.2d 199, 201-202 (6th Cir. 1991), cert. denied, 504 U.S. 975 (1992); *Northeast Women's Ctr., Inc.* v. *McMonagle*, 868 F.2d 1342, 1350 (3d Cir.), cert. denied, 493 U.S. 901 (1989); *United States* v. *Lewis*, 797 F.2d 358, 364 (7th Cir. 1986), cert. denied, 479 U.S. 1093 (1987); *United States* v. *Local 560 of the Int'l Bhd. of Teamsters*, 780 F.2d 267, 288 & n.23 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986); *United States* v. *Hoelker*, 765 F.2d 1422, 1425 (9th Cir. 1985), cert. denied, 475 U.S. 1024 (1986); *United States* v. *Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980), cert. denied, 450 U.S. 916, 450 U.S. 985, and 452 U.S. 905 (1981); *United States* v. *Santoni*, 585 F.2d 667, 673 (4th Cir. 1978) cert. denied, 440 U.S. 910 (1979); *United States* v. *Franks*, 511 F.2d 25, 32 n.8 (6th Cir.), cert. denied, 422 U.S. 1042, and 422 U.S. 1048 (1975); *United States* v. *Nadaline*, 471 F.2d 340, 344 (5th Cir.), cert. denied, 411 U.S. 951 (1973).

rights. The Court held in *McNally* v. *United States*, 483 U.S. 350, 355, 360 (1987), for example, that the term (as used in the mail fraud statute) does not include a State's intangible right to honest services where the State was not deprived of money, property, or control over its money or property. But the Court in *Carpenter* specifically rejected the argument that *McNally* "limit[ed] the scope of [the mail fraud statute] to tangible as distinguished from intangible property rights," even in a criminal prosecution such as was at issue in *Carpenter*. 484 U.S. at 25.

Nothing in the text or structure of the Hobbs Act indicates a congressional intent to give the term "property" anything other than its traditionally broad meaning. Petitioner argues (Br. 34-35) that the Hobbs Act's prohibition of interference with commerce by "threaten[ing] physical violence to * * * property," 18 U.S.C. 1951(a), requires the Court to limit meaning of property throughout the Act to tangible things. That is not so. It is true that intangible property rights—such as the right to the exclusive use of a patented invention and the right to control the timing of publication of confidential business information—cannot be subject to physical violence. Such forms of property therefore will not form the basis for criminal liability under that particular prohibition in the Hobbs Act. But that does not make them any less property, either in the general sense of the word or as used in the Hobbs Act. If a defendant threatened to kill a newspaper columnist if he did not give the defendant confidential information scheduled for publication the next week, he would surely be guilty of extorting or attempting to extort the columnist even though the confidential information and the right to control its release (both considered property by this

Court in *Carpenter*, see 484 U.S. at 26) are not capable of being harmed through physical violence. The same would be true if the object of the extortion were an intangible such as a copyright, a patent, stock ownership, or a contract right.

Petitioner suggests (see Br. 22) that this Court eschewed a similarly broad definition of property for purposes of the Hobbs Act in *Scheidler* v. *NOW*, 537 U.S. 393 (2003). That is not the case. The Court in *Scheidler* did not address the scope of the word "property" in the Hobbs Act. The Court instead considered whether the property alleged to have been extorted in that case—the intangible right of abortion clinics to exercise exclusive control over their business assets—was "obtain[ed]" within the meaning of the Hobbs Act such that it would support a civil action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.* *Scheidler*, 537 U.S. at 401. The Court held that, even if the defendants had deprived the clinics of a property right, they had not "obtain[ed]" the right, as required by the Act. *Id.* at 405. In so holding, the Court noted that the defendants had "neither pursued nor received 'something of value from' [the clinics] that they could exercise, transfer, or sell," *ibid.* (quoting *Nardello*, 393 U.S. at 290), implying that something of value that could be exercised, transferred, or sold would qualify as property that could be extorted. The Court explicitly declined to address the long line of court of appeals cases (starting with *Tropiano*) holding that the intangible right to make business decisions free of improper influence constitutes property. *Id.* at 402 n.6. And the Court acknowledged its holding in *Carpenter* "that confidential business information constitutes 'property' for purposes of the federal mail fraud statute." *Id.* at 402. The

Court's decision in *Scheidler* certainly sheds light on whether petitioner attempted to obtain property when he attempted to blackmail General Counsel Bierman to change his recommendation to petitioner's liking. See pp. 39-42, *infra*. It does not, however, cast doubt on the longstanding consensus that property in the Hobbs Act includes intangible rights with economic value. See Thomas W. Merrill, *Property and the Right to Exclude,* 77 Neb. L. Rev. 730, 732 (1998) ("[T]here is a consensus that the concept of property includes the rights of persons with respect to both tangible and intangible resources.").

e. A broad interpretation of property is consistent with the common-law crime of extortion

