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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 2, 3 and 4 EAP 2023

LARRY KRASNER, in his official capacity as the
District Attorney of Philadelphia,

Appellant in No. 3 EAP 2023,

v.

SENATOR KIM WARD, in her official capacity as Interim President Pro Tempore of the Senate,

Appellant in No. 4 EAP 2023;

REPRESENTATIVE TIMOTHY R. BONNER, in his official capacity as an impeachment manager; REPRESENTATIVE CRAIG WILLIAMS, in his official capacity as an impeachment manager,

Appellants in No. 2 EAP 2023;

REPRESENTATIVE JARED SOLOMON, in his official capacity as an impeachment manager; SENATOR JAY COSTA, in his official capacity as Minority Leader of the Senate; and JOHN DOES, in their official capacities as members of the SENATE IMPEACHMENT COMMITTEE.

BRIEF OF APPELLANT DISTRICT ATTORNEY LARRY KRASNER

Appeal from the December 30, 2022 Order of the
Commonwealth Court of Pennsylvania at No. 563 MD 2022

Dated: May 22, 2023

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I. INTRODUCTION

The central concern of these appeals is whether the Pennsylvania Constitution empowers the statewide General Assembly to impeach a locally elected prosecutor for his lawful (i.e., non-improper, not corrupt) exercise of his discretionary duties. The Pennsylvania Constitution prohibits this. The General Assembly is permitted only to impeach an official for improper or corrupt conduct; and this statewide body's impeachment powers do not reach locally elected officials. To permit impeachment here would impermissibly allow the General Assembly to effectively override and nullify the results of a local election. These appeals also raise whether, unlike all other business of the General Assembly, the Assembly's impeachment process dies at the end of its two-year term, just like all other General Assembly business.

District Attorney Krasner prevailed in the Commonwealth Court. The *en banc* court concluded that the Amended Articles of Impeachment against him – enacted during a lame-duck session – fail because none "support[s] a conclusion that District Attorney failed to perform a positive ministerial duty or performed a discretionary duty with an improper or corrupt motive." *Krasner v. Ward*, No. 563 M.D. 2022, 2023 WL 164777, at *19 (Pa. Commw. Ct. Jan. 12, 2023) (attached hereto as Appendix B). The Amended Articles therefore "cannot serve as the basis for a constitutionally sound impeachment trial." *Krasner,* 2023 WL 164777, at

*22. The court also rejected the House Managers' and Senate President Pro Tempore's justiciability arguments.

The Commonwealth Court did not accept District Attorney Krasner's two additional Constitutional challenges to the Articles: (1) the impeachment, like all other General Assembly business, died on November 30, 2022 upon the adjournment *sine die* of the 206th General Assembly, and (2) District Attorney Krasner cannot be subject to impeachment by the statewide General Assembly because he is a locally elected official, not a statewide officer,.

The text and structure of the controlling provisions of the Pennsylvania Constitution fully support District Attorney Krasner's challenges. Articles II and VI mandate that the impeachment died when the General Assembly adjourned *sine die* on November 30, 2022. Article II imposes overarching requirements and limits the General Assembly's ability to perform its business, including that the legislature may not carry business over after a newly elected General Assembly takes office. The Commonwealth Court's erroneous finding of a "judicial" business exception to the *sine die* rule cannot stand because it is inconsistent with the text and structure of Articles II and VI, and no Pennsylvania law supports such an exception.

The text of the impeachment provision – Article VI, Section 6 – further limits the General Assembly's impeachment powers to statewide officials, not

local officials such as District Attorney Krasner. That conclusion is reinforced by an analogous determination by Chief Justice Saylor that local officers are not civil officers subject to removal, as well as other supporting law. This fatal flaw arises from the neutral principle that local elections are not subject to approval or nullification through impeachment by the state legislature. Even more sharply, a majority party (Democrat or Republican) in the statewide General Assembly cannot use the impeachment power to try to nullify the election of a local official from the opposing party.

The Court's briefing schedule provides that District Attorney Krasner will address in this brief the issues on which he did not prevail (i.e., (1) and (2) above). Respondents will follow on the issues on which they did not prevail: the Amended Articles do not allege impeachable offenses because they do not allege "misbehavior in office," and their justiciability arguments.

Importantly, the District Attorney's challenge to each of the Articles is consistent with and advances the Commonwealth's and this Court's abiding commitment to fundamental principles of democracy, including this Court's jurisprudence safeguarding the conduct of elections. *First*, the General Assembly cannot through impeachment seek to nullify the election of an official for reasons that essentially amount to policy differences. To impeach, the Constitution requires much more. The General Assembly is required to allege and demonstrate

wrongdoing that rises to the level of "misbehavior in office" (i.e., failure to fulfill a ministerial duty or performance of a discretionary duty with an improper or corrupt motive). Historically, impeachments have been limited to officials who have committed crimes, not efforts by state legislators against officials with whom they have policy differences. Otherwise, a General Assembly majority party could nullify the policy choices made by voters in an election under the guise of "impeachment."

Second, to protect the will of the electorate in each election, Article II and other laws require that all of the General Assembly's business be completed and not carried over from one General Assembly to the next. The attempt to carry over the Articles of Impeachment from the 206th General Assembly to a trial before the 207th General Assembly Senate violates that principle. The members of the 206th were elected in 2020, while the members of the 207th were elected in 2022. Article II and the *sine die* adjournment rule squarely prohibit this. And certainly, neither allows for the "judicial" or impeachment business exception on which the Commonwealth Court relied.

Third, the Constitution and Commonwealth democracy are built on distinct layers of local and statewide government. Consistent with that, the impeachment provision should be read to limit the statewide General Assembly from extending its impeachment power to local officials, particularly elected officials. As

demonstrated below, the text and structure of Article VI, section 6 are consistent with this fundamental principle.

Fourth, it is our courts' job to interpret the Constitution's impeachment provisions. As will be evident from later briefs, Appellee House Managers and Senate President Pro Tempore would have this Court duck the important issues presented in these appeals under various justiciability doctrines that plainly do not apply. The Commonwealth Court did not accept that invitation – which would only empower the General Assembly and ignore the courts' role in the Constitution's checks and balances – and neither should this Court.

A final, *fifth* overarching point: The issues in these appeals are not about progressives versus conservatives or Democrats versus Republicans (or vice versa). A Democratic (or Republican) Party-controlled General Assembly should not be allowed to nullify the election of a Republican (or Democratic)-backed elected local official who did not engage in wrong-doing that is "misbehavior in office" as the Commonwealth Court defined it. Our democracy requires that a local electorate's mandate – whether conservative or reform – be respected, absent an impeachable offense. Thus, while an official can be impeached for exercising discretion based on a corrupt or improper motive, this Court plays the crucial and Constitutionally mandated role of ensuring that the impeachment process respects these fundamental, democratic guardrails.

II. STATEMENT OF JURISDICTION

District Attorney Krasner initiated the underlying action, No. 563 MD 2022, in the Commonwealth Court's original jurisdiction pursuant to 42 Pa. C.S. § 761(a). That court's December 30, 2022 Order is a final order, and appeals therefrom are within this Court's exclusive jurisdiction pursuant to 42 Pa. C.S. § 723(a) and Pa. R. App. P. 1101(a). This Court noted probable jurisdiction of these consolidated appeals (Nos. 2, 3 and 4 EAP 2023) by orders dated March 7, 2023.

III. ORDER IN QUESTION

The Order in question is the Commonwealth Court's December 30, 2022 Order, included in full as Appendix A. District Attorney Krasner appeals the following rulings in that Order:

> 7. District Attorney's Application for Summary Relief is DENIED, and Interim President's Cross-Application is GRANTED, regarding Count I of the PFR, as the General Assembly's power to impeach and try a public official is judicial in nature and, thus, is not affected by the adjournment of the General Assembly or the two-year span of each General Assembly iteration's legislative authority. *See Ferguson v. Maddox*, 263 S.W. 888, 890 (Tex. 1924); *Com. ex rel. Att'y Gen. v. Griest*, 46 A. 505, 506 (Pa. 1900); *In re Opinion of Justs.*, 14 Fla. 289, 297-98 (1872); *accord Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002).
>
> 8. District Attorney's Application for Summary Relief is DENIED, and Interim President's Cross-

> Application is GRANTED, regarding Count II of the PFR, as, in keeping with our extant corpus of case law, all public officials throughout the Commonwealth are subject to impeachment and trial by the General Assembly, regardless of whether they are local or state officials. *See Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155, 1162-64 (Pa. 2007); *id.* at 1162 n.6; *S. Newton Twp. Electors v. S. Newton Twp. Sup'r, Bouch*, 838 A.2d 643 (Pa. 2003); *Allegheny Inst. Taxpayers Coal. v. Allegheny Reg'l Asset Dist.*, 727 A.2d 113 (Pa. 1999); *In re Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995); *Com. ex rel. Specter v. Martin*, 232 A.2d 729, 733-39 (Pa. 1967); (plurality opinion); *id.* at 743-44 (Eagen, J., concurring in part); *id.* at 753-55 (Musmanno, J., separate opinion); *Houseman v. Com. ex rel. Tener*, 100 Pa. 222, 230-31 (1882).

IV. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

These appeals are from an Order of the Commonwealth Court granting in part and denying in part the parties' Cross-Applications for Summary Relief. A motion for summary relief under Rule 1532(b) "is similar to the relief envisioned by the rules of civil procedure governing summary judgment." *Brittain v. Beard*, 974 A.2d 479, 484 (Pa. 2009) (citing official note to Pa. R. App. P. 1532). "[A]n appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion." *Weaver v. Lancaster Newspapers, Inc.*, 926 A.2d 899, 902 (Pa. 2007). All the issues raised in this appeal are questions of law, for which this Court's "standard of review is *de novo* and [its] scope of review is plenary." *Brittain*, 974 A.2d at 483-84.

V. STATEMENT OF THE QUESTIONS INVOLVED

1. Do the Amended Articles of Impeachment carry over from the 206th General Assembly to the 207th General Assembly notwithstanding that the General Assembly's adjournment *sine die* terminates all pending business before the legislature, including impeachment proceedings?

The Commonwealth Court erroneously answered "yes".

2. Is District Attorney Krasner, a locally-elected official, subject to impeachment by the statewide General Assembly as an "other civil officer" pursuant to Article VI, section 6 of the Pennsylvania Constitution?

The Commonwealth Court erroneously answered "yes".

VI. STATEMENT OF THE CASE

A. Statement of Facts

1. The Pennsylvania House of Representatives' Lame-Duck Adoption of Amended Articles of Impeachment and Senate Proceedings against District Attorney Krasner during the 206th General Assembly

The voters of the City of Philadelphia elected Larry Krasner District Attorney of Philadelphia in 2017. They reelected him overwhelmingly in 2021, with 67% of the vote in the Democratic primary and 72% of the vote in the general election. Each time, he ran on a platform that included promises to, among other things, reform the cash bail system and prioritize the prosecution and enforcement of serious crimes over minor ones. Republican politicians in the Commonwealth

frequently attack District Attorney Krasner to rally their political base or raise their political profile.

On October 26, 2022, – two weeks before the 2022 election – Republican Representative Martina White introduced HR 240, a resolution "Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia, for misbehavior in office; and providing for the appointment of trial managers." R.42a ("HR 240"). Representative Torren Ecker sponsored Amendments to HR 240, which were introduced on November 16, 2022, eight days after the election. R.65a ("Amended Articles" or "Amended Articles of Impeachment").[1]

(a) The Amended Articles of Impeachment

The Amended Articles assert seven grounds for impeachment. None alleges that District Attorney Krasner committed a criminal offense, used the power of his office for personal or pecuniary gain, or otherwise acted from a corrupt or improper motive. *See id.* The Amended Articles are the following:

- Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
- Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation

[1] Representative Ecker was a member of the 206th General Assembly's House of Representatives Select Committee on Restoring Law and Order ("Select Committee"), tasked with investigating District Attorney Krasner. The Select Committee issued three reports; none recommended District Attorney Krasner's impeachment.

- Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

- Article IV: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter of *Commonwealth v. Pownall*

- Article V: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter In re: Conflicts of Interest of Philadelphia District Attorney's Office

- Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights

- Article VII: Misbehavior in Office in the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

Three of the Amended Articles (Articles I, VI, and VII) attack District Attorney Krasner's discretionary prosecution policies, approach to criminal justice, and management of the Philadelphia District Attorney's Office ("DAO").

Article II accuses District Attorney Krasner of "Obstruction" of a House Select Committee investigation. The Select Committee issued a subpoena *duces tecum,* and the District Attorney filed a motion to quash and for a protective order in the Commonwealth Court. R.69a-71a. The subpoena sought, among other

things, grand-jury and other privileged materials that if produced could have subjected the District Attorney to criminal penalties. Article II alleges that he refused to comply with the subpoena *duces tecum*. But compliance or noncompliance with a subpoena arising from a House investigation is not part of a district attorney's positive duties or discretionary authority.

Articles III and IV are based on the alleged misconduct of other lawyers in the DAO, not District Attorney Krasner's conduct. R.71a-76a. *See Commonwealth v. Bready*, 286 A.2d 654, 657 & n.4 (Pa. Super. Ct. 1971) (no vicarious liability for the crime of misbehavior in office).

Articles III, IV, and V allege violations of the Rules of Professional Conduct and Code of Judicial Conduct. However, the Pennsylvania Supreme Court has "inherent and exclusive authority" to "govern the conduct of attorneys practicing law within the Commonwealth." *Beyers v. Richmond*, 937 A.2d 1082, 1089, 1090 (Pa. 2007) (citing *Lloyd v. Fishinger*, 605 A.2d 1193, 1196 (Pa. 1992)). The exclusive remedy for a violation of those rules is discipline by the Disciplinary Board of the Supreme Court, not impeachment. 16 P.S. § 1401(o).

Article VI is conclusory and vague. It alleges, without identifying any supporting facts, that District Attorney Krasner violated federal and state victims' rights statutes by "failing to timely contact victims, deliberately misleading victims

and or disregarding victim input and treating victims with contempt and disrespect." R.76a-77a.

The Amended Articles state that, upon their adoption, the Speaker of the House "[s]hall appoint a committee of three members, two from the majority party and one from the minority party, to exhibit the same to the Senate, and on behalf of the House of Representatives to manage the trial thereof." R.78a.

(b) The November 8, 2022 Election and the End of the 206th General Assembly on November 30, 2022

On November 8, 2022, approximately one week before the passage of HR 240, a general election was held for all seats in the 207th General Assembly House of Representatives and one-half of the seats in the Senate. As a result of the election, the majority in the House of Representatives – which had passed the Amended Articles of Impeachment – shifted from Republican to Democratic.[2]

(c) The 206th General Assembly House Passes the Amended Articles of Impeachment

Notwithstanding the election that heralded a change in control of the House – and without District Attorney Krasner having an opportunity to be heard – on

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[2] *See* Marc Scolforo, *Democrats Win Control of Pennsylvania House, End GOP Rule*, ASSOCIATED PRESS (Feb. 7, 2023), https://apnews.com/article/politics-united-states-government-2022-midterm-elections-pittsburgh-4fb6556efcb455b795f2b7c85563c8f8; *see also* Anna Orso, *Pa. Democrats Within Striking Distance of Flipping the State House*, PHILA. INQUIRER (Updated Nov. 9, 2022), https://www.inquirer.com/politics/election/pennsylvania-state-house-democrats-republicans-election-results-20221109.html.

November 16, 2022, HR 240, as amended, passed the House by a vote of 107-85. R.14a. All but one House Republican voted in favor of HR 240. All Democrats voted against it. *Id.*

On November 18, 2022, the Speaker of the House of Representatives of the 206th General Assembly appointed Representatives Craig Williams, Timothy R. Bonner, and Jared Solomon as impeachment managers. The managers exhibited the Amended Articles to the Senate on November 30, 2022.

On the same day, the Senate adopted a Resolution directing the issuance of an impeachment summons to District Attorney Krasner. R.148a. The Resolution set three deadlines for after the General Assembly adjourned on November 30 – the dates for service of the Writ (December 7, 2022), District Attorney Krasner's answer to the Amended Articles (December 21, 2022), and the beginning of the impeachment trial (January 18, 2023). R.149a-50a.

At midnight on November 30, however, the 206th General Assembly ended. *See* Pa. Const. art. 2, §§ 2-4. The 207th session of the General Assembly began the following day (December 1, 2022).

2. Senate Proceedings on the Amended Articles of Impeachment

On December 30, 2022, the Commonwealth Court entered its Order declaring that the Amended Articles fail to satisfy the requirement imposed by Article VI, Section 6. On January 11, 2023, the Senate of the 207th General

Assembly administered an oath to its members for the impeachment trial, but then postponed the trial indefinitely. *See* Pa. Sen. Legislative J. 69-70 (Jan. 11, 2023).

B. Statement of Procedural History

1. Summary of District Attorney Krasner's Petition for Review and Relief Sought

On December 2, 2022, District Attorney Krasner filed a Petition for Review in the Nature of a Complaint for Declaratory Judgment and an Application for Summary Relief before the Commonwealth Court. R.1a. The impeachment managers and the President Pro Tempore of the Senate are respondents. The Senate Minority Leader has intervened in support of District Attorney Krasner.