Nothing in the common law of extortion indicates that property in this context was traditionally limited to tangible items. At common law, extortion was limited to corrupt acts by public officials for the performance of official duties. *Evans*, 504 U.S. at 260. Most prosecutions involved the corrupt official's taking of money—but the widespread consensus was that extortion extended to taking any "thing of value." 1 Wm. Oldnall Russell, *A Treatise on Crimes and Misdemeanors* 573-574 (8th ed. 1923) ("*Extortion* * * * signifies the unlawful taking by any officer, by colour of his office, of any money or thing of value."); 2 Joel P. Bishop, *Bishop on Criminal Law* § 401, at 331-332 (9th ed. 1923) ("In most cases, the thing obtained is money. * * * But probably anything of value will suffice."); 3 Francis Wharton, *A Treatise on Criminal Law* § 1898, at 2095 (11th ed. 1912) ("it is enough if any valuable thing is received"); Edward Coke, *The First Part of the Institutes of the Lawes of England*, at 368b (1628) ("Extortion * * * is a great misprision, by wresting or unlaw-

fully taking by any Officer, by colour of his Office, any money or valuable thing."); 4 William Blackstone, *Commentaries* *141 (extortion is "an abuse of public justice, which consists in any officer's unlawfully taking, by colour of his office, from any man, any money or thing of value."). The phrase "thing of value" is today recognized to include intangible rights. See, *e.g.*, *United States* v. *Girard*, 601 F.2d 69, 71 (2d Cir.), cert. denied, 444 U.S. 871 (1979); cf. *Bell* v. *United States*, 462 U.S. 356, 360 (1983).

As this Court has noted, "[a]bsent contrary direction from Congress," the Court "presum[es] that a statutory term has its common-law meaning." *Scheidler*, 537 U.S. at 402. At common law, an official would have been guilty of extortion if he had required a carpenter to pay money (not required by law) to the official in exchange for a license to operate his business. Such an official would surely have been just as guilty of extortion if he had required the carpenter to build a barn behind the official's house rather than to pay money. When it enacted the Hobbs Act, Congress unquestionably expanded extortion by extending it to private actors. But nothing in the Act or its enactment history indicates an intent to jettison the common-law understanding that intangible things of value are capable of being extorted.

2. The right to pursue one's existing business or occupation free from improper interference qualifies as property under Section 1951(b)(2)

The traditional concept of property in our legal system embraces intangible rights with economic value. At the core of those intangible rights protected as property is the right to pursue one's livelihood. The major source of wealth in the lives of most people is their business or job. The right to run a business or to pursue a job with-

out unlawful outside interference is undoubtedly a "thing of value" to everyone who runs a business or has a job. Such a right is therefore property that can be extorted if it is obtained by another through the wrongful use of actual or threatened force, violence, or fear.

a. As noted, before the enactment of the Hobbs Act, this Court had consistently considered intangible rights related to the operation of a business or the employment of one's labor to be property for purposes of the Due Process Clause or the Clayton Act. See, *e.g.*, *Truax*, 257 U.S. at 327 ("Plaintiffs' business is a property right * * * and free access for employees, owner and customers to his place of business is incident to such right."); *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 465 (1921) ("complainant's business of manufacturing printing presses and disposing of them in commerce is a property right, entitled to protection against unlawful injury or interference" from a secondary boycott designed to coerce customers to take their business elsewhere); *Dent*, 129 U.S. at 121-122 ("The interest, or, as it is sometimes termed, the estate acquired in [a source of livelihood]—that is, the right to continue [its] prosecution—is often of great value to the possessor[], and cannot be arbitrarily taken from [him], any more than [his] real or personal property can be thus taken.").

Beginning with *Tropiano*, the courts of appeals have uniformly agreed that a person's intangible right to pursue a business, including the right to make business decisions, is property under the Hobbs Act. See, *e.g.*, *United States* v. *Cain*, 671 F.3d 271, 282 (2d Cir.) (right to solicit accounts), petition for cert. pending, No. 12-9125 (filed Mar. 6, 2013), cert. denied, 132 S. Ct. 1872 (2012); *United States* v. *Thompson*, 647 F.3d 180, 186 (5th Cir. 2011) (a person's "labor * * * qualifies as

'property'"); *United States* v. *Vigil*, 523 F.3d 1258, 1264 (10th Cir.) (right to "decide with whom to work"), cert. denied, 555 U.S. 886 (2008); *United States* v. *Pellicano*, 135 Fed. Appx. 44, 46 & n.2 (9th Cir. 2005) (right of newspaper to decide what to publish); *Doe I* v. *Unocal Corp.*, 395 F.3d 932, 961 (9th Cir. 2002) ("right to make personal and business decisions about one's own labor"); *United States* v. *Stephens*, 964 F.2d 424, 433 n.20 (5th Cir. 1992) (right of towing company to decide when to release impounded vehicle); *Northeast Women's Ctr., Inc.* v. *McMonagle*, 868 F.2d 1342, 1350 (3d Cir.) ("right to continue to operate [a] business"), cert. denied, 493 U.S. 901 (1989); *United States* v. *Lewis*, 797 F.2d 358, 364 (7th Cir. 1986) (right to make "business decisions"), cert. denied, 479 U.S. 1093 (1987); *United States* v. *Hoelker*, 765 F.2d 1422, 1425 (9th Cir. 1985) (right to decide what insurance to purchase), cert. denied, 475 U.S. 1024 (1986); *United States* v. *Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980) (right to solicit business), cert. denied, 450 U.S. 916, and 450 U.S. 985, and 452 U.S. 905 (1981); *United States* v. *Santoni*, 585 F.2d 667, 672-673 (4th Cir. 1978) (right to decide to whom to award a subcontract), cert. denied, 440 U.S. 910 (1979). Courts of appeals similarly agree that property under the Hobbs Act encompasses "the business rights of [labor] unions," including the economically valuable right of union members to democratic participation in union affairs and to the loyal service of their union officials, as guaranteed by the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411. *United States* v. *Debs*, 949 F.2d 199, 201-202 (6th Cir. 1991), cert. denied, 504 U.S 975 (1992); see *United States* v. *Coppola*, 671 F.3d 220, 233-234 (2d Cir. 2012), cert. denied, 133 S. Ct. 843 (2013); *United States* v. *Gotti*, 459 F.3d 296, 324 n.9 (2d

Cir. 2006), cert. denied, 551 U.S. 1144 (2007); *United States* v. *Bellomo*, 176 F.3d 580, 592 (2d Cir.), cert. denied, 528 U.S. 987 (1999); *United States* v. *Local 560 of the Int'l Bhd. of Teamsters*, 780 F.2d 267, 281, 288 & n.23 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

The New York courts that interpreted the pre-1946 extortion law also uniformly agreed that the intangible rights to run a business, to make business decisions, and to labor were rights that qualify as property for purposes of the extortion law. See, *e.g.*, *Short*, 130 N.Y.S. at 700-701 (right to labor "constitute[s] property"); *Hughes*, 32 N.E. at 1107-1108 (property includes continued relationship with customers free from unlawful interference); *Barondess*, 31 N.E. at 241-242 (business and the running of a business qualify as property); see also *People* v. *Cuddihy*, 271 N.Y.S. 450, 453-454 (N.Y. Ct. Gen. Sess. 1934) (noting that a person's right to labor as he will "is his property" and finding no interference with such property when alleged victim agreed to terms of employment).[6]

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[6] The New York courts' early understanding of the breadth of the word "property" in the extortion context also comports with the understanding of other state courts about the general meaning of the term. See, *e.g.*, *Suckow* v. *Board of Med. Exam'rs*, 187 P. 965 (Cal. 1920) (the right to practice medicine or other profession is a property right); *State* v. *Kramer*, 115 A. 8 (Del. 1921) (threats to get someone fired from his job qualify as threats to harm property for purposes of extortion law); *Eden* v. *People*, 43 N.E. 1108 (Ill. 1896) (property includes the labor of a barbershop owner); *Wood* v. *Security Mut. Life Ins. Co.*, 198 N.W. 573, 575 (Neb. 1924) ("Property, in a broad sense, is defined as any valuable right or interest considered primarily as a source or element of wealth, and includes in modern legal systems practically all valuable rights."); *Purvis* v. *Local No. 500, United Bhd. of Carpenters & Joiners*, 63 A. 585, 588 (Pa. 1906) ("The right of a workman to freely use his hands and to use them for just whom he pleases, upon just such terms as he pleases, is his property,

b. Construing property in the Hobbs Act *not* to include the intangible rights to make business decisions and to labor would frustrate one of the core objectives of the Act, *viz.* to fight racketeering. The predecessor to the Hobbs Act was the Anti-Racketeering Act, ch. 569, 48 Stat. 979. See *United States* v. *Culbert*, 435 U.S. 371, 374 (1978). That law was enacted after the Senate Committee on Interstate Commerce thoroughly investigated "rackets" and "racketeering" in the United States. S. Res. 74, 73d Cong., 1st Sess. (1933). The House Report that accompanied the resulting bill (which ultimately became the Anti-Racketeering Act) stated that it was designed "for the suppression of racketeering in interstate commerce" and explained that "the typical racketeering activities affecting interstate commerce are those in connection with price fixing and economic extortion directed by professional gangsters." H.R. Rep. No. 1833, 73d Cong., 2d Sess. 2 (1934).