The Petition for Review pleaded three claims seeking declarations that the impeachment proceedings are unlawful and could not proceed during the 207th General Assembly that began on December 1, 2022. Claim I sought a declaration that District Attorney Krasner is not subject to impeachment because the Amended Articles did not survive the adjournment of the 206th General Assembly legislative session *sine die*. The Pennsylvania Constitution, Pennsylvania precedent, and General Assembly Rules all provide that matters pending before the General Assembly do not carry over from one General Assembly to the next.

Claim II sought a declaration that District Attorney Krasner is not subject to impeachment because the Pennsylvania Constitution does not authorize the General Assembly, whose members are elected statewide, to impeach a locally

elected official such as the Philadelphia District Attorney. Article VI, section 6, limits the scope of impeachment, stating: "the Governor and all other civil officers shall be liable to impeachment for any misbehavior in office…." Section 6's plain text and the legislative history of the constitutional provisions demonstrate that Article VI does not apply to local officials. Additionally, as explained by Chief Justice Saylor in his concurrence in a decision interpreting the Constitution's removal provision (*Burger v. School Board of McGuffey School District*), a civil officer is limited to "state-level officials" – not local officials – as state-level officials "were almost exclusively in view when then-Section 4 of Article VI was framed." 923 A.2d 1155, 1167 (Pa. 2007) (Saylor, J., concurring).

Claim III sought a declaration that District Attorney Krasner is not subject to impeachment because the Amended Articles do not allege that he engaged in "any misbehavior in office." This Court has interpreted that phrase, in the context of removal, to be conduct that would violate the common law criminal offense of "misbehavior in office": an officer's "failure to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." *See In re Braig*, 590 A.2d 284, 286 (Pa. 1991). The Amended Articles cannot serve as a basis for a constitutionally sound impeachment trial because they expressly state that they are not based on this interpretation of misbehavior in office, R.59a, and do not plead facts that show this occurred.

Each of these three claims is an independent ground for the same relief: a declaration that the Amended Articles are null and void and, as a result, any effort to take up the Amended Articles or related legislation is unlawful.

Respondents Bonner and Williams filed Preliminary Objections to the Petition for Review on the basis that those three claims were not justiciable. R.242a. Respondent Solomon filed a Notice of Intent Not to Defend in Lieu of Answer on December 12, 2022. Respondent Senator Ward filed a Cross-Application for Summary Relief on all three of District Attorney Krasner's claims. R.357a.

2. The Commonwealth Court Grants District Attorney Krasner's Application that the Amended Articles of Impeachment Fail to Satisfy the Constitutional Standard of "Any Misbehavior in Office" (Claim III), But Denies the Application as to the *Sine Die* and Civil Officer Claims (Claims I and II)

The court *en banc* heard argument on December 29, 2022, and entered its Order the next day. The December 30 Order granted District Attorney Krasner's Application for Summary Relief on Claim III:

> None of the Amended Articles of Impeachment satisfy the requirement imposed by Article VI, Section 6 of the Pennsylvania Constitution that impeachment charges against a public official must allege conduct that constitutes what would amount to the common law crime of "misbehavior in office," i.e., failure to perform a positive ministerial duty or performance of a discretionary duty with an improper or corrupt motive, as well as because Article I and VII improperly challenge District

> Attorney's discretionary authority, and Articles III, IV, and V unconstitutionally intrude upon the Supreme Court's exclusive authority to govern the conduct of all attorneys in this Commonwealth, including the District Attorney.

App. A, Dec. 30, 2022 Order ¶ 9 (case citations omitted). The Commonwealth Court granted substantially the relief he sought: a declaration that the Amended Articles "cannot serve as the basis for a constitutionally sound impeachment trial." *Krasner*, 2023 WL 164777, at *22.

However, the court denied District Attorney Krasner's Application for Summary Relief with respect to Claims I and II and granted Senator Ward's Cross-Application on those two issues. With respect to Claim I, the Commonwealth Court declared, "the General Assembly's power to impeach and try a public official is judicial in nature and, thus, is not affected by the adjournment of the General Assembly or the two-year span of each General Assembly iteration's legislative authority." App. A, Order ¶ 7 (case citations omitted). With respect to Claim II, the Commonwealth Court stated, "in keeping with our extant corpus of case law, all public officials throughout the Commonwealth are subject to impeachment and trial by the General Assembly, regardless of whether they are local or state officials." *Id.* ¶ 8 (case citations omitted).[3]

[3] The Commonwealth Court's December 30 Order correctly decided the other issues before the Court, including its decisions (i) overruling Respondent Bonner and Williams'

The Commonwealth Court (Ceisler, J.) issued an opinion supporting the December 30 Order on January 12, 2023. *See Krasner v. Ward*, No. 563 M.D. 2022, 2023 WL 164777 (Pa. Commw. Ct. Jan. 12, 2023) (attached hereto as Appendix B). The Court reasoned that "each of the Amended Articles meets constitutional muster only if the assertions made therein would support a conclusion that District Attorney failed to perform a positive ministerial duty or performed a discretionary duty with an improper or corrupt motive." *Id.* at *19. For instance, the Court rejected several Articles because the fact that "the House simply appears not approve of the way District Attorney has chosen to run his office," or disagrees with "his policy decisions and prosecution choices," is not "misbehavior in office." *Id.* at *20, *21; *see also id.* at *20 ("such disagreements, standing alone, are not enough to create a constitutionally sound basis for impeaching and removing District Attorney"). Judge Wojcik authored a concurring opinion[4]; Judge McCullough dissented. *See id.* at *22, *26.

Preliminary Objections on the basis of justiciability, and (ii) denying Respondent Ward's Cross Application for Summary Relief on the basis that the Senate and Senate Impeachment Committees are indispensable parties. This last decision (ii) has not been appealed. Pursuant to the Court's briefing schedule, District Attorney Krasner will address in his next brief why the Commonwealth Court's Order regarding (i) and Claim III should be affirmed.

[4] In his concurrence, Judge Wojcik opined that the House did not have authority to consider whether District Attorney Krasner violated the Rules of Professional Conduct and the Code of Judicial Conduct, as alleged in Articles III, IV, and V. *Id.* at *26. Although he joined the December 30 Order, he stated in his concurrence that he had since concluded that the District Attorney's challenges to the other Amended Articles "present nonjusticiable political questions." *Id.* at *27. Nonetheless, the court's December 30 Order controls and is not modified by Judge

On January 26, 2023, Respondents Bonner and Williams filed a Notice of Appeal. On February 8, 2023, District Attorney Krasner filed a cross-appeal of the portions of the Commonwealth Court's order that denied relief on Claims I and II of his Petition for Review. Senator Ward filed a notice of cross-appeal on February 9 from the Commonwealth Court's disposition of Claim III.[5]

VII. SUMMARY OF ARGUMENT

District Attorney Krasner prevailed before the Commonwealth Court because it correctly concluded that none of the Amended Articles satisfies the requirements of Article VI, Section 6 of the Constitution. As designated Appellant, this opening brief addresses not that ruling, but instead the Commonwealth Court's denial of relief on District Attorney Krasner's two alternative bases for challenging the General Assembly's impeachment process: that the General Assembly's impeachment business expired on November 30, 2022, when the General Assembly adjourned *sine die*, and therefore the General Assembly cannot proceed with a Senate trial (Claim I); and District Attorney Krasner is a local official, not subject to impeachment by the statewide General

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Wojcik's concurring opinion. *Cohen v. Jenkintown Cab Co.,* 446 A.2d 1284, 1289 n.8 (Pa. Super. Ct. 1982) ("[I]t is the order, and not the opinion, which is controlling.… The [subsequent] opinion cannot be treated as an attempt to modify the original order.").

[5] Respondents Bonner and Williams filed appeals first, followed by District Attorney Krasner's cross-appeal notice. This Court designated District Attorney Krasner as appellant in an order dated April 20, 2023.

Assembly (Claim II). The Commonwealth Court erred as a matter of law in denying Claims I and II.

Article II of the Constitution mandates that all pending business before the General Assembly expires at the end of the Assembly's two-year cycle when it adjourns *sine die*. This Article II requirement governs Article VI impeachment proceedings and mandates that all of the General Assembly's business – legislative and judicial – cannot be held over from the 206th General Assembly for trial in the Senate of the 207th General Assembly. The text and structure of the Constitution precludes a "judicial" business exception to the *sine die* rule like the one created by the Commonwealth Court. That court's finding such an exception is legal error.

The Commonwealth Court also erred in concluding that the District Attorney is a "civil officer" subject to impeachment by the General Assembly under Article VI, section 6, because he is a local official, not a statewide official. Section 6 limits impeachment to "[t]he Governor and all other civil officers," and limits the impeachment remedy to disqualification from holding office "under this Commonwealth." Pa. Const. art. VI, § 6. The only "civil officer" referenced in Section 6 is the Governor, a statewide officeholder. Basic principles of constitutional construction provide that the "catch-all" phrase "all other civil officers" is limited to officeholders similarly situated to the specific example given, the Governor, that is, statewide officers. Additionally, section 6 allows for

the disqualification of impeached officers only from holding *statewide* offices (offices "under this Commonwealth"). It would make no sense to allow impeachment of locally elected officers but permit them to hold local, but not statewide, offices.

It is true that, in previous cases, this Court has applied Section 7 of Article VI – which provides for removal of "[a]ll civil officers" upon conviction of certain crimes – to locally elected officers. But, as Chief Justice Saylor stated in his 2007 concurrence in *Burger v. School Board of McGuffey School District*, "state-level officials were almost exclusively in view when then-Section 4 [now Section 7] of Article VI was framed," and it should not be applied to local officials. 923 A.2d 1155, 1167 (Pa. 2007) (Saylor, J., concurring). We urge this Court to adopt this interpretation of Article VI and conclude that a local officer is not subject to impeachment under section 6.

Sound policies and fundamental principles of democratic self-rule highlight the Commonwealth Court's errors in its *sine die* and civil officer rulings. As to *sine die*, allowing business to carry over from one General Assembly to the next would disrupt the alignment of elections required by the Constitution. The November 2020 election elected the members of the 206th General Assembly's House and Senate; and the November 2022 election elected the members of 207th General Assembly. To allow the impeachment business to carry over from the

206th to the 207th General Assembly impermissibly allows legislators elected in two different elections at two different times to address the same impeachment business, i.e., the Amended Articles of Impeachment.

That the impeachment power of the statewide legislature is limited to officials of the same, statewide level is also consonant with the Commonwealth's democratic structure. Allowing otherwise – as the Commonwealth Court held – would permit statewide legislators with no connection to a region to nullify the local election in that region.

VIII. ARGUMENT

A. The Commonwealth Court Erroneously Concluded that the Amended Articles of Impeachment Did not Expire Upon the Adjournment *Sine Die* of the 206th General Assembly Based on a Novel and Unsupported Exception for "Judicial" Powers

Pending business before the General Assembly's two legislative bodies – the House and the Senate – terminates upon the adjournment *sine die*[6] of the General Assembly. Pending matters are prohibited from being carried over from one General Assembly to the next. Thus, the business pending before the 206th General Assembly's Senate, which included the Amended Articles and the

[6] "The term '*sine die*' means 'without day,' and a legislative body adjourns *sine die* when it adjourns 'without appointing a day on which to appear or assemble again.'" *Creamer v. Twelve Common Pleas Judges*, 281 A.2d 57, 65 (Pa. 1971); *see also* P. Mason, Manual of Legislative Procedures § 445(4), at 311 (1970) ("A motion to adjourn *sine die* has the effect of closing the session and terminating all unfinished business before the House, and all legislation pending upon adjournment *sine die* expires with the session").

proceedings that were to follow, died on November 30, 2022. Thereafter and now that the 206th General Assembly has ended, the Amended Articles – which were never tried – are null and void. The new Senate formed on December 1, 2022, in the 207th General Assembly cannot take them up and conduct an impeachment trial.

Nonetheless, the Commonwealth Court's December 30 Order concluded that there are two different kinds of business that the General Assembly conducts: legislative business, which the court acknowledges died on November 30; and business that is "judicial in nature," which according to the court, did not die. App. A, Order ¶ 7. But there is no basis for a "judicial" business exception. It is not in the text of the Constitution. It is also inconsistent with the structure of the Constitution. Unsurprisingly, there are no decisions interpreting Pennsylvania law that support this judicial business exception. Thus, because the General Assembly adjourned *sine die* on November 30, 2022, all pending business – including the Amended Articles of Impeachment – terminated on that date, and the new, 207th General Assembly is prohibited from taking them up.

1. Pennsylvania Law Expressly Provides that *All* Pending Business of the General Assembly Terminates Upon Adjournment *Sine Die* and Recognizes no Exception for "Judicial" Matters

The text of the Constitution is the starting point.[7] It is clear: (1) each General Assembly continues for only two years, at the end of which all pending business expires; (2) impeachment proceedings are business of the General Assembly; and (3) there is no judicial or impeachment powers exception. The structure of the Constitution, as well as the case law, further support these conclusions.

(a) The General Assembly Exists for Two Years, at the End of Which All Pending Business Terminates

Article II of the Pennsylvania Constitution mandates that the General Assembly exists for two years, at the end of which all pending business terminates. It states, "[m]embers of the General Assembly shall be chosen at the general election every second year;" "Senators shall be elected for the term of four years and Representatives for the term of two years;" and "[t]he General Assembly shall be a continuing body during the term for which its Representatives are elected." Pa. Const. art. II, §§ 2-4. At the end of those two years, the General Assembly adjourns *sine die*. *See Scarnati v. Wolf*, 173 A.3d 1110, 1114 n.4 (Pa. 2017) ("An

[7] As the Commonwealth Court acknowledged, "the polestar of constitutional analysis undertaken by the Court must be the plain language of the constitutional provision at issue." *Krasner*, 2023 WL 164777, at *9 (quoting *In re Bruno*, 101 A.3d 635, 659 (Pa. 2014)).

adjournment *sine die* 'end[s] a deliberative assembly's or court's session without setting a time to reconvene.'") (citing, e.g., Black's Law Dictionary 44 (8th ed. 2004)); *Frame v. Sutherland*, 327 A.2d 623, 627 (Pa. 1974).

In other words, the Pennsylvania Constitution limits the General Assembly to a "continuing body" for only two years. The 206th General Assembly terminated on November 30, 2022, when it adjourned *sine die*. It was not a "continuing body" thereafter, and its business did not carry over. The text of these provisions does not distinguish between legislative and judicial business.

Precedent likewise firmly establishes that all pending business terminates when the General Assembly adjourns *sine die* at the end of its two-year term. *See* Robert E. Woodside, PENNSYLVANIA CONSTITUTIONAL LAW 274-75 (1985) ("If the legislature adjourns *sine die* during the second annual session that terminates all business pending before it."). In *Frame v. Sutherland*, for example, this Court recognized the general principle that, upon adjournment, "unenacted bills pending at the end of a session expired, requiring reintroduction and repassage of the bill in the originating house in order to obtain consideration by the other house." 327 A.2d at 627. In *Brown v. Brancato*, moreover, this Court ruled that a select committee established by the House, and any powers granted to that committee, ended with adjournment. 184 A. 89, 93 (Pa. 1936). Our research has uncovered no authority interpreting Pennsylvania law – including these decisions –

distinguishing between legislative and judicial business or powers in determining the effect of *sine die* adjournment, or holding that while legislative business dies at the end of a General Assembly, so-called "judicial" business does not.

Hence, just as *Frame* and *Brown* observed that the General Assembly's activities come to an end at the end of each session, the expiration of the 206th General Assembly terminated the pending Amended Articles of Impeachment.

(b) Impeachment Proceedings Are Business of the General Assembly Subject to the General Rules in the Constitution Governing How the Legislature Conducts Business

The structure of Articles II and VI further demonstrates that impeachment proceedings are business of the General Assembly that dies upon *sine die* adjournment, just like any other business of the legislature. As noted, Article II provides that the business of the General Assembly's House and Senate terminates at the end of a General Assembly's two-year cycle. Article VI governing impeachment grants the Article II Senate and the House impeachment-related powers. It says: "The House of Representatives shall have the sole power of impeachment," and "All impeachments shall be tried by the Senate." Pa. Const. art. VI, §§ 4, 5 (emphasis added). Crucially, "[t]he House of Representatives" and "the Senate" referred to in Article VI are the legislative bodies described in Article II. *See Brouillette v. Wolf*, 213 A.3d 341, 364 (Pa. Commw. Ct. 2019) ("[W]here two provisions of our Constitution relate to the same subject matter, they are to be

read *in pari materia*." (quoting *Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008))).

It follows necessarily that the Article VI impeachment business of the House and Senate are circumscribed by their Article II authority. And because Article II imposes the *sine die* adjournment rule, Article VI impeachment business is governed by the *sine die* rule.