When Congress replaced the Anti-Racketeering Act with the Hobbs Act in 1946, it broadened the statute's reach by removing an exception to liability for the payment of bona fide wages. See *Culbert*, 435 U.S. at 375 n.5; see also *Enmons*, 410 U.S. at 408 (noting that Congress enacted the Hobbs Act for the limited purpose of "undoing the restrictive impact of" *United States* v. *Local 807 of International Brotherhood of Teamsters*, 315 U.S. 521 (1942)). Although neither the Hobbs Act nor its predecessor reach only racketeering activity, see *Culbert*, 435 U.S. at 374-378, the Act's prohibition against extortion provides a critical anti-racketeering tool. This Court has noted that the crime of "[e]xtortion

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and so in no less degree is a man's business in which he has invested his capital."); *O'Hara* v. *Stack*, 90 Pa. 477 (Pa. 1879) ("A man's profession is his property.").

is typically employed by organized crime to enforce usurious loans, infiltrate legitimate businesses, and obtain control of labor unions." *Nardello*, 393 U.S. at 295 n.13. *Nardello* relied on the 1967 report of the President's Commission on Law Enforcement and Administration of Justice, which explained that organized crime enterprises "acquire[]" "[c]ontrol of business concerns" through, *inter alia*, "using various forms of extortion." *Task Force Report: Organized Crime* 4; *id.* at 5 (when organized crime infiltrates legitimate business, "[s]trong-arm tactics are used to enforce unfair business policy and to obtain customers"). The *Task Force Report* also recognized that racketeers' infiltration of labor unions facilitates extortion of other businesses by enabling the "extorti[on of] money by threats of possible labor strife." *Ibid.*; *id.* at 116 (noting that racketeers used extortion to obtain criminal business monopolies by coercing business owners to sign unfair contracts or intimidating customers, thereby "gaining an exclusive right to [the businesses'] customers").

Hobbs Act prosecutions frequently target extortion that wrests control of the decision-making power of labor unions and legitimate business. If the Court were to adopt petitioner's narrow interpretation of property in the Hobbs Act, the Act would no longer prohibit organized crime enterprises from using force, violence, and threats of harm against unions, businesses, or honest laborers, with a view to usurping control over their economic affairs. Such a result would radically depart from the historic enforcement of the Hobbs Act and the law of extortion generally—and would frustrate Congress's intent.

3. The General Counsel's right to give disinterested legal advice to the State Comptroller in the course of his employment was property

a. Luke Bierman was employed as the General Counsel to the State Comptroller. His job was to provide legal services to his client (the Comptroller), including legal advice and recommendations. His right to provide disinterested legal advice free from unlawful outside influence was property under the Hobbs Act. A lawyer of course plays a distinctive role in rendering advice. But the principle is the same as applied by the New York courts in holding that a house painter's right to do his job and a cloak manufacturer's right to operate its business were property under New York's extortion law. See *Short*, 130 N.Y.S. at 700-701; *Barondess*, 31 N.E. at 240-242. A lawyer's legal opinion, whether presented orally or in writing, is the product that he creates and sells to his client. In the court of appeals' words, the ability to give legal advice is a lawyer's "stock in trade." Pet. App. 8a (quoting *In re San Juan Dupont Plaza Hotel Fire Litig.*, 111 F.3d 220, 237 n.19 (1st Cir. 1997)); see also, *e.g.*, *United States* v. *Jurado*, 996 F.2d 312 (Table), No. 92-2151, 1993 WL 207444, at *2 (10th Cir. June 10, 1993) ("[A] lawyer's stock in trade is his time and advice."); *United States* v. *Bertoli*, 994 F.2d 1002, 1023 (3d Cir. 1993) (same); *United States* v. *Bloom*, 149 F.3d 649, 657 (7th Cir. 1998) (Bauer, J., dissenting) (same).[7]

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[7] It is immaterial that Beirman was a government lawyer instead of a private-sector lawyer. The relationship between the General Counsel and the State Comptroller was no less an attorney-client relationship than that between a private-sector lawyer and his clients. See Proposed Fed. R. Evid. 503(a)(1) (defining the attorney-client privilege to include public entities and officers within its definition of

A lawyer's advice therefore has economic value to the lawyer—it is the source of his livelihood and the labor for which he is compensated. When a lawyer is unable to give his client advice that accords with the lawyer's assessment of the client's best interests and with the requirements of the law, he has nothing of value to sell. A blackmail scheme that deprives a lawyer of his intangible interest in selling his labor deprives the lawyer of his property because it usurps the product that the lawyer uses to earn his livelihood. See *International News Serv.*, 248 U.S. at 236 ("[T]he right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired.").

b. Petitioner's attempts to argue that Bierman has no property interest in his ability to do his job without unlawful interference are unavailing.