This structural point – that Article II limits are a part of the Article VI impeachment process – is clearly correct. Article II includes provisions concerning the election, qualification, compensation, privileges, and terms of members. *See* Pa. Const. art. II, §§ 2, 3, 5–8, 15. These provisions apply to members of the House and Senate performing all of their business, whether legislative or impeachment. For instance, Article II requires that members of the House and Senate must be at least 21 and 25 years of age, respectively. *Id.* § 5. The Article II age requirements surely apply to House and Senate members engaged in Article VI impeachment business, even though Article VI does not expressly incorporate Article II. There is no exception to these eligibility requirements for legislators involved in the impeachment process.[8] In the same

[8] Article II imposes several other general requirements on action by the General Assembly, including that certain crimes make one ineligible to serve (section 7), a quorum requirement (section 10), and legislative speech-and-debate immunity (section 15). If the Court were to hold that Article II does not apply to impeachment proceedings, the Senate could include

way, the Article II *sine die* limitation must apply to Article VI impeachment. Nothing in the Constitution says – directly or indirectly – that some <u>but not all</u> of the provisions of Article II apply to Article VI impeachment. The Commonwealth Court's holding that there is some "judicial" exception is therefore directly contrary to Article II.

That this conclusion is indisputably correct is further reinforced by the fact that, where the Constitution includes special rules governing legislative business (as compared to other business such as impeachment or "judicial" business), the drafters included those provisions in a separate article, Article III. Article III (Legislation), Part A, sets forth the "Procedures" for the enactment of legislation, and Parts B-E concern specific subjects of legislative authorization and impose certain limits on legislative power. Those provisions apply only to legislation, not impeachment. Put another way, when the Constitution creates different rules for legislative or other business (say, impeachment), it expressly does that. But no text excepts Article VI impeachment from Article II requirements.

Finally, case law confirms that the general provisions of Article II governing the General Assembly's procedures apply to all business, including "judicial"

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convicted-criminal members in the trial and decide the trial without quorum, but members would be subject to arrest or liability for comments during those proceedings. That cannot be the correct construction of the Constitution.

functions. In *Commonwealth v. Costello*, the Court of Quarter Sessions held that a committee established by the Senate that was judicial in nature could not continue past adjournment. *Commonwealth v. Costello*, No. 315, 1912 WL 3913, at *6 (Pa. Quar. Sess. Mar. 15, 1912). That Senate committee was formed to "investigate any charges … between legislative sessions, against any judges or other persons holding a civil office in this commonwealth, of any immoral or dishonest conduct…." *Id.* at *1. The court concluded that this resolution "had no proper legislative purpose" and instead empowered the committee to exercise duties that "are strictly judicial in character." *See id.* at *4. The resolution also required a report to the *next* General Assembly. The court observed, "[w]hile it is true that one-half of the present senators may hold over and so become members of the next general assembly, the latter may wholly refuse to receive the commission's report, since each legislature is organized as a body distinct from the legislatures that have preceded it or that may follow it, and is not bound by the acts, purposes or intentions of its predecessors…." *Costello*, 1912 WL 3913, at *4. Nonetheless, the court held that, although the commission was judicial in character, adjournment *sine die* terminated its authority. *Id.* at *6 ("[S]ince each house by itself lacks full general power of legislation, an express constitutional warrant is necessary to

authorize its committees to make investigations after the legislature has adjourned *sine die*.").[9]

(c) The Constitution Provides No Basis for a "Judicial Powers" Exception for Procedures Applicable to Impeachment

The Constitution's text does not create a judicial or impeachment exception to the *sine die* rule. As demonstrated above, the Constitution's structure demonstrates in two ways that there is no such exception: (1) Article II's requirements apply to Article VI impeachment; and (2) when the Constitution carves out different rules for certain business it expressly says that, as Article III does for legislation. Decisions interpreting Pennsylvania law are all consistent with those conclusions.

Nonetheless, the Commonwealth Court found a "judicial" business exception. And it did so even after acknowledging, "nothing explicit or specific in the Pennsylvania Constitution … addresses either the temporal limits of [the General Assembly's] judicial powers, in general, or the effect the termination of

[9] Other Pennsylvania courts have applied this principle to hold that bodies that expire or adjourn *sine die* are divested of authority to take official action. *See Commonwealth v. Thompson*, 1896 WL 3895, at *2 (Ct. Quar. Sess. Venango Cnty. 1896) ("[C]ourts of common law have the power to vacate judgment during the term in which they were rendered" until it is "adjourned *sine die*") (citing *Ex parte Lange*, 85 U.S. 163 (1873)); *Order of Solon v. Gaskill*, 43 A. 1085 (Pa. 1899) (corporation that "omitted to elect any new officers, and adjourned *sine die*" "ceased to exist," and "[t]he meeting of a minority party the next day was without authority and all its acts were void"); *In re Crawford's License*, 33 Pa. Super. 338 (1907) (holding liquor-license court erred in granting post-adjournment application) (applying statute).

one iteration of the General Assembly and the beginning of a new one." *Krasner*, 2023 WL 164777, at *11. The Commonwealth Court wrote: "the General Assembly's *impeachment* powers are not the same as its *legislative* powers." *Id.* at *11 (emphasis added); *see also id.* ("The restrictions imposed by the Pennsylvania Constitution upon the General Assembly's legislative powers therefore do not apply to its judicial powers of impeachment, trial, and removal."). It is of course true that the activities involved with impeachment and enacting legislation have differences. But that simply restates the conclusion and fails to grapple with the text and structure of the Constitution, including that Article VI impeachment powers must be read in conjunction with the requirements and rules imposed by Article II, as discussed above.

What Pennsylvania case law the Commonwealth Court relied upon also does not support its conclusions. In *Commonwealth ex rel. Attorney General v. Griest*, 46 A. 505 (Pa. 1900), for example, this Court held that the procedure for amending the Constitution did not require the Governor's approval, and the Court could not engraft that requirement where the Constitution expressly establishes a procedure for amendment that does not include presentment to the Governor. *Id.* at 506. Crucially, the Court found that the Constitutional amendment process was not required to follow the same steps as the process for ordinary legislation because the text of the Constitution expressly provided for a different process. Additionally,

there was no challenge in that case to the General Assembly's constitutional authority to carry out a power following its termination as a continuing body. Thus, *Griest* teaches that different rules are to apply to different proceedings in the General Assembly when the text of the Constitution says so.[10]

That does not support a judicial or impeachment exception. The Article VI impeachment provision provides "[a]ll impeachments shall be tried by the Senate", Senators must be under oath for the trial, and conviction cannot result without the concurrence of at least two-thirds of the members present. Pa. Const. art. VI, § 5. Unlike the conflict between the presentment requirements for ordinary legislation and the provision for amendments that expressly delineates a different procedure, there is no conflict between Article II's *sine die* adjournment rule and Article VI's impeachment provisions. Nor does Article VI expressly exempt the Senate from all of the Article II requirements.

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[10] The Commonwealth Court also cited *Mellow v. Pizzingrilli*, 800 A.2d 350 (Pa. Commw. Ct. 2002), which similarly concerned a challenge to a constitutional amendment. *Mellow* is inapplicable for similar reasons as *Griest*. Applying *Griest*, the *Mellow* court concluded that "the provisions of Article III relating to the enactment of legislation" do not apply to constitutional amendments, which are not "laws" for purposes of Article III. 800 A.2d at 359. Neither *Griest* nor *Mellow* involved a conflict between Article II, which applies generally to all powers of the General Assembly, and the amendment procedures.

2. The General Assembly's Rules Confirm that All Business Expires at the End of Each Two-Year Term

The Rules of the General Assembly further confirm that the House and Senate impeachment business ended with the 206th General Assembly on November 30, 2022.[11] The Legislative Procedure Manual explains the constitutional principle that the General Assembly is a "continuing body" for only two years, ending on November 30 of even-numbered years. *See* 101 Pa. Code § 7.21(a) ("The General Assembly is a continuing body during the term for which its Representatives are elected which begins on December 1 of each even-numbered year and ends at the expiration of November 30 of the next even-numbered year."). The legislature is authorized to carry over business only from the first regular (i.e., one year) session to the second regular session. *Id.* § 7.21(b) (emphasis added) ("*All matters* pending before the General Assembly upon the adjournment *sine die* or expiration of a first regular session maintain their status and are pending before the second regular session."). These rules draw no distinction between legislative, judicial, or other matters.

[11] These Rules are relevant only as confirmation of the clear constitutional text and consequent case law; District Attorney Krasner does not (and need not) contend that the Senate violated its rules, nor does he seek an order requiring the Senate to follow its rules. Thus, the Commonwealth Court's comment – "the Senate's violation of its own internal procedural rules would not in this instance give this Court the ability to rule in District Attorney's favor regarding Count I," *Krasner*, 2023 WL 164777, at *12 n.13 – does not address his argument.

Senate Rule 12(j) reaffirms this same principle. It emphasizes that all matters pending before the Senate upon the expiration of the second regular session are no longer "pending" in the new session.

> All bills, joint resolutions, resolutions, concurrent resolutions or other matters pending before the Senate upon the recess of a first regular session convening in an odd-numbered year shall maintain their status and be pending before a second regular session convening in an even-numbered year but not beyond adjournment *sine die* or November 30th of such year, whichever first occurs.

Pennsylvania Senate Rule 12(j) (emphasis added); *see also Mason's Manual of Legislative Procedures* § 445.4 (2020) ("motion to adjourn *sine die* has the effect of closing the session and terminating *all unfinished business* before the house." (emphasis added)).[12] These provisions do not distinguish "judicial" from any other matters.

3. Policy Justifications for the *Sine Die* Rule Apply to *Any* Act of the Legislative Branch.

Application of Pennsylvania's *sine die* rule to impeachment is further supported by strong policy justifications. The General Assembly's official acts – whether carried out by the House, Senate, or the two chambers concurrently –

[12] The Senate Rules provide that the rules in Mason's Manual "shall govern the Senate in all cases to which they are applicable, and in which they are not inconsistent with the Standing Rules, Prior Decisions and Orders of the Senate." Pa. Sen. Res. 3, R. 26 (Jan. 5, 2021); *see also* 101 Pa. Code § 7.32 ("Mason's Manual of Legislative Procedure is the parliamentary authority of the Senate….").

express the will of the electorate that voted them in to office. In the ordinary course – and as everyone agrees is the case for legislative business – the 2020 election selected legislators comprising the 206th General Assembly (the entire House and half of the Senate). The 2022 election selected the next General Assembly – the one that governs after November 30, 2022.

Critically, to allow the 206th General Assembly to dictate the business of the 207th would undermine the power of the 2022 election that selected the 207th General Assembly legislators. A 2020 election is different from a 2022 election. It involves different voters, candidates, and issues of importance to voters. Allowing the 206th General Assembly elected in 2020 to bind the 207th General Assembly elected in 2022 by forcing it to continue with the 206th's unfinished business would undermine the 2022 election.

Relatedly, one chamber of the prior General Assembly must not be able to compel action in the other chamber of the subsequent General Assembly. For the actions of the General Assembly to reflect the will of the voters of Pennsylvania, they must be passed by the House and Senate of the same General Assembly.

The *sine die* rule is a basic constitutional principle of Pennsylvania legislative procedure. As the Court has observed, Pennsylvania recognizes the longstanding principle "that no action taken by [a] governing body" in an exercise of its governmental powers "is binding upon its successor … because they may not

lawfully circumscribe the legislative powers of their successors" – even if there is overlap between officials in the predecessor and successor government body. *McCormick v. Hanover Twp.*, 92 A. 195, 196 (Pa. 1914); *see also Commonwealth ex rel. Fortney, for Use of Volunteer Fire Dep't of Coal Twp., Northumberland Cnty. v. Bartol*, 20 A.2d 313, 314 (Pa. 1941) (a legislature "cannot, by ordinance or resolution, make it obligatory upon a future body to pass an ordinance"). This applies equally to a General Assembly committee that is "judicial in character," which cannot bind a successive legislature to take action. *Costello*, 1912 WL 3913, at *4 ("[E]ach legislature is organized as a body distinct from the legislatures that have preceded it or that may follow it, and is not bound by the acts, purposes or intentions of its predecessors….").

This must apply to impeachment, as any other rule would allow a predecessor House to not just "circumscribe" consideration of, but obligate a successor Senate to try, impeachments under Article VI. Thus, applied here, neither the Senate nor the House of the 206th General Assembly could "circumscribe" the powers of 207th General Assembly's Senate by obligating it to try District Attorney Krasner's impeachment. Any so-called "judicial power" exception has no roots in the Pennsylvania Constitution, case law, or wise public policy.

Sometimes, lawyers need to make up hypotheticals to drive home their point. Not here. The majority in the House of Representatives changed from Republican in the 206th General Assembly to Democratic in the 207th General Assembly.[13] That led to the change in leadership of the House.[14] Thus, there is a genuine difference between the two General Assemblies; not just that they are the result of different elections but that those elections changed the leadership of the House. Indeed, House Manager Respondents Bonner and Williams were appointed by the leadership from the 206th General Assembly that was rejected by the voters in the 2022 election.

4. The Commonwealth Court Erred by Relying on Inapposite, Nonbinding Authorities from Other Jurisdictions

Setting aside the text and structure of the Pennsylvania Constitution, the Commonwealth Court's opinion took a wrong turn in relying on case law from outside Pennsylvania and unspecified "British history, [] compendiums of parliamentary authority, [] a nearly 110-year-old opinion from the Pennsylvania Attorney General, and [] a litany of prior impeachment proceedings at the federal level … [and in] Pennsylvania and other states. " *Krasner*, 2023 WL 164777, at

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[13] *See* Marc Scolforo, *Democrats Win Control of Pennsylvania House, End GOP Rule*, ASSOCIATED PRESS (Feb. 7, 2023), https://apnews.com/article/politics-united-states-government-2022-midterm-elections-pittsburgh-4fb6556efcb455b795f2b7c85563c8f8.

[14] *See* Pa. House Democrats, *PA House Elects Rep. Joanna McClinton to Serve as House Speaker* (Feb. 28, 2023), https://www.pahouse.com/InTheNews/NewsRelease/?id=127797.

*11. The Commonwealth Court erred in rejecting Pennsylvania's Constitution in favor of these ancient and foreign precedents.

First, past Pennsylvania impeachment proceedings provide no support at all. The Commonwealth Court referenced Senator Ward's citing five impeachment proceedings in Pennsylvania that apparently spanned two sessions of the General Assembly and an Advisory Opinion from the Attorney General in *Umbel's Case*. *See id.* (citing R.397a-405a). Notably, each of these five impeachments occurred between 1794 and 1825. R.379a-84a. And *Umbel's Case* is from 1913. R.398a-400a.

These impeachment proceedings and *Umbel's Case* are the thinnest gruel. They all occurred long before the *sine die* adjournment principle was codified in the Pennsylvania Constitution in 1967. *See* Pa. L. 1036 (1967) (enacting Article II, § 4, which codifies the *sine die* rule).[15] Impeachment proceedings in the 18th and 19th centuries and an Advisory Opinion from 1913 are irrelevant to interpreting constitutional provisions enacted in 1967 or determining whether they permit the Senate to carry over the Amended Articles of Impeachment against District Attorney Krasner from the 206th to the 207th Session of the General Assembly.

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[15] It also does not appear that the public officials in any of those impeachments challenged their impeachment on the basis of *sine die*. If those officials did not object, they create no precedent.

Second, federal impeachment proceedings cannot support the constitutionality of the Pennsylvania Senate's proceeding with this impeachment matter. The federal constitution, unlike Pennsylvania's, does not codify the *sine die* principle or address what matters carry over to a new session or to a new Congress. Moreover, unlike the Pennsylvania Senate, the U.S. Senate is a "continuing body" after elections because two-thirds of U.S. Senators (more than a quorum) do not change. *See* S. Rept. No. 100-542, Carrying the Impeachment Proceedings Against Judge Alcee L. Hastings Over to the 101st Congress at 10 (Sept. 22, 1988). By contrast, the Pennsylvania Senate only continues until a new election, as half of Pennsylvania's Senators stand for election every two years, leaving less than a quorum of continuing senators. *See* Pa. Const. art. II, § 10.

Third, decisions from other jurisdictions, including nineteenth and early twentieth-century cases, offer no support. *See Krasner*, 2023 WL 164777, at *11-*12 (discussing *In re Opinion of Justices*, 14 Fla. 289, 296 (1872); *People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 327 (N.Y. Sup. Ct. 1913), *aff'd*, 163 A.D. 725 (N.Y. App. Div. 1914); and *Ferguson v. Maddox*, 263 S.W. 888, 890 (Tex. 1924)). These non-Pennsylvania decisions do distinguish between impeachment – a "judicial" function of the legislature – and "legislative" functions. But none control here. Critically, none of the three non-Pennsylvania cases involved an

intervening election. None presented the question raised here, i.e., a subsequent legislature's authority to take up unfinished business from a prior legislature.

These cases have no bearing for multiple other reasons. The New York and Texas decisions (*Ferguson* and *Hayes)* concerned a governor's attempt to forestall his own impeachment by exercising his authority under the relevant state constitution to prevent the state assembly from considering any legislative business other than what the governor allowed – which in neither case included his own impeachment. *Ferguson*, 263 S.W. at 889; *Hayes*, 143 N.Y.S. at 327. In both cases, the state court characterized impeachment as a judicial rather than a legislative power to vindicate the legislature's authority to consider impeachment without requiring the governor's consent. *Ferguson*, 263 S.W. at 890-91; *Hayes*, 143 N.Y.S. at 328.