First, petitioner argues (see Br. 2, 19, 31-32) that the Court should not even consider whether Bierman's right to make a legal recommendation free from unlawful outside influence is property because the jury's verdict specified that the property petitioner attempted to extort was Bierman's recommendation, not his right to make a recommendation. But Bierman's "recommendation" and his "right to make the recommendation" are merely different expressions of the same property, *i.e.*, his intangible right to give disinterested legal advice to his client. In *Carpenter*, this Court referred to the property at issue as both "[c]onfidential business information" and the "right to decide how to use [such information] prior to disclosing it to the public." 484 U.S. at

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"client"); Restatement (Third) of the Law Governing Lawyers § 74, at 573 (2000) ("[T]he attorney-client privilege extends to a communication of a governmental organization.").

26-27. The recommendation at issue is not the physical piece of paper on which Bierman printed his advice, contrary to petitioner's suggestion (see Br. 26-27). The recommendation is the substance of Bierman's advice, and Bierman's property interest in that advice includes his right to exercise exclusive control over it, *i.e.*, to choose what course of action he will advise his client to take. This Court has long held that "[p]roperty is more than the mere thing which a person owns," but "consists of the free use, enjoyment, and disposal" of what he owns "without control or diminution save by the law of the land." *Buchanan*, 245 U.S. at 74 (quoting 1 William Blackstone, *Commentaries* *134).

Petitioner similarly argues (Br. 35-36) that the Hobbs Act protects "property" but not "property rights" such as are at issue here. This Court long ago rejected such an illogical parsing of the term "property," noting that, even when the property is a tangible thing, the "ordinary, everyday" understanding of the word "property" is not limited to the thing itself but includes "the aggregate of the owner's rights to control and dispose of" the thing. *Crane*, 331 U.S. at 6. Thus, if petitioner had used blackmail to compel Bierman to rent his house to petitioner's mother, he would be guilty of extortion not because he unlawfully obtained Bierman's house, but because he unlawfully obtained Bierman's right to control use of the house. The latter "property right" is no less property than the house itself and plainly falls within the meaning of the term "property" in the Hobbs Act.

Second, petitioner argues that Bierman's recommendation is not property because it cannot be "sold, transferred, or exercised." Br. 26. Petitioner relies on this Court's statement in *Scheidler* that the defendants there had not obtained property under the Hobbs Act because

they had "neither pursued nor received 'something of value from' [the clinics] that they could exercise, transfer, or sell." 537 U.S. at 405 (quoting *Nardello*, 393 U.S. at 290). But in so doing, petitioner confuses the inquiry into whether something is property with the inquiry into whether an extortion defendant has obtained such property. The Court in *Scheidler* assumed for the sake of the opinion that the defendants "may have deprived or sought to deprive" the abortion clinics of property (*i.e.*, "something of value"), but held that "they did not *acquire* any such property." *Ibid.* (emphasis added). The Court viewed as distinct the Hobbs Act's requirements that the object of the illegal scheme be "property" and that the defendant seek to "obtain" such property, and there is no reason to collapse those distinct requirements here.

In any case, petitioner is wrong that Bierman's recommendation was not something that could be exercised. Bierman exercised his right to make a responsible legal recommendation when he advised the Comptroller not to invest in petitioner's company's fund. As discussed at pp. 39-42, *infra*, when petitioner attempted to force Bierman to change that recommendation, he attempted to exercise Bierman's right to make his own recommendation. It is of no moment that the Comptroller may or may not have taken Bierman's advice. See Pet. Br. 26. That is the nature of the product a lawyer sells to his client. Petitioner admits that Bierman was being "pressured to change his opinion." *Id.* at 29. Bierman's right to form his own disinterested legal "opinion" and to deliver that opinion to his client is property and by attempting to unlawfully "pressure[]" him to change it, petitioner was attempting to exercise that right for himself, thereby attempting to obtain

Bierman's property "by wrongful use of * * * fear." 18 U.S.C. 1951(b)(2).

Finally, petitioner is incorrect (Br. 18, 26) that Bierman's recommendation had no "intrinsic value." Petitioner obviously viewed Bierman's recommendation as having value—he sought to exercise it to promote his own economic interest. As the district court explained, the jury had ample reason to conclude that petitioner "believed at the time * * * that the General Counsel's negative recommendation was the reason the Commitment was not going forward," Pet. App. 85a, and that, "if the General Counsel changed his recommendation to approve the Commitment, it would set into motion a series [of] events by which the [Pension Fund's] assets would be invested through FA Technologies as had been done in the past," *id.* at 86a. And the evidence in the record established that petitioner's firm stood to earn more than seven million dollars over the first ten years of the investment. J.A. 147.