Also, the Texas and New York constitutions at the time – unlike Pennsylvania's current constitution – expressly provided that impeachment is a judicial function and allowed for their respective senates to exercise judicial functions.[16] The Pennsylvania Constitution does not; it vests judicial power

[16] Unlike Pennsylvania's, the impeachment provisions of the New York constitution in effect at the time were included in its Article regarding the judiciary. *See* N.Y. Const. of 1894, Art. VI (referring to the Senate as "the Court for the Trial of Impeachments", s. 13), *available at* https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1894-NY-Constitution-compressed.pdf. Similarly, the Texas Constitution then in effect expressly authorized the Texas Senate to exercise judicial functions and sit as a Court of Impeachment. *See* Tex. Const. of

exclusively in the unified judicial system, and says nothing about the Senate as a "court of impeachment." Pa. Const, Art. V, Sec. 1.

Finally, *In re Opinion of Justices*, a Florida decision from 1872, involved a state senate that failed to reach a verdict on impeachment charges before it adjourned. 14 Fla. at 290-92. The Florida constitution then in effect *expressly* allowed officers subject to impeachment to demand that trial occur within one year of the adoption of articles of impeachment, without limitation to a legislative session. *See* Fla. Const. of 1868, art. XVI, § 9. Under those circumstances, the Court declined to deem the adjournment an effective acquittal. But that does not support the Commonwealth Court's conclusion in this case because the Florida constitution set a specific time limit for impeachment trials without regard to the legislative session. Pennsylvania's Constitution, by contrast, sets a specific term in which legislative business must be completed, and does not include any exception for impeachment proceedings or "judicial" business.

Accordingly, Pennsylvania law does not recognize an exception to the *sine die* principle for impeachments or the General Assembly's judicial powers. That exception has no home in Pennsylvania. It is contrary to the text and structure of the Constitution, as well as case-law. This Court should therefore reverse the

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1876, art. II, § 1; art. XV, *available at* https://tarlton.law.utexas.edu/c.php? g=813324& p=5803233.

Commonwealth Court's decision and declare that the General Assembly cannot proceed further with articles of impeachment once it adjourns *sine die*.

B. District Attorney Krasner, as a Locally Elected Official, Is Not Subject to Impeachment by the Statewide General Assembly Under Article VI, Section 6

District Attorney Krasner is a locally elected official who is not subject to impeachment by the General Assembly as an "other civil officer" under Article VI of the Pennsylvania Constitution. Article VI, section 6 states, "[t]he Governor and all other civil officers shall be liable to impeachment for any misbehavior in office…." Pa. Const. art. VI § 6 (emphasis added). That provision does not apply to local officials such as the Philadelphia District Attorney.

Nonetheless, the Commonwealth Court erred in concluding that District Attorney Krasner is subject to impeachment by the General Assembly. The court concluded, "in keeping with our extant corpus of case law, all public officials throughout the Commonwealth are subject to impeachment and trial by the General Assembly, regardless of whether they are local or state officials." App. A, Order ¶ 8. The opinion asserted that District Attorney Krasner's interpretation of Article VI "conflicts with the general tenor of relevant case law … [including] prior Supreme Court cases that imply that article VI … applies to local officials as well as state-level officials." *Krasner*, 2023 WL 164777, at *13. However, as the court noted in its opinion, *id.* at *14 n.14, Chief Justice Saylor called that conclusion into

doubt in *Burger v. School Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155, 1167 (Pa. 2007) (Saylor, J., concurring). Chief Justice Saylor's view – that the phrase "civil officers" in Article VI's removal provision refers only to statewide officers – is convincing, and District Attorney Krasner urges this Court to adopt it here.

Hence, the Commonwealth Court's decision that District Attorney Krasner is liable to impeachment by the General Assembly is contrary to the text of Article VI, section 6 and its history, and should be reversed.

1. The Text, Structure, and History of Article VI, Section 6 Demonstrate that, as a Local Official, District Attorney Krasner Is Not Subject to Impeachment by the General Assembly

The text, structure, and history of the Pennsylvania Constitution make clear that impeachment under Article VI only applies to statewide officers.

Let's start with the text: "The Governor and <u>all other civil officers</u> shall be liable to impeachment for any misbehavior in office…." Pa. Const. art. VI § 6 (emphasis added). The text does not refer to "all civil officers" but "all <u>other</u> civil officers," meaning civil officers like the Governor, who is a statewide officeholder. Basic principles of constitutional and statutory construction teach that the "catch-all" phrase "other civil officers," following a specific term like "[t]he Governor," limits the scope of officeholders to those situated similarly to the specific example given. *See Northway Vill. No. 3, Inc. v. Northway Props., Inc.*, 244 A.2d 47, 50 (Pa. 1968) ("The ancient maxim '*noscitur a sociis*' summarizes the rule that the

meaning of words may be indicated or controlled by those words with which they are associated. Words are known by the company they keep."); *Burns v. Coyne*, 144 A. 667, 668 (Pa. 1928) ("[W]here specific expressions are followed by those which are general, the latter will be confined to things of the same class as the former."). Thus, the "other civil officers" subject to impeachment under section 6 must, like the Governor, be statewide officers.

The text of Section 6's remedy provision further demonstrates that impeachment is limited to statewide officers. It states that judgment in impeachment cases "shall not extend further than to removal from office and disqualification to hold any office of trust or profit <u>under this Commonwealth</u>." Pa. Const. art. VI, § 6 (emphasis added). Senator Ward has argued that the District Attorney is an officer "under this Commonwealth." R.419a-22a. But local officials, such as the District Attorney, do not hold an office "under this Commonwealth." *See Commonwealth ex rel. Woodruff v. Joyce*, 139 A. 742, 742-43 (Pa. 1927) (holding that a local office is not an office "under this Commonwealth"); *Emhardt v. Wilson*, 20 Pa. D. & C. 608, 609 (Phila. Cty. Com. Pl. 1934) (holding that a Philadelphia officer was not an officer "under this Commonwealth" under Art. II, Section 6).

This means that an impeachment judgment could only preclude a person from holding statewide, not local, office. This provision makes sense for statewide

officers because the remedy is to disqualify them from holding statewide office. It would make little sense, however, for the impeachment remedy against a local official to be disqualification from holding statewide office only. If local officials were subject to Article VI, Section 6 impeachment, one would expect that provision would have been drafted to disqualify an impeached officer from local offices, too.[17]

The history of the enactment of the impeachment provisions of Article VI provides a final leg supporting the conclusion that impeachment under Article VI is limited to statewide officers. The impeachment provision of the Constitution of 1838 explicitly limited impeachment to statewide officers. It recited that "[t]he governor and all other civil officers under this commonwealth shall be liable to impeachment for any misdemeanor in office…." Pa. Const. of 1838, art. IV, § 3 (emphasis added). Because impeachment was textually limited to officers "under this commonwealth," it encompassed only statewide officers. *See Joyce*, 139 A. at 742-43.

[17] The Commonwealth Court acknowledged as much, saying: "It would be illogical for article VI, section 6 to be read to allow the General Assembly to impeach and remove District Attorney [Krasner] … when the same provision does not enable the General Assembly to disqualify him from holding that office again in the future." *Krasner,* 2023 WL 164777, at *13 (citing *Joyce*, 139 A. at 742)); *see also Stollar v. Cont'l Can Co.*, 180 A.2d 71, 74 (Pa. 1962) ("To fail to give effect to all of the provisions of a statute or to give them an unreasonable or absurd construction violates the fundamental rules of statutory interpretation.").

Following the 1874 constitutional convention, without any debate, explanation, or vote of the delegates to explain the change, Article VI, Section 3 was modified and the initial reference to "under this commonwealth" in the 1838 constitution was eliminated, although the identical reference in the disqualification clause remained. There was no debate, and the Journals accompanying the constitution note that the "old Constitution" was "retained" in this provision. It thus appears that the 1874 impeachment provision (which, in material part, exists today) preserved the meaning of the 1838 version, and the changes were for stylistic and non-substantive purposes. *See* 2 Journal of the Convention to Amend the Constitution of Pennsylvania, 1872, at 1303, 1320. That is, if the 1874 change was intended to substantively modify the 1838 provision, there would have been a similar change in the remedy clause and an explanation of why the change was made. There is no such explanation. Therefore, the current section 6, like the predecessor versions, was meant to subject only civil officers "under this commonwealth" – statewide officers – to impeachment.

Likewise, the debates and legislative history of Pennsylvania constitutional conventions confirm that the framers were concerned about officers holding statewide office (specifically judges) when devising the impeachment process.[18]

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[18] *See Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second*

These statements during deliberations demonstrate that the framers' focus was on *statewide* officials and judges. They were not concerned with local officers, such as the District Attorney of Philadelphia,[19] and they evinced no intent to subject them to impeachment by the state legislature. Accordingly, the history of these provisions confirms the meaning of the text: as a locally elected official, District Attorney Krasner is not one of the "all other civil officers" who may be impeached under Article VI, Section 6.[20]

Day of May, 1837 (Harrisburg: Packer, Barrett and Parke, 1837) [hereinafter, "*1837 Debates*"] vol. 1, p. 459 ("The question, so far as it has been argued at all, has been argued as respects judicial officers only; and perhaps properly. There has been no attempt to impeach any other officer under the present Constitution."); *1837 Debates* vol. 1, p. 275 ("It is said, the Governor, and all other civil officers under this Commonwealth, shall be liable to impeachment; but, sir, we do not say who those civil officers are. Are they to be understood as judges alone, or are they other officers than those of a judicial character?… These questions cannot be answered, for the plain reason, that they relate to subjects not yet acted on by the Convention."); *Debates of the Convention to Amend the Constitution of Pennsylvania Convened at Harrisburg, November 12, 1872* (Harrisburg: Benjamin Singerly, 1873) vol. 2, p. 575 ("[T]he House has the sole power of impeachment, and the Senate to try and adjudge, not only the Governor, but all judicial officers[.]").

[19] There can be no serious doubt that the Philadelphia District Attorney is a "local, and expressly not state, official[]." *Carter v. City of Philadelphia*, 181 F.3d 339, 350 (3d Cir. 1999) (emphasis in original); *see also Chalfin v. Specter,* 233 A.2d 562, 565 (Pa. 1967) ("The … Constitution of Pennsylvania … states in the clearest imaginable language that District Attorneys are County—not State—officers, and in Philadelphia, by virtue of the above-quoted Constitutional provisions and the Home Rule Charter, are City—not State—officers….").

[20] Another provision of Article VI supports this narrow reading of section 6. Section 3 specifies the oath required of all "Senators, Representatives and all judicial, State and county officers." Pa. Const. art. VI, § 3 (emphasis added). That section 3 specifically applies to "county officers" supports that section 6 – which does not specifically include "county officers" – does not apply to them. *Fonner v. Shandon, Inc.,* 724 A.2d 903, 907 (Pa. 1999) ("[W]here the legislature includes specific language in one section of the statute and excludes it from another, the language should not be implied where excluded.").

2. The Court Should Adopt Chief Justice Saylor's Reasoning to Conclude that District Attorney Krasner Is Not Subject to Impeachment Under Article VI, Section 6.

The Commonwealth Court rejected the interpretation presented above – based on the text and history of Article VI, Section 6 – because prior decisions by this Court interpreting the phrase "[a]ll civil officers" in the context of Article 6, Section 7's removal provision would appear to preclude that interpretation. *See Krasner,* 2023 WL 164777, at *13-*16. Those prior cases have held that the removal provision – applicable to "[a]ll civil officers" – applies to both statewide and local officers.

Chief Justice Saylor's concurrence in *Burger v. School Board of McGuffey School District* explained why a local official should not be subject to Section 7 removal because the term "all civil officers" applies to statewide, not local officials. 923 A.2d at 1167 (Saylor, J., concurring). He was guided by the observation: "Here again the debates are informative because they reveal that state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed; little attention was paid to the concept of local appointing powers and the manner in which their removal powers should or should not be constrained." *Id.* at 1167. He also observed, because the Constitution contains other provisions specifically authorizing the General Assembly to legislate regarding local government, "it appears most likely to me that the framers did not intend the

general at-pleasure removal power contained in Article VI, Section 7 to constrain the General Assembly in its formulation of regulations concerning the hiring and firing" of local officials. *Id.* Chief Justice Saylor therefore would have rejected the prior decisions and held that Article VI, Section 7, applicable to "all civil officers," does not apply to local officials. The same reasoning applies to Section 6 (applicable to "[t]he Governor and all other civil officers"), concerning impeachment.

Chief Justice Saylor's concurrence cannot be dismissed as some lone voice because the four-Justice majority concluded that his theory is "cogent." *Id.* at 1161 n.6. Understandably, however, the *Burger* Court's Opinion declined to address this issue further because it was not raised by the parties, leaving that issue to another day. *Id.*

This consolidated appeal brings us to that day, at least in the context of impeachment. It squarely presents the question, whether the text, structure, and history of the Constitution allow a local official to be impeached under Article VI, Section 6. The answer is no; statewide officials, not local officials, are subject to impeachment by the statewide General Assembly. As demonstrated above, that conclusion follows clearly from the text, structure, and history of that provision, the elements that are the touchstones of Constitutional interpretation. *See*

Northway Vill. No. 3, 244 A.2d at 50; *Burns*, 144 A. at 668; *Stollar*, 180 A.2d at 74*; see generally supra* Part VIII.B.1.

The rub, of course, is that Sections 6 and 7 both use the term "civil officer." And how could a local official not be a civil officer for the purposes of impeachment yet be a civil officer for the purposes of removal? There are several possible answers.

First, Sections 6 and 7 are different texts that need not be read the same way. The issue before the Court is whether Section 6's "all other civil officers" and disqualification from office "under this Commonwealth" includes local officials. Section 7, in contrast, concerns the removal of "all civil officers" – not "all <u>other</u> civil officers" – and does not have the same statewide disqualification language. *Cf. Fletcher v. Pennsylvania Prop. & Cas. Ins. Guar. Ass'n*, 985 A.2d 678, 684 (Pa. 2009) ("[W]here a section of a statute contains a given provision, the omission of such a provision from a similar section is significant to show a different legislative intent."). These differences suggest that, asking how "civil officer" can have two different meanings is a false question; the real question is whether Sections 6 and 7 reach different kinds of officials given not just those two common words but the complete text of those provisions. That proper focus on the full text of each provision – not just the two words "civil officer" in isolation – releases the

apparent tension and allows the Court to do what it should, namely interpret properly the scope of the Section 6 impeachment provision.[21]

Second, even if "civil officers" in Section 6 and 7 should be read the same way, the Court could offer two alternative views of its removal cases. By one approach, it could conclude that the Court's prior removal decisions were not reasoned decisions entitled to deference. It is true that the Court's Section 7 removal provisions have affirmed the removal of local officers. *See Burger*, 923 A.2d 1155; *S. Newton Twp. Electors v. S. Newton Twp. Supervisor, Bouch*, 838 A.2d 643 (Pa. 2003); *Allegheny Inst. Taxpayers Coal. v. Allegheny Reg'l Asset Dist.*, 727 A.2d 113 (Pa. 1999); *In re Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995); *Commonwealth ex rel. Schofield v. Lindsay*, 198 A. 635 (Pa. 1938). But, as Chief Justice Saylor explained, "it is not clear that those decisions took into account the Commonwealth-official versus local-official distinction." 923 A.2d at 1167 (Saylor, J., concurring). That is, the parties in those matters apparently did not dispute the applicability of Section 7 to municipal officers.

[21] Admittedly, there is the interpretive doctrine that the same words used in different parts of the Constitution or a statute must be afforded the same meaning. *Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 4 A.3d 610, 622 (Pa. 2010) ("A word or phrase whose meaning is clear when used in one section of a statute will be construed to mean the same thing in another section of the same statute."). But that doctrine poses no bar because the Court is interpreting different phrases – "all other civil officers" and "all civil officers" – where the text and context demonstrate that only the former are subject to disqualification from statewide office.

For similar reasons, *Commonwealth ex rel. Specter v. Martin*, 232 A.2d 729 (Pa. 1967) – which the Commonwealth Court described as "more injurious to District Attorney's claim that he is not a civil officer in terms of article VI, section 6," *Krasner*, 2023 WL 164777, at *15 – does not support the Commonwealth Court's conclusion. The parties in *Martin* also did not dispute whether Article VI applies to local officials or only statewide officials. Instead, at issue was whether a home-rule-charter provision providing for removal could coexist alongside constitutional removal provisions. A splintered court found that it could not. Nevertheless, *Martin* does not squarely address the scope of Article VI's impeachment and removal provisions and thus does not dictate the result here.

Alternatively, the Court could overrule those removal decisions, to the extent inconsistent with the interpretation that the impeachment provision does not reach local officers. Unlike the Commonwealth Court, this Court is not bound to follow these decisions.[22] It may revise prior constitutional precedent where

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[22] The Commonwealth Court recognized that it was constrained by these authorities. App. A, Order ¶ 8 ("[I]n keeping with our extant corpus of case law, all public officials throughout the Commonwealth are subject to impeachment and trial by the General Assembly, regardless of whether they are local or state officials.") (emphasis added); *Krasner*, 2023 WL 164777, at *13 (crediting District Attorney Krasner's textual arguments but stating that they "conflict[] with the general tenor of relevant case law").

appropriate.[23] Based on Chief Justice Saylor's reasoning in *Burger*, the Court could overrule the prior removal decisions.