In addition, as explained above, Bierman's property right to control his recommendation had intrinsic value *to him* because it was the source of his professional livelihood. His right to make his own recommendation cannot be compared to the unissued video poker licenses at issue in *Cleveland* v. *United States*, 531 U.S. 12, 15 (2000). The Court held that those licenses, while they were in the hands of the State, were not property under the mail fraud statue because the State had a regulatory interest in the licenses, not a property interest. *Id.* at 20. The Court reasoned in part that the State earned nearly all of the revenue from the licenses after their issuance, not while the State had control over them. *Id.* at 22. That is not true of Bierman's recommendation. Bierman was hired by the Comptroller's Office to render

his legal services, including by giving the office his disinterested legal advice. Such advice—and, more to the point, the right to give such advice free of unlawful outside influence—therefore had tangible economic value to Bierman (who obviously had no "regulatory" interest in his own ability to conduct himself as a lawyer).

B. Petitioner Attempted To Use Threats Of Fear To "Obtain" The General Counsel's Right To Make A Recommendation To The State Comptroller Within The Meaning Of The Hobbs Act

1. This Court held in *Scheidler* that a person does not commit extortion under the Hobbs Act when he deprives another of property through the wrongful use of force or threats, but does not obtain that property for himself or another. 537 U.S. at 402-405. The property potentially at issue in *Scheidler* was the abortion clinics' "right of exclusive control of their business assets" and there was "no dispute" that the defendants had "interfered with, disrupted, and in some instances completely deprived respondents of their ability to exercise their property rights." *Id.* at 404-405. But the Court found no extortion because the defendants had not "obtained" (*i.e.*, "gain[ed] * * * possession of") the property at issue. *Id.* at 403-405 & n.8. Because the defendants' ultimate objective was not to "exercise, transfer, or sell" the property at issue, the Court explained, they sought merely to "interfer[e] with or depriv[e]" the clinics of their property, not to obtain it—and had therefore not committed extortion. *Id.* at 405.

This case is not like *Scheidler* because petitioner *did* seek to obtain General Counsel Bierman's intangible property right to give his disinterested legal opinion to his client free of improper outside interference. If the defendants in *Scheidler* had attempted to force the clin-

ics to provide orthopedic services instead of abortion services, or had attempted to shut the clinics down so that defendants could themselves provide abortion-related services to the clinics' patients, they would have committed extortion. The equivalent happened here. The goal of petitioner's blackmail scheme was to replace Bierman's original recommendation with one that petitioner wanted him to make. In so doing, petitioner sought to exercise Bierman's recommendation authority as *petitioner* saw fit, and thereby to usurp Bierman's right to control his own decisions, in violation of the Hobbs Act.

Petitioner asserts that he was simply attempting to "'restrict [Bierman's] freedom of action,' not to acquire his property." Br. 30 (quoting *Scheidler*, 537 U.S. at 405) (alteration in original). His assertion is belied by his own words of blackmail. Petitioner did not attempt to simply restrict Bierman's freedom of action—by, for example, attempting to prevent him from going to work on the day his recommendation was due. Petitioner used threats in an effort to force Bierman to affirmatively "recommend moving forward" with an investment in petitioner's company's fund, J.A. 60; to tell the Comptroller that, based on his review of the files, not investing in the fund would "cause terrible disaster" for the Comptroller's Office, *ibid.*; and to "change [his] recommendation," Pet. Br. 29 (alteration in original). In other words, petitioner attempted to force Bierman to substitute petitioner's preferred recommendation for his own. That is extortion. If petitioner had threatened to burn down a brick-layer's house if the brick-layer did not lay bricks for petitioner's use, there would be no doubt that he would be guilty of extortion. The same would be true if petitioner had threatened to burn down a barber shop

if the barber did not cut his wife's hair for free for a year, or if he had threatened to assault a corporate insider if the insider did not provide him with nonpublic information, or if he had threatened to harm a prosecutor's child if the prosecutor did not secure the indictment of an enemy. In each example, an individual "obtain[s] property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear." 18 U.S.C. 1951(b)(2).

Petitioner also warns that "any effort to interfere with an employer's right to determine which workers to hire and how much to pay them could be characterized as extortion." Br. 49; see *id.* at 52. But the Hobbs Act requires that the requisite interference utilize "actual or threatened force, violence, or fear" to qualify as extortion. 18 U.S.C. 1951(b)(2). The Hobbs Act also requires that the use of such threats, force, violence, or fear be "wrongful." *Ibid.* If a labor union pickets a business that the union perceives to be underpaying its employees, the business owner may be "fear[ful]" that he will lose business and may therefore feel pressure to pay his employees more. But this Court has made clear that the "fear" wrought in the business owner would not be "wrongful" in that situation. In *Enmons*, the Court explained the difference between legitimate and wrongful uses of threats or force: "[I]nstances where union officials threatened force or violence against an employer in order to obtain personal payoffs" or "to exact 'wage' payments from employers in return for 'imposed, unwanted, superfluous and fictitious services' of workers" *do* constitute violations of the Hobbs Act because "the alleged extortionist has no lawful claim to that property." 410 U.S. at 400 (footnotes omitted). By contrast, when a union uses "violence to achieve legiti-

mate union objectives, such as higher wages in return for genuine services which the employer seeks," there is no extortion. *Ibid.*

For the same reason, petitioner goes too far in likening himself to "social protestors" such as "anti-segregationists [who] conducted sit-ins at lunch counters to force restaurateurs to serve African-Americans." Br. 51-52. Those protestors were not seeking property to which they were not entitled. They did not use threats of violence to attempt to coerce restaurant owners to serve them food without charging for it. They did not threaten customers of segregated lunch counters with violence if they patronized such an establishment. And they did not attempt to blackmail anyone to relinquish control of his right to engage in his livelihood free of threats.