3. Other Considerations Support Limiting the General Assembly's Impeachment Power Only to Statewide Officers

Allowing the General Assembly – which is elected by voters statewide – to impeach a locally elected officer such as the District Attorney is inconsistent with basic principles of democracy. A local official exercises power, such as the criminal prosecution powers of the District Attorney, within a limited area of the Commonwealth of Pennsylvania. For that reason, a local official is elected to office by the voters within that limited area. For District Attorney Krasner, this is the voters of Philadelphia. Those voters elected District Attorney Krasner based on his policy proposals, and overwhelmingly a second time based on his performance in office.

If the General Assembly were allowed to impeach District Attorney Krasner – or other local officials – it would allow them to override the will of the local

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[23] *See Commonwealth v. Alexander*, 243 A.3d 177, 197 (Pa. 2020) ("*[S]tare decisis* 'is at its weakest when we interpret the Constitution….'" (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997))); *Holt v. 2011 Legislative Reapportionment Comm'n,* 38 A.3d 711, 759 (Pa. 2012) ("[W]e are not constrained to closely and blindly re-affirm constitutional interpretations of prior decisions which have proven to be unworkable or badly reasoned…."); *see also Vieth v. Jubelirer*, 541 U.S. 267, 306 (2004) ("When governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent." (cleaned up)); *Henslee v. Union Planters Nat. Bank & Trust Co.,* 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting) ("Wisdom too often never comes, and so one ought not to reject it merely because it comes late.").

voters, affecting the local officials' policies and actions. This discontinuity – between those affected by and electing the District Attorney or other local officer, and those electing the legislature with the power to remove him – is contrary to the democratic principles underlying the Pennsylvania Constitution. Allowing a statewide General Assembly to control local officers contrary to the electoral will of local voters is anathema to those principles. This basic concern about democratic interests weighs heavily in support of the textual, structural, and historical interpretation of the Article 6, Section 6 impeachment provision as limited to statewide officers.[24]

In arguing that the General Assembly cannot impeach District Attorney Krasner because he is a local Philadelphia official, he is not arguing that he is somehow not subject to impeachment.[25] He is required to follow the law like any

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[24] These concerns are another reason the Court could apply the reasoning of Chief Justice Saylor's *Burger* concurrence to impeachment, but not address removal at this time. Removal under Section 7 does not raise the same concerns about democratic principles, because removal is automatic upon conviction of certain crimes. Pa. Const. art. VI, § 7. It does not depend on action of the statewide General Assembly.

[25] Inexplicably, Respondents Bonner and Williams have argued that District Attorney Krasner has maintained in these proceedings that he is "infallible." *See* Response of Respondents Bonner and Williams to Application for Disqualification of Justice Kevin M. Dougherty, Nos. 2, 3 & 4 EAP 2023 (Pa. Apr. 3, 2023), at 1. Not so. The District Attorney recognizes that he has the enormously difficult job of heading an office of approximately 300 prosecutors responsible for the safety and well-being of the more than 1.5 million people living in the City of Philadelphia. He is proud of his accomplishments and the citizens of Philadelphia overwhelmingly re-elected him in 2021. But he of course recognizes that he is not free from criticism, and that is what the democratic process properly encourages and embraces. What he does vigorously oppose, however, is efforts to take criticism and misuse the Pennsylvania

other individual and is accountable to the citizens of Philadelphia as an elected official.[26] But allowing the statewide legislature to impeach and remove him from office is contrary to the text and structure of the Pennsylvania Constitution and basic democratic principles.

IX. CONCLUSION

For the foregoing reasons, District Attorney Krasner respectfully requests that the Court reverse the Commonwealth Court's December 30, 2022 Order to the extent it denied District Attorney Krasner's Application for Summary Relief and

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Constitution or other law to advance political agendas like the impeachment effort that is the subject of these appeals.

[26] Indeed, the First Class Cities Government Law, Act of June 25, 1919, P.L. 581, No. 274 (June 25, 1919), provides a local process for impeachment and removal of municipal officers such as the District Attorney. *See generally* 53 P.S. §§ 12199-12205. It includes petitions by local electors, appointment of an investigating committee, and a trial over which the Court of Common Pleas presides. *Id.* §§ 12200-12205. A statewide effort to impeach a local District Attorney unnecessarily runs roughshod over decades of law – including the First Class Cities Government Law – empowering localities such as Philadelphia to govern their own affairs by, *inter alia*, regulating the election and removal of their elected officials.

granted Senator Ward's Cross Application for Summary Relief with respect to Counts I and II of the Petition for Review.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: May 22, 2023

By: *__/s/ John S. Summers__*

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RULE 2135 CERTIFICATION

The undersigned hereby certifies that this brief contains 13,463 words and therefore complies with the word count limit set forth by Pa. R. App. P. 2135(a)(1).

Dated: May 22, 2023

/s/ John S. Summers
John S. Summers

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 22, 2023

/s/ John S. Summers
John S. Summers

APPENDIX A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Larry Krasner, in his official capacity as the District Attorney of Philadelphia, Petitioner	:	
v.	:	No. 563 M.D. 2022
Senator Kim Ward, in her official capacity as Interim President Pro Tempore of the Senate; Representative Timothy R. Bonner, in his official capacity as an impeachment manager; Representative Craig Williams, in his official capacity as an impeachment manager; Representative Jared Solomon, in his official capacity as an impeachment manager; and John Does, in their official capacities as members of the Senate Impeachment Committee, Respondents	:	

O R D E R

AND NOW, this **30th** day of **December, 2022**, upon consideration of the Preliminary Objections of Respondent Representative Timothy R. Bonner, in his official capacity as an impeachment manager, and Respondent Representative Craig Williams, in his official capacity as an impeachment manager (collectively Impeachment Managers), the Application for Summary Relief filed by Petitioner Larry Krasner, in his official capacity as the District Attorney of Philadelphia

(District Attorney), the Cross-Application for Summary Relief (Cross-Application) filed by Respondent Senator Kim Ward, in her official capacity as Interim President Pro Tempore of the Senate (Interim President), and the Application for Leave to Intervene (Intervention Application) filed by Proposed Intervenor Senator Jay Costa, in his official capacity (Proposed Intervenor), and the responses thereto, it is hereby ORDERED:

1. Interim President's Cross-Application is DENIED regarding the claim that the Pennsylvania Senate and the Senate Impeachment Committee are indispensable parties to this matter, as Interim President's interest in this matter is indistinguishable from that of the Senate as a whole, and of the Committee, and her involvement here has positioned her to adequately defend and protect those parties' interests. *See City of Philadelphia v. Com.*, 838 A.2d 566, 581-85 (Pa. 2003).
2. Respondents John Does, in their official capacities as members of the Senate Impeachment Committee, are dismissed as parties to this action. *See* Pa. R.Civ.P. 2005(g).
3. Impeachment Managers' preliminary objection as to the justiciability of the claims made by District Attorney in his Petition for Review (PFR) is OVERRULED, as District Attorney raises constitutional challenges to the impeachment process that are fully justiciable by this Court. *See Sweeney v. Tucker*, 375 A.2d 698, 711 (Pa. 1977); *In re Investigation by Dauphin Cnty. Grand Jury, Sept., 1938*, 2 A.2d 802, 803 (Pa. 1938); *cf.* 42 Pa. C.S. § 7541(a).
4. Impeachment Managers' preliminary objection as to District Attorney's standing is OVERRULED, as District Attorney is an aggrieved party at this stage. *See Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 488-

89 (Pa. 2021); *Americans for Fair Treatment, Inc. v. Philadelphia Fed'n of Teachers*, 150 A.3d 528, 533 (Pa. Cmwlth. 2016).

5. Impeachment Managers' preliminary objection as to the ripeness of District Attorney's claims is OVERRULED, as District Attorney's claims raise legal and constitutional issues that do not require further development of the factual record. *See Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013).
6. Interim President's Cross-Application is DENIED regarding the ripeness of District Attorney's claims. *See id.*
7. District Attorney's Application for Summary Relief is DENIED, and Interim President's Cross-Application is GRANTED, regarding Count I of the PFR, as the General Assembly's power to impeach and try a public official is judicial in nature and, thus, is not affected by the adjournment of the General Assembly or the two-year span of each General Assembly iteration's legislative authority. *See Ferguson v. Maddox*, 263 S.W. 888, 890 (Tex. 1924); *Com. ex rel. Att'y Gen. v. Griest*, 46 A. 505, 506 (Pa. 1900); *In re Opinion of Justs.*, 14 Fla. 289, 297-98 (1872); *accord Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002).
8. District Attorney's Application for Summary Relief is DENIED, and Interim President's Cross-Application is GRANTED, regarding Count II of the PFR, as, in keeping with our extant corpus of case law, all public officials throughout the Commonwealth are subject to impeachment and trial by the General Assembly, regardless of whether they are local or state officials. *See Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155, 1162-64 (Pa. 2007); *id.* at 1162 n.6; *S. Newton Twp. Electors v. S. Newton Twp. Sup'r, Bouch*, 838

A.2d 643 (Pa. 2003); *Allegheny Inst. Taxpayers Coal. v. Allegheny Reg'l Asset Dist.*, 727 A.2d 113 (Pa. 1999); *In re Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995); *Com. ex rel. Specter v. Martin*, 232 A.2d 729, 733-39 (Pa. 1967); (plurality opinion); *id.* at 743-44 (Eagen, J., concurring in part); *id.* at 753-55 (Musmanno, J., separate opinion); *Houseman v. Com. ex rel. Tener*, 100 Pa. 222, 230-31 (1882).

9. District Attorney's Application for Summary Relief is GRANTED, and Interim President's Cross-Application is DENIED, regarding Count III of the PFR, as none of the Amended Articles of Impeachment satisfy the requirement imposed by Article VI, Section 6 of the Pennsylvania Constitution that impeachment charges against a public official must allege conduct that constitutes what would amount to the common law crime of "misbehavior in office," *i.e.*, failure to perform a positive ministerial duty or performance of a discretionary duty with an improper or corrupt motive, as well as because Article I and VII improperly challenge District Attorney's discretionary authority, and Articles III, IV, and V unconstitutionally intrude upon the Supreme Court's exclusive authority to govern the conduct of all attorneys in this Commonwealth, including the District Attorney. *See Com. v. Clancy*, 192 A.3d 44, 53 (Pa. 2018); *Com. v. Brown*, 708 A.2d 81, 84 (Pa. 1998); *Com. v. Stern*, 701 A.2d 568, 571 (Pa. 1997); *In re Braig*, 590 A.2d 284, 286-88 (Pa. 1991); *Com. v. Sutley*, 378 A.2d 780, 783 (Pa. 1977); *Com. ex rel. Specter v. Bauer*, 261 A.2d 573, 576 (Pa. 1970); *Martin*, 232 A.2d at 736; *Com. v. Hubbs*, 8 A.2d 618, 620-21 (Pa. Super. 1939); 16 P.S. § 1401(o).

10. Proposed Intervenor's Intervention Application is GRANTED. *See* Pa. R.Civ.P. 2327(4); *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs.*, 225 A.3d 902, 911 (Pa. Cmwlth. 2020).

Opinion to follow.

____

Judge Ellen Ceisler

Order Exit
12/30/2022

APPENDIX B

2023 WL 164777
Unpublished Disposition
Only the Westlaw citation is currently available.
See Pa. Commonwealth Court Internal
Operating Procedures, Sec. 414 before citing.
OPINION NOT REPORTED
Commonwealth Court of Pennsylvania.

Larry KRASNER, in his official capacity as the District Attorney of Philadelphia, Petitioner
v.
Senator Kim WARD, in her official capacity as Interim President Pro Tempore of the Senate; Representative Timothy R. Bonner, in his official capacity as an impeachment manager; Representative Craig Williams, in his official capacity as an impeachment manager; Representative Jared Solomon, in his official capacity as an impeachment manager; and John Does, in their official capacities as members of the Senate Impeachment Committee, Respondents

No. 563 M.D. 2022
|
Argued December 29, 2022
|
Filed January 12, 2023

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge, HONORABLE PATRICIA A. McCULLOUGH, Judge, HONORABLE MICHAEL H. WOJCIK, Judge, HONORABLE ELLEN CEISLER, Judge

Opinion

MEMORANDUM OPINION BY JUDGE CEISLER

***1** Petitioner Larry Krasner, in his official capacity as the District Attorney of Philadelphia (District Attorney), has filed a Petition for Review in the Nature of a Complaint for Declaratory Judgment (PFR) in this Court's original jurisdiction. Through this PFR, Krasner seeks a judicial declaration against Respondents Senator Kim Ward, in her official capacity as Interim President Pro Tempore of the Senate (Interim President);[1] Representatives Timothy R. Bonner, Craig Williams, Jared Solomon, and John Does, in their official capacities as members of the Senate Impeachment Committee (collectively, Respondents), that the impeachment proceeding against him, which is currently pending in the General Assembly, is unlawful and unconstitutional. Respondents Representatives Timothy R. Bonner, and Craig Williams, in their official capacities as impeachment managers (collectively, Impeachment Managers), have filed preliminary objections to the PFR.[2] Additionally, Interim President has filed a Cross-Application for Summary Relief (Cross-Application).[3] Finally, Proposed Intervenor Senator Jay Costa, in his official capacity (Proposed Intervenor), has filed an Application for Leave to Intervene (Intervention Application).

After thorough review, we grant Proposed Intervenor's Intervention Application, overrule Impeachment Managers' preliminary objections in full, grant District Attorney's Application for Summary Relief in part and deny it in part, and grant Interim President's Cross-Application in part and deny it in part.

I. Facts and Procedural History

On November 16, 2022, the Pennsylvania House of Representatives (House) passed House Resolution 240 (HR 240), which contained amended articles of impeachment (Amended Articles) against District Attorney, by a vote of 107 to 85. The Amended Articles provide the following bases for impeaching District Attorney:

> **Article I:** Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
>
> **Article II:** Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation
>
> **Article III:** Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

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Article IV: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Commonwealth v. Pownall*

***2 Article V:** Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter *In re: Conflicts of Interest of Philadelphia District Attorney's Office*

Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights

Article VII: Misbehavior in Office in the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

PFR, Ex. C. On November 29, 2022, the Pennsylvania State Senate (Senate) passed Senate Resolution 386 (SR 386), which established "special rules of practice and procedure in the Senate when sitting on impeachment trials[,]" and Senate Resolution 387 (SR 387), which directed the House to "exhibit" the Amended Articles through its designated impeachment managers before the Senate on November 30, 2022.

On November 30, 2022, the Senate enacted Senate Resolution 388 (SR 388), which ordered that a writ of impeachment summons be issued to District Attorney and set the start date of his impeachment trial as January 18, 2023. The 206th General Assembly, which was responsible for passing all of the aforementioned resolutions, terminated at 11:59 p.m. on November 30, 2022, and was replaced by the 207th General Assembly. *See* Pa. Const. art. II, §§ 2-4. The Senate's summons was then served upon District Attorney on December 1, 2022.

On December 2, 2022, District Attorney filed his PFR with this Court. Therein, he requested judgment against Respondents that would declare the pending impeachment proceedings to be unconstitutional and unlawful. The PFR contains three counts, each of which offers a separate argument for why District Attorney is entitled to such relief. In Count I, District Attorney argues that the Amended Articles, as a pending matter, were rendered void upon the termination of the 206th General Assembly on November 30, 2022, and did not carry over to the 207th General Assembly. PFR ¶¶41-50. In Count II, he claims that he cannot be impeached and removed by the General Assembly, because the Pennsylvania Constitution does not give the General Assembly power to impeach local elected officials, as well as because the power to do so has been delegated to the City of Philadelphia's government. *Id.* ¶¶52-61. Finally, in Count III, he argues that the Amended Articles are invalid and do not provide a constitutionally valid basis for his impeachment, as none of them assert viable claims that District Attorney engaged in "any misbehavior in office." *Id.* ¶¶63-79. Accordingly, District Attorney has asked this Court to:

(A) Declare that the Amended Articles and related legislative business, including [SR] 386, 387, and 388, became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th General Assembly legislative session.

(B) Declare that [a]rticle VI, [s]ection 6 of the Pennsylvania Constitution[4] does not authorize impeachment of ... [District Attorney] by the General Assembly.

(C) Declare that the Amended Articles against ... [District Attorney] do not allege conduct that constitutes "any misbehavior in office" within the meaning of [a]rticle VI, [s]ection 6 of the Pennsylvania Constitution.

***3** (D) Declare that [ ] Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

(E) Declare that any effort by [ ] Respondents, House[,] or Senate to take up the Amended Articles or related legislation, including [SR] 386, 387, or 388, is unlawful.

(F) Grant such other relief as is just and proper.

PFR, Prayer for Relief. Contemporaneously, District Attorney also filed an Application for Summary Relief, in which he argues that he is entitled to summary relief on each of the three counts in the PFR.