2. For decades, federal courts of appeals interpreting the Hobbs Act have routinely found criminal extortion when defendants take control or attempt to take control of the operation of a business or other exercise of a person's livelihood. For example, in *United States* v. *Glasser*, 443 F.2d 994, 997-998, 1007-1008, cert. denied, 404 U.S. 854 (1971), the Second Circuit concluded that a defendant was guilty of extortion when he sprayed acid on plate-glass windows installed in businesses by nonunion glaziers in an effort to force business owners to employ only unionized glaziers. The court concluded that the defendant had obtained, *inter alia*, the property right of nonunion glaziers to seek future plate glass installation contracts. *Id.* at 1007; see *United States* v. *Gambino*, 566 F.2d 414, 416-418 (2d Cir. 1977) (defendant guilty of extortion used violence and threats to control the garbage-collection market by obtaining rival company's property "right to solicit [customer] stops"),

cert. denied, 435 U.S. 952 (1978). The Ninth Circuit has similarly found extortion under the Hobbs Act when the defendants used force to obtain a rival business's property "right to solicit business free from threatened destruction." *Zemek*, 634 F.2d at 1163-1164, 1174. And in *Vigil*, 523 F.3d at 1264, the court of appeals concluded that the defendant had sought to "obtain" his victim's "right to decide with whom to work" by improperly using his official power to force the victim to hire his friend's wife. Petitioner likewise sought to obtain a valuable right belonging to Bierman, and thereby sought to obtain his property.[8]

3. Relying on *Scheidler*, petitioner argues (Br. 36-40) that construing extortion in the Hobbs Act to include the extortion of "intangible rights" and the coerced exercise of such rights would be inconsistent with the history of the Hobbs Act because it would collapse the distinction between the pre-1946 New York state crimes of coercion and extortion. Petitioner is incorrect. As the Court held in *Scheidler*, the distinction between the crimes of coercion and extortion is maintained by the requirement that a defendant *obtain property* through the specified unlawful means in order to commit extortion. As long as the property at issue is capable of being obtained (*e.g.*, exercised), and as long as the defendant's objective is

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[8] Similarly, in *People* v. *Spatarella*, *supra*, New York's highest court upheld the state extortion conviction of a refuse collector who threatened a competitor with physical violence if he did not cease providing services to a particular customer the defendant wanted for his own. The court rejected the defendant's claim that he did not "obtain" any property by means of his threats. 313 N.E.2d at 39-40. The court explained that the defendant's conduct had "deprived [the competitor] of [his] business arrangement [with the customer], the advantage of which was obtained by and accrued to the defendant directly in consequence of his extortive activity." *Id.* at 40.

actually to obtain it, a defendant commits extortion through coercive means. If a defendant's coercive measures involve property that is not capable of being obtained (or no property at all), however, he will by definition not be able to obtain it or attempt to obtain it and cannot commit extortion in relation to it.

It is no surprise that extortion and coercion cases will often resemble each other. The crime of extortion requires a defendant to use coercive means; coercion is therefore a "lesser" offense of extortion, 537 U.S. at 405, just as manslaughter is a lesser offense of murder. Accordingly, "coercion and extortion certainly overlap to the extent that extortion necessarily involves the use of coercive conduct to obtain property." *Id.* at 407-408. Yet the two will not coincide in all cases. By tradition (and statutory definition), extortion is an economically motivated crime; coercion need not be. Some aspects of human relations are not economic in character. If one man uses threats of violence to force a second man to stop dating the first man's sister, he may be guilty of coercion. But because a person's right to choose his romantic partner is not an inherently economic activity, the coercing party is not guilty of extortion. A person's right to engage in his livelihood, by contrast, does have economic value—and when another person uses threats of violence to usurp that right, often (as here) to his own economic benefit or that of a third party, he commits extortion.

As this Court did in *Scheidler*, petitioner identifies (Br. 37-38) three New York state cases affirming coercion convictions of "individuals who * * * employed threats and acts of force and violence to dictate and restrict the actions and decisions of businesses." 537 U.S. at 406 (citing *People* v. *Ginsberg*, 188 N.E. 62 (N.Y.