Both Impeachment Managers and Interim President have filed challenges to the PFR. In their preliminary objections, Impeachment Managers argue that this Court should dismiss the PFR for several reasons. First, Counts I and III present non-justiciable political questions, as it is exclusively within the General Assembly's purview to decide whether impeachment proceedings can continue into a new iteration

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of the General Assembly, as well as whether District Attorney's behavior constitutes "any misbehavior in office." Impeachment Managers' Br. in Support of Prelim. Objs. at 10-17. Second, District Attorney lacks standing to challenge the impeachment proceedings, as he is not aggrieved by the impeachment proceedings, which have yet to take place. *Id.* at 18-20. Finally, Counts II and III are not yet ripe for judicial review, as District Attorney is not entitled to preemptive judicial determinations regarding whether someone in his elected office is subject to impeachment and removal by the General Assembly, or whether the impeachment charges against him are sufficient. *Id.* at 20-25. As for Interim President, she argues in her Cross-Application that this Court lacks subject matter jurisdiction because District Attorney has failed to join the Senate and the Senate Impeachment Committee, both of which Interim President alleges are indispensable parties, as well as because District Attorney has allegedly failed to state claims that are legally sufficient and ripe for judicial review. Interim President's Br. at 16-82.

II. Discussion

A. Indispensable Parties

We first address Interim President's assertion that District Attorney has failed to join all indispensable parties, specifically the Senate and Senate Impeachment Committee, as this argument implicates this Court's jurisdiction to consider the merits of District Attorney's PFR. On this point, Interim President's argument is without merit.

> [The Supreme] Court has stated that a party is indispensable "when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." *Sprague v. Casey*, ... 550 A.2d 184, 189 ([Pa.] 1988). "[T]he basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of" him or her. *CRY, Inc. v. Mill Serv., Inc.*, ... 640 A.2d 372, 375 ([Pa.] 1994). In undertaking this inquiry, the nature of the claim and the relief sought must be considered. *See id.* at ... 375-76.[11] Furthermore, we note the general principle that, in an action for declaratory judgment, all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action. *See Mains v. Fulton*, ... 224 A.2d 195, 196 ([Pa.] 1966). Indeed, Section 7540(a) of the Judicial Code, 42 Pa. C.S. § 7540(a), which is part of Pennsylvania's Declaratory Judgments Act,[12] states that, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."
>
> > ***4** [11] The relevant analysis is sometimes said to require examination of the following factors: "1. Do absent parties have a right or interest related to the claim? 2. If so, what is the nature of that right or interest? 3. Is that right or interest essential to the merits of the issue? 4. Can justice be afforded without violating the due process rights of absent parties?" *Mechanicsburg Area Sch. Dist. v. Kline*, ... 431 A.2d 953, 956 ([Pa.] 1981). These are implicitly considered in the analysis that follows.
> >
> > [12] [42 Pa. C.S. §§ 7531-7541].
>
> While this joinder provision is mandatory, it is subject to limiting principles. For example, where the interest involved is indirect or incidental, joinder may not be required.

City of Phila. v. Com., 838 A.2d 566, 581-82 (Pa. 2003). "The failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction. Whether a court lacks jurisdiction due to the failure to join an indispensable party may be raised at any time or *sua sponte.*" *HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1015 (Pa. Cmwlth. 2010) (internal citations omitted).

Interim President argues that the Court lacks subject matter jurisdiction because District Attorney did not name the entire Senate as a respondent, as well as because the Senate Impeachment Committee (Committee), though an allegedly indispensable party, does not exist yet and cannot be represented, as District Attorney attempts to do, by naming John Does as respondents in the actual Committee's stead. Interim President's Br. at 75-82.

At first blush, it would appear that Interim President is correct that the Senate is an indispensable party. The Senate's ability as a body to vote upon the Amended Articles would be affected, as a declaratory judgment in District Attorney's favor would certainly render pointless its pursuit of an impeachment trial, and the Senate undoubtedly has an interest in protecting its prerogative to run an impeachment trial as it sees fit.

However, upon further review, it is clear that the Senate is, in fact, dispensable. In *City of Philadelphia v. Commonwealth*, the Supreme Court was faced with a similar question regarding indispensable parties in litigation about whether certain legislation had been enacted in accordance with the Pennsylvania Constitution's procedural requirements. In its analysis, the Supreme Court noted that

> the guiding inquiry in any discussion of indispensability is whether justice can be done in the absence of the parties asserted to be necessary. Such an inquiry entails an assessment of the particular facts and circumstances presented in each case. Here, while it is true that the [challenged legislation] purports to alter the rights and obligations of numerous persons, due to the nature of the constitutional issues raised in the [City of Philadelphia's] Complaint, achieving justice is not dependent upon the participation of all of those persons.

City of Phila., 838 A.2d at 584-85. Using this standard, the Court concluded that the General Assembly was not an indispensable party, remarking that

> it bears noting that this case is somewhat unusual in that the crux of the challenge centers, not upon any substantive aspect of the legislation at issue, but upon the procedure by which it was adopted. It could reasonably be argued, then, that the Legislature's participation is necessary, as it has a general interest in defending the procedural regularity of the bills that it approves. [*H*]*owever, the Presiding Officers and the Minority Leaders of both Houses of the General Assembly are* [*already*] *named respondents; these officials are capable of representing the interests of the Legislature as a whole.*

***5** *Id.* at 584 (emphasis added). The same is true here. While the Senate certainly has a vested interest in the outcome of this matter, Interim President is already named as a respondent. Interim President's interest in this matter is *indistinguishable* from that of the Senate as a whole, and her involvement here has positioned her to also defend and protect the Senate's interests. In fact, the arguments and responses she has presented thus far all relate to the Senate's institutional impeachment-related powers, not to her specific authority as the Senate's president *pro tempore.* Therefore, the Senate's due process rights will not be violated if this Court proceeds with dealing with the merits of this case without its direct involvement, and, thus, it is not an indispensable party.

We reach the same conclusion as to the Committee. Preliminarily, it does not yet exist, so it obviously cannot defend itself at this point and does not seem like it is actually a proper party to name as a respondent.[5] However, like the Senate as a whole, the Committee, in the event that it is eventually constituted, would have interests in this matter that are coterminous with both that of the Senate and of Interim President. As such, there is no basis for concluding that those interests could not be adequately protected by Interim President in her role as an already-named respondent in this case. Thus, the Committee is also not an indispensable party.[6] Consequently, as District Attorney was not required to name the Committee or the Senate as respondents to this matter, we deny Interim President's Cross-Application as to her assertion that we lack subject matter jurisdiction due to District Attorney's failure to join all indispensable parties.

B. Impeachment Managers' Preliminary Objections

Moving on, as noted *supra*, Impeachment Managers preliminarily object to District Attorney's PFR on the following bases. First, they argue that Counts I and III present non-justiciable political questions, as it is exclusively within the General Assembly's purview to decide whether impeachment proceedings can continue into a new iteration of the General Assembly, as well as whether District Attorney's behavior constitutes "any misbehavior in office." Impeachment Managers' Br. in Support of Prelim. Objs. at 10-17. Second, they claim that District Attorney lacks standing to challenge the impeachment proceedings, as he is not aggrieved by the impeachment proceedings, which have yet to take place. *Id.* at 18-20. Finally, they maintain Counts II and III are not yet ripe for judicial review, as District Attorney is not entitled to preemptive judicial determinations regarding whether someone in his elected office is subject to impeachment and removal by the General Assembly, or whether the impeachment charges against him are sufficient. *Id.* at 20-25. Each of these arguments will be addressed *seriatim.*

1. Do District Attorney's Claims Present Non-Justiciable Political Questions?

Contrary to Impeachment Managers' assertions, each of District Attorney's claims is fully justiciable and do not contravene the separation of powers doctrine.

> Ordinarily, the exercise of the judiciary's power to review the constitutionality of legislative action does not offend the principle of separation of powers. *See*, *e. g., Marbury v.*

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> *Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803). There may be certain powers which our Constitution confers upon the legislative branch, however, which are not subject to judicial review.
>
> ***6** A challenge to the Legislature's exercise of a power which the Constitution commits exclusively to the Legislature presents a nonjusticiable "political question."
>
> ....
>
> A political question stands in contrast to the ordinary respect which courts pay to the other branches of government. A political question is not involved when a court concludes that another branch acted within the power conferred upon it by the Constitution:
>
> > "In such cases ... the court does not refuse judicial review; it exercises it. It is not dismissing an issue as non[-]justiciable; it adjudicates. It is not refusing to pass upon the power of the political branches; it passes upon it, only to affirm that they had the power which had been challenged and that nothing in the Constitution prohibited the particular exercise of it."
>
> Henkin, Is There a "Political Question" Doctrine?, 85 Yale L.J. 597, 606 (1976).
>
> In cases involving political questions, however, the courts will not review the actions of another branch because the determination whether the action taken is within the power granted by the Constitution has been "entrusted exclusively and finally to the political branches of government for 'self-monitoring.' " *Id.* at 599 (footnote omitted).

Sweeney v. Tucker, 375 A.2d 698, 705-06 (Pa. 1977). With regard to the impeachment process,

> [t]he [Pennsylvania C]onstitution provides ... that "[t]he House ... shall have the sole power of impeachment." [Pa. Const. art. VI, § 4.] This plain language makes the power plenary within constitutional limits[.] ... Therefore, the courts have no jurisdiction in impeachment proceedings, and no control over their conduct, *so long as actions taken are within constitutional lines.*

In re Investigation by Dauph. Cnty. Grand Jury, Sept., 1938, 2 A.2d 802, 803 (Pa. 1938) (emphasis added). Thus, determining the *constitutionality* of an impeachment proceeding is something that falls squarely within the scope of judicial authority, but anything beyond that rests within the sole purview of the General Assembly.

Here, each of District Attorney's claims is rooted in allegations that the impeachment proceedings violate the strictures imposed by the Pennsylvania Constitution regarding who can be impeached and removed, as well as why and when eligible individuals can be impeached and removed. These are all non-political questions and are therefore justiciable. *See generally Sweeney*, 375 A.2d at 711 ("[T]he Pennsylvania Constitution should be construed, when possible, to permit state court review of legislative action alleged to be unconstitutional."); *cf.* 42 Pa. C.S. § 7541(a) ("[The Declaratory Judgments Act] is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.").[7] Accordingly, we overrule Impeachment Managers' preliminary objection regarding the justiciability of District Attorney's claims.

2. Does District Attorney Have Standing and Are His Claims Ripe?

***7** Impeachment Managers' assertions that District Attorney lacks standing to pursue this matter and that his claims are not yet ripe for judicial review are also without merit.

> To have standing to seek judicial relief, the plaintiff must show that it is aggrieved by the action or matter that it challenges. A [petitioner] is aggrieved only if it is adversely affected and has a substantial, direct and immediate interest in the matter at issue. To be "substantial," the [petitioner's] interest must be distinct from and surpass the interest of all citizens in procuring compliance with the law. For the interest to be "direct," there must be a causal connection between harm to the [petitioner's] interest and the alleged violation of law that is the subject of the action. The interest is "immediate" if the causal connection is not remote or speculative.

Ams. for Fair Treatment, Inc. v. Phila. Fed'n of Teachers, 150 A.3d 528, 533 (Pa. Cmwlth. 2016) (internal citations omitted).

> There is considerable overlap between the doctrines of standing and ripeness, especially where the contentions regarding lack of justiciability are focused on arguments that the interest asserted by the petitioner is speculative, not concrete, or would require the court to offer an advisory opinion. *Rendell [v. Pa. State Ethics Comm'n*, 983 A.2d 708,] 718 [(Pa. 2009)]. In this sense, a challenge that

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> a petitioner's interest in the outcome of the litigation is hypothetical may be pled either as determinative of standing or restyled as a ripeness concern although the allegations are essentially the same. *Id.* Standing and ripeness are distinct concepts insofar as ripeness also reflects the separate concern that relevant facts are not sufficiently developed to permit judicial resolution of the dispute. [However, p]ure questions of law ... do not suffer generally from development defects and are particularly well suited for pre-enforcement review. *Id.* at 718 n.13.

Robinson Twp., Wash. Cnty. v. Com., 83 A.3d 901, 917 (Pa. 2013).

It is entirely unreasonable under the circumstances for Impeachment Managers to assert that District Attorney lacks standing. The Amended Articles are targeted squarely at him and are part of the broader, continuing effort by the General Assembly to potentially remove him from office. If left to proceed unabated, the Amended Articles will result in the District Attorney being tried by the Senate in less than a month. This gives him a substantial, direct, and immediate interest in the outcome here, which renders him aggrieved, despite the fact that his impeachment trial has not yet begun. *Cf. Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 488-89 (Pa. 2021) (noting that "our jurisprudence in pre-enforcement declaratory judgment cases ... has developed to give standing to plaintiffs to challenge laws before the laws have been enforced against them and before enforcement has been threatened").

As for the ripeness of District Attorney's claims, we acknowledge that Sections 4, 6, 10, and 15 of SR 386 collectively create a process through which he may make motions and objections regarding procedural and evidentiary issues prior to and during the course of his trial. *See* PFR, Ex. D. Even so, it remains that each of District Attorney's claims presents threshold questions of law and constitutional interpretation that require no additional factual development. We therefore conclude that the entirety of District Attorney's PFR is currently ripe for adjudication. *See Robinson*, 83 A.3d at 917.

***8** Accordingly, we overrule Impeachment Managers' preliminary objections regarding District Attorney's standing and the ripeness of the claims articulated in his PFR.

C. Interim President's Response in Opposition to District Attorney's Application for Summary Relief and Interim President's Cross-Application

Interim President opposes District Attorney's Application for Summary Relief, arguing that he is not entitled to judgment regarding any of the claims in his PFR. Interim President's Br. at 16-74.[8] She also seeks summary relief through her Cross-Application. Specifically, she maintains that each of District Attorney's claims is legally insufficient, as well as that Count III is not ripe for judicial review. *Id.* at 16-74, 82.[9] As a result, she contends she is entitled to summary relief in her favor on all counts.

1. Are District Attorney's Claims Ripe for Judicial Review?

As already discussed, each of District Attorney's claims presents threshold questions of law and constitutional interpretation that require no additional factual development. Therefore, we deny Interim President's Cross-Application regarding the ripeness of the claims presented by District Attorney.

2. Are District Attorney's Claims Legally Insufficient?

Interim President's assertion that District Attorney's claims are legally insufficient is best understood as a request for summary relief in her favor regarding the substantive merits of those claims. Traditionally, legal insufficiency of a pleading, otherwise known as demurrer, must be raised by preliminary objection. Per Pennsylvania Rule of Civil Procedure 1028, in relevant part:

> Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:
>
> ***9** ....
>
> (4) legal insufficiency of a pleading (demurrer)[.]

Pa. R.Civ.P. 1028(a)(4). Where a party fails to demur to a pleading via preliminary objections, they waive their ability to do so. *See* Pa. R.Civ.P. 1032(a); *Zappala v. Brandolini Prop. Mgmt., Inc.*, 909 A.2d 1272, 1282 (Pa. 2006).

Here, Interim President argues that District Attorney's claims are legally insufficient, but this seems to be more of an

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improper use of legal terminology than an actual demurrer claim. Instead, judging by her Cross-Application, it appears that Interim President contends that District Attorney's claims are "legally insufficient," in that his reading of the Pennsylvania Constitution is incorrect and that, based upon the law and the factual circumstances, Interim President is entitled to judgment in her favor on all counts. For analytical simplicity's sake, the merits of Interim President's request for summary relief regarding the substance of District Attorney's claims is addressed in the following section.

D. District Attorney's Application for Summary Relief

We now turn to the substantive merits of District Attorney's PFR, as well as his and Interim President's respective, dueling claims that they are entitled to summary relief in their favor. Each of the counts in District Attorney's PFR, generally speaking, requires us to parse the text of the Pennsylvania Constitution. Given this, we turn to our canons of constitutional interpretation for guidance.

> As an interpretive matter, the polestar of constitutional analysis undertaken by the Court must be the plain language of the constitutional provisions at issue. A constitutional provision requires unstrained analysis, "a natural reading which avoids contradictions and difficulties in implementation, which completely conforms to the intent of the framers and which reflects the views of the ratifying voter." *Jubelirer v. Rendell*, ... 953 A.2d 514, 528 ([Pa.] 2008); *Com*[.] *ex rel. Paulinski v. Isaac*, ... 397 A.2d 760, 766 ([Pa.] 1979). Stated otherwise, the constitutional language controls and "must be interpreted in its popular sense, as understood by the people when they voted on its adoption." *Stilp v. Com*[.], ... 905 A.2d 918, 939 ([Pa.] 2006); *Ieropoli v. AC & S Corp.*, ... 842 A.2d 919, 925 ([Pa.] 2004).

In re Bruno, 101 A.3d 635, 659 (Pa. 2014). With this in mind, we turn to each of District Attorney's claims.

1. Have the Amended Articles Been Invalidated as a Result of the 206th General Assembly's Adjournment?

In Count I of his PFR, District Attorney claims that the Amended Articles were rendered null and void when the 206th General Assembly terminated on November 30, 2022, just prior to the stroke of midnight. District Attorney's Br. at 8-16. He claims that his position is backed by the Pennsylvania Constitution, the Legislative Procedure Manual (Manual), the General Assembly's Rules, and precedential case law, and that he is entitled to summary relief as a result. *Id.* We, however, disagree.

The Pennsylvania Constitution establishes, in relevant part: "Members of the General Assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election." Pa. Const. art. II, § 2. "Senators shall be elected for the term of four years and Representatives for the term of two years." *Id.* § 3. "The General Assembly shall be a continuing body during the term for which its Representatives are elected." *Id.* § 4. In line with these constitutional provisions, the Manual states:

> ***10** (a) *When held.*--The General Assembly is a continuing body during the term for which its Representatives are elected which begins on December 1 of each even-numbered year and ends at the expiration of November 30 of the next even-numbered year. Regular sessions are held annually and begin at 12 noon on the first Tuesday of January of each year. The regular session held in odd-numbered years is referred to as the first regular session and the regular session held in even-numbered years is referred to as the second regular session.
>
> (b) *Matters considered.*--There is no limitation as to the matters which may be considered during a regular session. All matters pending before the General Assembly upon the adjournment *sine die*[10] or expiration of a first regular session maintain their status and are pending before the second regular session.

101 Pa. Code § 7.21. "When the General Assembly finally adjourns any regular or special session, such adjournment is referred to as an adjournment *sine die* and is accomplished by a concurrent resolution." *Id.* § 7.24(b). Additionally, Senate Rule 12(j) mandates:

> All bills, joint resolutions, resolutions, concurrent resolutions or other matters pending before the Senate upon the recess of a first regular session convening in an odd-numbered year shall maintain their status and be pending before a second regular session convening in an even-numbered year but not beyond adjournment *sine die* or November 30th of such year, whichever first occurs.

S.R. 12(j), 206th General Assembly Senate Rule 12(j) (Pa. 2021-2022).[11] As the Supreme Court has explained:

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> The [Pennsylvania] Constitution contemplates the exercise of legislative power by concurrence of both House and Senate. The legislative action of the General Assembly, in virtue of the session which convened, ... end[s] with its adjournment.[ ] ... There is no implied power in the exercise of which the [General Assembly] may sit after adjournment.

Brown v. Brancato, 184 A. 89, 93 (Pa. 1936) (footnote omitted).

> A motion to adjourn *sine die* has the effect of closing the session and terminating all unfinished business before the House, and all legislation pending upon adjournment sine die expires with the session, while a motion to adjourn from day to day does not destroy the continuity of a session and unfinished business simply takes its place on the calendar of the succeeding day.

Frame v. Sutherland, 327 A.2d 623, 627 n.9 (Pa. 1974) (quoting P. Mason, Manual of Legislative Procedure § 445(3), at 301 (1970)). "[A] *sine die* adjournment at the end of a session does not terminate all then-pending business before the General Assembly, however, as article II, section 4 of the Pennsylvania Constitution "now provides that '[t]he General Assembly shall be a continuing body during the term for which its Representatives are elected.' " *Id.* Additionally, though it is not precedential, the following, succinct bit of analysis from *Commonwealth v. Costello* is instructive:

> When ... the session of the legislature has finally adjourned and ended, ... this is equivalent to the prorogation of parliament. The functions of the legislature are then terminated. The conclusion of the session puts an end to all pending proceedings of a legislative character: Jefferson's Manual, 183; Cushing's Law and Practice of Legislative Assemblies, § 516. Nothing thereafter remains to call into action any auxiliary legislative power.

21 Pa. D. 232, 237 (Pa. Quar. Sess. 1912), 1912 WL 3913, at *6.

***11** All of this having been said, however, the General Assembly's *impeachment* powers are not the same as its *legislative* powers. To the contrary, those impeachment powers are found in

> a separate[ ] and independent article [of the Pennsylvania Constitution], standing alone and entirely unconnected with any other subject. Nor does [that article] contain any reference to any other provision of the [C]onstitution as being needed or to be used in carrying out the particular work to which the eighteenth article is devoted. It is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution.

Com. ex rel. Att'y Gen. v. Griest, 46 A. 505, 506 (Pa. 1900);[12] *accord Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) (Article III of the Pennsylvania Constitution is inapplicable to the constitutional amendment process, because "it is not a legislative act at all, but a separate and specific power granted to the General Assembly, similar to the impeachment and trial powers granted to the House ... and Senate, respectively, under [a]rticle VI, [s]ections 4 and 5"). Instead, the General Assembly's constitutionally conferred power to impeach, try, and remove public officials "is a judicial power." *People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 327 (N.Y. Sup. Ct. 1913).

> [T]he sole function of the House and Senate is not to compose "the Legislature," and to act together in the making of laws. Each, in the plainest language, is given separate plenary power and jurisdiction in relation to matters of impeachment: The House the power to 'impeach,' that is, to prefer charges; the Senate the power to 'try' those charges. These powers are essentially judicial in their nature. Their proper exercise does not, in the remotest degree, involve any legislative function.

Ferguson v. Maddox, 263 S.W. 888, 890 (Tex. 1924).

The restrictions imposed by the Pennsylvania Constitution upon the General Assembly's legislative powers therefore do not apply to its judicial powers of impeachment, trial, and removal. While there is nothing explicit or specific in the Pennsylvania Constitution that addresses either the temporal limits of such judicial powers, in general, or the effect the termination of one iteration of the General Assembly and the beginning of a new one, Impeachment Managers and Interim President present persuasive authority, in the form of references to British history, to compendiums of parliamentary authority, to a nearly 110-year-old opinion from the Pennsylvania Attorney General, and to a litany of prior impeachment proceedings at the federal level, as well as in Pennsylvania and other states. *See* Impeachment Managers' Br. in Opp'n to District Attorney's Appl. for Summ. Relief at 9-15; Interim President's Br. at 25-33. All of that historical, judicial, and traditional authority firmly supports a conclusion that the Pennsylvania Constitution does not require the impeachment and trial of a public official to be completed by the same iteration of the General Assembly.

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As the Florida Supreme Court wrote more than 150 years ago, when faced with a similar argument,

> ***12** [s]o long as there is a Senate there is a court. If the Senate was abolished and the impeachment causes then pending before it [were] not transferred to some other tribunal as its successor for trial, then we would have a different question for solution. But that is not the case. Because Senators may die or change, the Senate does not cease to exist nor do its functions as a court cease. The court co-exists with the Senate. Because the Judge of a Circuit Court may die, the Circuit Court does not cease to exist as a tribunal known to the constitution. A court is one thing, and the judge of the court is another. The abolition of the court does not follow from a vacancy in the office of the judicial officer that presides in it; the death of each officer composing this court, between the regular terms appointed for its sitting, would not a work a discontinuance of any cause now upon its calendar. If such a thing should occur in term, it would intercept and interrupt the actual business until other officers are appointed under the constitution; this would be the whole result. So far, therefore, as the tribunal is concerned, the Senate, like any other judicial tribunal, does not die or cease to exist with the adjournment of the session or term. Its business as a court is simply intercepted. All cases of impeachment pending and undisposed of at the preceding session remain upon its calendar or docket *until the Senate sitting as a court* enters an order finally disposing of each case. Much embarrassment in the consideration of this subject will arise if we make the Senate occupy to this matter the relation of a party, and conceive the idea that if the personal character of the Senate changes, the suit thereby is abated.

In re Opinion of Justs., 14 Fla. 289, 297-98 (1872) (emphasis in original).[13] Therefore, as the adjournment of the General Assembly does not affect its judicial powers, we conclude that the Amended Articles remain constitutionally valid, despite the fact that District Attorney's impeachment was started during the 206th General Assembly and will be continued by the 207th. Accordingly, we deny District Attorney's Application for Summary Relief, and grant Interim President's Cross-Application, regarding Count I of the PFR.

2. Is District Attorney Constitutionally Eligible for Impeachment and Trial by the General Assembly?

In Count II, District Attorney argues that he cannot be impeached and removed by the General Assembly, due to his role as Philadelphia's district attorney. He puts forth two reasons for why this is the case. First, he argues that he is not a "civil officer," as that term is understood through its use in article VI, section 6 of the Pennsylvania Constitution. District Attorney's Br. at 17-21. Second, he maintains that all power to impeach and remove him has been constitutionally delegated to the City of Philadelphia's government. *Id.* at 21-26. On these bases, he maintains that he is entitled to summary relief regarding Count II. As with his argument regarding Count I, we disagree.

With regard to the first part of this argument, and as already mentioned *supra*, article VI, section 6 reads as follows:

> The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Pa. Const. art. VI, § 6.

By virtue of this language, the question then becomes whether the Pennsylvania Constitution gives the General Assembly the power to impeach and remove county or local officers. *See Pettit v. Namie*, 931 A.2d 790, 797 (Pa. Cmwlth. 2007) ("[I]n Pennsylvania, district attorneys are properly considered county rather than state officers."). The answer hinges upon the meaning of "all other civil officers," as that term is used in article VI, section 6. While that meaning is not immediately apparent from the text itself, District Attorney argues the most reasonable reading is that "all other civil officers" are only those individuals who hold state-level offices. Article VI, section 6 speaks of "[t]he Governor and all other civil officers" as those which are susceptible to the General Assembly's powers of impeachment and removal. Pa. Const. art. VI, § 6. Though, again, the meaning of "all other civil officers" is not plainly evident, District Attorney directs our attention to the doctrine of *ejusdem generis.* District Attorney's Br. at 17-18.

> ***13** "Under [this] doctrine ..., where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." *McClellan v. Health Maint*[. *Org.*

> *of Pa.*], ... 686 A.2d 801, 806 ([Pa.] 1996). Stated in somewhat repetitive yet different language, the rule of *ejusdem generis* instructs that "where general words follow an enumeration of ... words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to ... the same general kind or class as those specifically mentioned." *Steele v. Statesman* [*Ins. Co.*], ... 607 A.2d 742, 743 ([Pa.] 1992).

S.A. by H.O. v. Pittsburgh Pub. Sch. Dist., 160 A.3d 940, 946 (Pa. Cmwlth. 2017). The Governor holds a state-level elected office, so, in District Attorney's reading, *ejusdem generis* requires that "all other civil officers" subject to impeachment and removal by the General Assembly must be of a similar station, *i.e.*, holding state-level elected office. District Attorney's Br. at 17-19. As District Attorney is an officer of the City of Philadelphia, under his preferred interpretation, he therefore is not of the same class of elected official as the Governor and is not subject to impeachment and trial by the General Assembly. *See* Pa. Const. art. IX, § 4 ("County officers shall consist of ... district attorneys[.]"); *id.* art. IX, § 13(e) ("Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia[.]"); *Chalfin v. Specter*, 233 A.2d 562, 565 (Pa. 1967). Furthermore, District Attorney also points our attention towards excerpts from the debates and the legislative history pertaining to the impeachment provisions from various versions of the Pennsylvania Constitution. District Attorney's Br. at 19-21. District Attorney asserts that these excerpts also support his position that the General Assembly does not have constitutional authority to impeach and try him. *Id.* This interpretation is supported by the fact that "judgment in [impeachment] cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth." Pa. Const. art. VI, § 6. It would be illogical for article VI, section 6 to be read to allow the General Assembly to impeach and remove District Attorney as Philadelphia's district attorney, when the same provision does not enable the General Assembly to disqualify him from holding that office again in the future. *See Com. ex rel. Woodruff v. Joyce*, 139 A. 742, 742 (Pa. 1927) (the phrase "any office under this Commonwealth" refers only to state-level offices, not local offices).

Unfortunately for District Attorney, though, his proposed reading of article VI, section 6 conflicts with the general tenor of relevant case law. Notably, there are prior Supreme Court cases that imply that article VI of the Pennsylvania Constitution, as a whole, applies to local officials as well as state-level officials. *See S. Newton Twp. Electors v. S. Newton Twp. Supervisor, Bouch*, 838 A.2d 643 (Pa. 2003); *Allegheny Inst. Taxpayers Coal. v. Allegheny Reg'l Asset Dist.*, 727 A.2d 113 (Pa. 1999); *In re Pet. to Recall Reese*, 665 A.2d 1162 (Pa. 1995). In each of those cases, a local official successfully fought removal efforts that were initiated at the local level by arguing that article VI, Section 7 was the only legal mechanism by which they could be removed from office, or the issue of how a local official could be removed was addressed as part of the Supreme Court's reasoning. Additionally, the Supreme Court has expressly stated that a theory of a similar nature, whereby local officials are not subject to the removal process outlined in article VI, section 7, which addresses the removal of "all civil officers ... on conviction of misbehavior in office or of any infamous crime[,]" as well as the Governor's ability to remove certain kinds of civil officers for cause,

> ***14** is in at least facial tension with prior decisions of this Court. *See, e.g.*, *Com*[.] *ex rel. Schofield v. Lindsay*, ... 198 A. 635 ([Pa.] 1938) (quoting *In re Georges Twp. Sch. Dirs.*, ... 133 A. 223, 225 ([Pa.] 1926)[,] for the proposition that, "in so far as appointive officers are concerned, there is the right, under ... article [VI], section 4, of the Constitution, on the part of the one selecting, to remove at his own pleasure ... and this applies not only to officers designated by the Governor, but to those permitted by the Legislature to make the appointment in question, whether the employment be by the state, a county, or municipality"); *accord Finley v. McNair*, ... 176 A. 10, 11 & n. 1 ([Pa.] 1935) (including an assistant county superintendent of schools as one among those "held to be officers" in prior cases).

Burger v. Sch. Bd. of McGuffey Sch. Dist., 923 A.2d 1155, 1162 n.6 (Pa. 2007).[14]

Furthermore, with regard to a previous version of the Pennsylvania Constitution's removal provision, which is substantially similar to the one contained in the current version of article VI, section 7, the Supreme Court stated:

> Under the ... constitution there are three kinds of removal, to wit, on conviction of misbehavior or crime, at the pleasure of the appointing power, and for reasonable cause on the address of two-thirds of the senate. All officers are subject to the first kind, appointed officers to the second, and elected officers to the third. It seems to us very clear that the word "officers" here is used in the same sense throughout the section so far as their classification into state, county and municipal, is concerned. We cannot

> conceive that we have any right to say that the expression "appointed officers" shall be held to exclude such as are municipal, and include only such as are state or county, when it is not at all disputed that the expression "all officers" in the first clause includes them all. The distinction between appointed and elected officers, is one that relates merely to the source of their authority. That is, those that are appointed, not some of them but all of them, may be removed at the mere pleasure of the power that appointed them, and those that are elected, on the address of two-thirds of the senate, and by the governor.... It seems to us that we would be making, rather than construing, the constitution if we should say that appointed municipal officers shall not be removable at the pleasure of the power which appointed them, when the plain unambiguous words of the instrument positively declare that all appointed officers shall be subject to such removal. If we could thus declare, it is difficult to perceive any good reason why we might not with the same propriety hold that appointed county officers should be exempted from this method of removal. In truth there is no distinction appearing in the section either by words or inference, in either the territorial or functional character of the offices held by the persons who are subjected to its operation. For us to make such a distinction would be a work of creation, not of interpretation.

***15** *Houseman v. Com. ex rel. Tener*, 100 Pa. 222, 230-31 (1882). Even more injurious to District Attorney's claim that he is not a civil officer in terms of article VI, section 6 is *Commonwealth ex rel. Specter v. Martin*, 232 A.2d 729 (Pa. 1967), in which the Supreme Court dealt with whether Arlen Specter's candidacy for Mayor of Philadelphia prevented him from retaining his position as the City's District Attorney. In that splintered decision, there was a 5-1 majority, sprinkled across three separate opinions, in favor of concluding that the district attorney of Philadelphia is subject to the Pennsylvania Constitution's removal provisions,[15] due to the usage in article VI, section 7 of the phrase "[a]ll civil officers[.]"[16] *See Martin*, 232 A.2d at 733-39 (plurality opinion); *id.* at 743-44 (Eagen, J., concurring in part); *id.* at 753-55 (Musmanno, J., separate opinion). There is thus no principled basis for us to conclude that the nearly identical language in article VI, section 6 should be treated differently. As a result, we hold that the General Assembly *does* have such power to impeach and try local officials under article VI, section 6.

Nor does the second part of District Attorney's argument warrant a change in this conclusion, as it is entirely contingent upon the first part of his argument regarding Count II. article XI, section 13 of the Pennsylvania Constitution, in relevant part, abolished all county offices in Philadelphia, replaced them with City offices, and directed that the City officers elected or appointed to those offices be subject to the Constitution and the laws in place at the time of the amendment's effective date, unless the General Assembly provided otherwise. *See* Pa. Const. art. IX, § 13(a), (f). Among the laws in place in 1951, the time at which article IX, section 13 took effect, was the Act of June 25, 1919, P.L. 581, No. 274, more commonly known as the Charter Act, City Charter Act, or First Class City Charter Act. *See In re Hadley*, 6 A.2d 874, 876 (Pa. 1939); *Stewart v. Hadley*, 193 A. 41, 42 (Pa. 1937); *Leary v. City of Phila.*, 172 A. 459, 460 (Pa. 1934). Section 9 of the Charter Act authorizes the impeachment and removal of a City officer through a process that starts with a complaint filed with the Court of Common Pleas of Philadelphia County by 20 "qualified electors," followed by an initial examination by the Court of the allegations therein, a rule to show cause hearing, the appointment by the Court of an investigative committee consisting "of [5] competent and reputable citizens," the issuance of a report by the committee, a trial presided over by the Court's president judge, and, finally, the removal of the municipal officer from his post. 53 P.S. §§ 12199-12205.