1933); *People* v. *Scotti*, 195 N.E. 162 (N.Y. 1934); *People* v. *Kaplan*, 269 N.Y.S. 161 (N.Y. App. Div. 1934)). But nothing in those decisions indicates that the defendants at issue could not have been convicted of extortion. Prosecutors choose not to charge defendants with the most serious available offense every day and it is rarely possible to reconstruct the reasons behind such a charging decision based on the appellate decisions that result years later (particularly one-paragraph decisions as in *Ginsberg* and *Scotti*). As in this case, many defendants who engage in the type of blackmail petitioner engaged in could be charged with extortion, coercion, or both. See *Wisch*, 296 N.Y.S.2d at 844-886 (defendant liable for both coercion and extortion for threatening to ruin milk dealer's businesses if they did not agree to fix prices). Petitioner was charged in federal court with extortion and the jury reasonably concluded that he had attempted to use fear and threats to compel Bierman to exercise his valuable property right to make a legal recommendation to his client in the manner petitioner directed.[9]

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[9] Petitioner also relies on a series of cases cited in the Field Code provision defining the then-separate crime of "larceny." Petitioner asserts that those cases—included in the Code as illustrative of "what property may be the subject of larceny," Field Code § 584, at 211—indicate that "'property' to the drafters of the Field Code meant money, tangible things of value, or notes, bills, or other written documents evidencing money or other tangible property." Pet. Br. 39. Petitioner ignores a critical difference between the Field Code's larceny and extortion provisions, however. "Larceny" was defined in the Field Code as "the taking of *personal property* accomplished by fraud or stealth, or without color of right thereto, and with intent to deprive another thereof." Field Code § 584, at 210 (emphasis added). The phrase "personal property" usually refers to tangible items that can be moved from place to place. As explained in this brief, however, the term "property"—the term actually used in the Field Code's

C. Petitioner's Remaining Arguments Are Without Merit

1. Petitioner argues that allowing petitioner to be punished in the federal system for his blackmail attempt implicates "[f]undamental principles of federalism" because the crime he committed was a state crime. Pet. 45. Petitioner's concern is misplaced. This Court rejected a similar "concern about disturbing the federal-state balance" in *Culbert*, finding "no question that" when Congress enacted the Hobbs Act it "intended to define as a federal crime conduct that it knew was punishable under state law." 435 U.S. at 379. In so doing, Members of Congress raised the same objection petitioner raises, *i.e.*, that it would be "a grave interference with the rights of the States" because "the conduct punishable under the Hobbs Act was already punishable under state robbery and extortion statutes." *Ibid.* Congress rejected those objections, "apparently believ[ing], however, that the States had not been effectively prosecuting robbery and extortion affecting interstate commerce and that the Federal Government had an obligation to do so." *Id.* at 379-380.

This Court has recognized that Congress sought through the Hobbs Act "to use all the constitutional power [it] has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone* v. *United States*, 361 U.S. 212, 215 (1960). And that purpose is manifest in the text of the statute, which reaches any robbery or extortionate act that affects commerce "in any way or degree." 18 U.S.C. 1951(a). "[T]he words of the Hobbs Act 'do not lend themselves to restrictive interpretation,'" *Scheidler*, 537 U.S. at 408

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extortion provision, see Field Code § 613, at 220—is much broader and encompasses intangible rights.

(quoting *Culbert*, 435 U.S. at 373), and this Court should reject petitioner's invitation to impose such a restrictive reading on the term "property," as used in the Act.

2. Finally, petitioner also errs in invoking the rule of lenity (or related vagueness principles). Lenity is a tie-breaking rule of statutory construction that applies only if, "at the end of the process of construing what Congress has expressed," *Callanan* v. *United States*, 364 U.S. 587, 596 (1961), "there is a grievous ambiguity or uncertainty in the statute," *Muscarello* v. *United States*, 524 U.S. 125, 139 (1998) (internal quotation marks and citation omitted). Neither "[t]he mere possibility of articulating a narrower construction," *Smith* v. *United States*, 508 U.S. 223, 239 (1993), nor the "existence of some statutory ambiguity" is "sufficient to warrant application of th[e] rule," *Muscarello*, 524 U.S. at 138. Instead, the rule of lenity applies "only if, after seizing everything from which aid can be derived, [the Court] can make no more than a guess as to what Congress intended." *Ibid.* (internal quotation marks and citation omitted). "Lenity applies only when the equipoise of competing reasons cannot otherwise be resolved." *Johnson* v. *United States*, 529 U.S. 694, 713 n.13 (2000). No such equipoise exists here. The term "property" was broadly understood at the time of the enactment of the Hobbs Act to encompass valuable intangible property rights such as a person's right to labor and conduct his profession, and such property rights were viewed as being obtainable through extortionate means. Viewed in context, the term is not ambiguous, and certainly not "grievous[ly]" so.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 18 U.S.C. 875 provides in pertinent part:

Interstate communications

* * * * *

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

2. 18 U.S.C. 1951 provides in pertinent part:

Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.