***16** As District Attorney is a "civil officer" for purposes of article VI, section 6 of the Pennsylvania Constitution, Section 9 of the Charter Act at most *complements*, but does not *supplant*, the General Assembly's power to impeach him. Given this, as well as our disposition of the first part of District Attorney's argument, the contingent second part cannot entitle him to the relief he seeks through Count II. Accordingly, we deny District Attorney's Application for Summary Relief, and grant Interim President's Cross-Application, regarding Count II.

3. What Constitutes "Any Misbehavior in Office" in the Context of article VI, section 6 of the Pennsylvania Constitution and Do the Amended Articles Contain Viable Allegations that District Attorney Committed Such Conduct?

Finally, in Count III, District Attorney argues that the Amended Articles fail to allege conduct on his part that would satisfy article VI, section 6's[17] requirement that he may be impeached and tried only in the event he committed "any misbehavior in office." We agree.

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There do not appear to have been any prior cases that have interpreted what this phrase means in the context of impeachment, but guidance can be found from *In re Braig*, 590 A.2d 284 (Pa. 1991), where the Supreme Court addressed former article V, section 18(l) of the Pennsylvania Constitution,[18] which mandated the removal and barring from office of any jurist who has been convicted in a court of law "of misbehavior in office," as well as article VI, section 7's similar language regarding civil officers.[19] As explained by the *Braig* Court:

> "Misbehavior in office" was a common law crime consisting of the failure to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive. Our Constitution has long contained provisions specifying that civil officers "shall be removed on conviction of misbehavior in office or of any infamous crime." Constitution of 1838, [a]rticle VI, [s]ection 9; Constitution of 1874, [a]rticle VI, [s]ection 4 (renumbered [a]rticle VI, [s]ection 7 on May 17, 1966). In the several cases where interpretation of these provisions came before the appellate courts, it was uniformly understood that the reference to "misbehavior in office" was to the criminal offense as defined at common law.
>
> ....
>
> Based on our reading of all the cases, we must conclude that the language of [a]rticle V, [s]ection 18(l), like the identical language of present [a]rticle VI, [s]ection 7, refers to the offense of "misbehavior in office" as it was defined at common law. This conclusion is not without its difficulties, however. Since the enactment of the Crimes Code effective June 6, 1973,[20] common law crimes have been abolished and "[n]o conduct constitutes a crime unless it is a crime under this title or another statute of this Commonwealth." 18 Pa. C.S. § 107(b). Thus no prosecution on a charge of "misbehavior in office" can now be undertaken. Rather than reach the difficult question whether the legislature could effectively nullify the constitutional provision by abolishing the crime referred to therein, we think it prudent to adopt a holding under which the constitutional provision may still be given effect. Therefore, we hold that the automatic forfeiture provision of [a]rticle V, [s]ection 18(l) applies where a judge has been convicted of a crime that satisfies the elements of the common law offense of misbehavior in office.

***17** *Braig*, 590 A.2d at 286-88.[21]

District Attorney and Interim President take opposing positions regarding *Braig*. District Attorney maintains that the understanding of "misbehavior in office" that was articulated in *Braig* is equally applicable here, despite the fact that *Braig* did not deal with how to interpret article VI, section 6. In District Attorney's view, "misbehavior in office" has a uniform meaning wherever it is used in the Pennsylvania Constitution, and allows for impeachment, trial, and removal only where a public official failed to perform a positive ministerial duty or performed a discretionary duty with an improper or corrupt motive. By contrast, Interim President argues that *Braig* is inapposite. She asserts that article VI, section 6's allowance for impeachment "for any misbehavior in office" distinguishes it from article VI, section 7's declaration that civil officers are subject to removal "on conviction of misbehavior in office" and former article V, section 18(l)'s language that a jurist will automatically forfeit their office and be barred therefrom upon being "convicted of misbehavior in office by a court." Interim President believes that "any misbehavior in office," in terms of the impeachment process, is whatever the General Assembly deems it to be; in other words, it is a political offense, not a criminal one. According to Interim President, her interpretation is supported by *Larsen*, in which our Court declined to hold that a public official may only be impeached for what amount to criminal offenses. In addition, Interim President claims her reasoning is supported by the alterations that were made to article VI when it was amended in 1966 to, in relevant part, change its wording from allowing impeachment "for any misdemeanor in office" to allowing impeachment "for any misbehavior in office."

***18** With regard to Interim President's assertion about *Larsen*, the salient portion of that opinion reads as follows:

> [Larsen] seems to pursue an alternative argument that the impeachment charges by the House ... do not amount to a constitutionally valid basis for impeachment because they do not, at least in some respects, amount to charges of criminal offenses.
>
> [Larsen] refers to the Preparatory Committee Report on the Judiciary, for the Pennsylvania Constitution Convention, 1967-1968, pp. 158-160 to support the point that "misbehavior in office"—the [section] 6 statement of impeachable offense—should be interpreted as referring only to the common law crime of misconduct in office, quoting the cited portion of the report as follows:

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> The common law of misconduct in office, variously called misbehavior, misfeasance, or misdemeanor in office, means either the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive.... The multiple usage of the term "misbehavior in office" appears to be a codification of the common law offense.
>
> However, it is impossible to perceive how the impeachment charges in this case depart from even that strict definition of impeachable offense, which finds no support in judicial precedents. Briefly summarized, the charges are as follows:
>
> 1. [Larsen] tracked petitions for allowance of appeal to the Supreme Court, for special handling, because friends and political contributors were involved as attorneys;
>
> 2. [Larsen] engaged in *ex parte* communications and exchanges with a friend and political supporter who was the attorney in two cases in which petitions for allowance of appeal were pending before the Supreme Court;
>
> 3. [Larsen] made false statements to the grand jury;
>
> 4. [Larsen] communicated *ex parte* with a trial judge to influence the outcome of a trial court proceeding;
>
> 5. In litigation pursuant to his reprimand by the Supreme Court, petitioner made false statements under oath;
>
> 6. [Larsen] violated prescription drug laws.
>
> Even if the definition of "misbehavior in office" for impeachment purposes, quoted above from the writings of the Constitutional Convention Preparatory Committee, had the force of law, review of the impeachment charges leads to the conclusion that they involve breaches of "positive statutory duty" and also "performance of discretionary act with improper or corrupt motive."

646 A.2d at 702. In short, *Larsen* provides muddled support at best for Interim President's position. The Court expressed some skepticism towards the idea that "any misbehavior in office" only refers to criminal offenses, but did not actually hold that Larsen's preferred, narrower definition was incorrect and, instead, went on to address and apply that definition to the merits of Larsen's claims.

As for Interim President's position regarding the 1966 amendment of article VI of the Pennsylvania Constitution, it is true that the pre-1966 amendment language was narrow in scope. As explained by the Supreme Court:

> The [pre-1966 amended] [C]onstitution provides in [a]rticle 6, section 1, ... that " '[t]he House of Representatives shall have the sole power of impeachment.' " This plain language makes the power plenary within constitutional limits, that is to say, " 'for any misdemeanor in office,' " which is a criminal act in the course of the conduct of the office, to which impeachments are limited. For crimes not misdemeanors in office, impeachment cannot be brought. This is the clear wording of section 3 of [a]rticle 6, ... which reads, " 'The Governor and all other civil officers shall be liable to impeachment for any misdemeanor in office.' "

***19** *Dauph. Cnty. Grand Jury*, 2 A.2d at 803. However, it does not follow from this that changing the wording from "misdemeanor" to "misbehavior" necessarily broadened the scope of activities for which a public official may be impeached from only criminal acts committed in office to anything the General Assembly deemed objectionable. Indeed, the framers of the 1966 amendment, as well as the voters who approved it, would undoubtedly have been aware of the general understanding of "misbehavior in office" and the fact that it was at that point a common law crime in Pennsylvania,[22] as well as its usage and understanding throughout other parts of the Pennsylvania Constitution. It would be illogical to conclude, without firm supporting evidence that is not on offer here, that a phrase has entirely different meanings when deployed in such a way. Rather, it is more plausible that the 1966 amendment simply harmonized the wording of article VI's impeachment provision with other, similar provisions elsewhere in the Pennsylvania Constitution.

It follows, then, that it is much more reasonable for us to conclude that the 1966 amendment of article VI of the Pennsylvania Constitution *shrank* the universe of potentially impeachable offenses. In this reading, pre-1966 amendment article VI allowed for impeachment in the event a public official committed "a criminal act in the course of the conduct of the office[.]" *Id.* Post-amendment, however, it only permits impeachment in the event a public official has acted in a manner that conformed with the generally understood, preexisting definition of the crime of "misbehavior in office," *i.e.*, the failure to perform a positive ministerial duty or the performance of a discretionary duty with an improper or corrupt motive.[23] Such a reading comports with our canons of constitutional interpretation far more comfortably than that proposed by Interim President. *See* *Bruno*, 101 A.3d at 659.

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What distinguishes the impeachment provisions of article VI, section 6 from the removal provisions contained in article VI, section 7 and article V, section 18(d)(3) is that impeachable misbehavior in office does not require a preexisting criminal conviction in a court of law. In this context, and in light of the "judicial" nature of impeachment proceedings, it is logical then to treat the Amended Articles as, in essence, an indictment of District Attorney by the House, with the Senate acting in the dual roles of judge and jury, both presiding over District Attorney's trial and voting on the charges after the presentation of evidence. Ultimately, however, the Amended Articles, and indeed the whole process itself, are constitutionally sound only in the event that the substance of the House's "charges" are akin to a criminal indictment of District Attorney for misbehavior in office. Each of the Amended Articles must therefore be scrutinized, in order to determine whether they satisfy this standard. In other words, each of the Amended Articles meets constitutional muster only if the assertions made there would support a conclusion that District Attorney failed to perform a positive ministerial duty or performed a discretionary duty with an improper or corrupt motive.

***20** In Article I of the Amended Articles, the House alleges that District Attorney has been derelict in his duties and has violated the law. Specifically, the House avers that District Attorney has fired experienced line prosecutors and hired ones without the necessary level of expertise; withdrew his office from the Pennsylvania District Attorneys Association due to policy disagreements; altered prosecutorial training "to focus on issues that promote ... [District Attorney's] radically progressive philosophies rather than how to effectively prosecute a criminal case"; reoriented office charging and plea bargaining policies regarding certain prostitution, drug possession, and other low-level crimes to focus on limiting pre-trial detainment and increasing the use of alternative sentencing practices instead of post-conviction incarceration; began factoring defendants' immigration status into the plea bargaining process; and set goals to limit the length of carceral sentences, as well as of both parole and probation supervision. *See* PFR, Ex. C at 26-29. The House claims that these decisions have led to decreased prosecution of crimes and guilty verdicts, as well as a sharp increase in the crime rate in Philadelphia. *See id.* at 29-34. What the House *does not do*, however, is make assertions in Article I that would sustain a charge of misbehavior in office. Each of the House's concerns in Article I pertains to discretionary determinations made by District Attorney in his role as Philadelphia's district attorney, but are not supported by allegations that those determinations were the product of an improper or corrupt motive. Instead, the House simply appears not to approve of the way District Attorney has chosen to run his office. Regardless of whether any of the House's concerns have substantive merit, it remains that such disagreements, standing alone, are not enough to create a constitutionally sound basis for impeaching and removing District Attorney. *Cf. Com. v. Clancy*, 192 A.3d 44, 53 (Pa. 2018) ("[T]he prosecutor is afforded such great deference that this Court and the Supreme Court of the United States seldom interfere with a prosecutor's charging decision. *See, e.g.*, *United States v. Nixon*, 418 U.S. 683, 693 ... (1974) (noting that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case"); *Com*[.] *v. Stipetich*, ... 652 A.2d 1294, 1295 ([Pa.] 1995) (noting that "the ultimate discretion to file criminal charges lies in the district attorney")); *Com. v. Brown*, 708 A.2d 81, 84 (Pa. 1998) (quoting *Com. v. Malloy*, 450 A.2d 689, 692 (Pa. Super. 1982)) "[T]he district attorney is permitted to exercise sound discretion to refrain from proceeding in a criminal case whenever he, in good faith, thinks that the prosecution would not serve the best interests of the state."); *Com. ex rel. Specter v. Bauer*, 261 A.2d 573, 576 (Pa. 1970) (cleaned up) ("The [d]istrict [a]ttorney of Philadelphia County, no less than district attorneys in any other county of this Commonwealth, is the sole public official charged with the legal responsibility of conducting in court all criminal and other prosecutions, in the name of the Commonwealth.... The [d]istrict [a]ttorney must be allowed to carry out this important function without hindrance or interference from any source."); *Com. v. DiPasquale*, 246 A.2d 430, 432 (Pa. 1968) (citation omitted) ("A [d]istrict [a]ttorney has a [g]eneral and widely recognized power to conduct criminal litigation and prosecutions on behalf of the Commonwealth, and to decide whether and when to prosecute, and whether and when to continue or discontinue a case.... But this broad general power of a [d]istrict [a]ttorney is subject to the right the power of a Court (a) to provide generally for the orderly administration of criminal Justice, including the right and power to supervise all trials and all Court proceedings, and (b) to protect all of a defendant's rights to a fair trial and due process under the Constitution of the United States and the Constitution of Pennsylvania."); *Martin*, 232 A.2d at 736 ("In the performance of his duties, the district attorney acts in a quasi-judicial capacity.... [T]he office of [d]istrict [a]ttorney is part and parcel of the judicial system and performs an important function in the administration of justice.... [I]n the performance of his duties, the law grants to the district

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attorney wide discretion in the exercise of which he acts in a judicial capacity.").

In Article II of the Amended Articles, the House alleges the District Attorney obstructed its Select Committee of Restoring Law and Order's investigation of him. Specifically, the House claims that District Attorney did so by opposing and then partially complying with the Select Committee's subpoenas, filing an action in Commonwealth Court challenging the Select Committee's actions, and requesting that he be allowed to testify before the Select Committee at a public hearing, rather than in private. *See* PFR, Ex. C at 34-38. However, working agreeably with the investigative efforts of a General Assembly committee does not come within the responsibilities imposed by law upon district attorneys, *i.e.*, the duty to conduct prosecutions and enforce the law within their respective jurisdictions. In other words, complying with the Select Committee was not one of District Attorney's discretionary or ministerial duties, and his failure to do so cannot constitute misbehavior in office.

In Articles III, IV, and V of the Amended Articles, the House claims that District Attorney violated the Rules of Professional Conduct and the Code of Judicial Conduct by virtue of his and his office's handling of three different criminal cases. *See* PFR, Ex. C at 38-47. These articles, however, fail as a matter of law. Generally speaking, "[t]he legislature is precluded ... from exercising powers entrusted to the judiciary." *Com. v. Stern*, 701 A.2d 568, 571 (Pa. 1997). This includes those entrusted by "[a]rticle V, [s]ection 10(c) [of the Pennsylvania Constitution, which] vests the exclusive power to govern the conduct of attorneys in the Supreme Court of Pennsylvania." *Id.* at 572. "In furtherance of that authority, [the Supreme] Court has enacted rules of professional conduct." *Lloyd v. Fishinger*, 605 A.2d 1193, 1196 (Pa. 1992). "[I]t necessarily follows that any encroachment upon the judicial power by the legislature[,]" including upon the Supreme Court's exclusive authority to discipline attorneys, "is offensive to the fundamental scheme of our government." *Com. v. Sutley*, 378 A.2d 780, 783 (Pa. 1977). As such, the General Assembly is without authority to adjudicate any such alleged violations of the Rules of Professional Conduct; only the Supreme Court may do so, through its Disciplinary Board and the administrative process that the Supreme Court has established through the Rules of Disciplinary Enforcement. As for District Attorney's alleged violations of the Code of Judicial Conduct, the Amended Articles assert that it applies to him by virtue of Section 1401(o) of The County Code.[24] *See* PFR, Ex. C at 24. Section 1401(o)[25] reads as follows:

> ***21** A district attorney shall be subject to the Rules of Professional Conduct and the canons of ethics as applied to judges in the courts of common pleas of this Commonwealth insofar as such canons apply to salaries, full-time duties and conflicts of interest. Any complaint by a citizen of the county that a full-time district attorney may be in violation of this section shall be made to the Disciplinary Board of the Supreme Court of Pennsylvania. If any substantive basis is found, the board shall proceed forthwith in the manner prescribed by the rules of the Supreme Court and make such recommendation for disciplinary action as it deems advisable, provided, however, that if the Supreme Court deems the violation so grave as to warrant removal from office, the prothonotary of the Supreme Court shall transmit its findings to the Speaker of the House ... for such action as the House ... deems appropriate under [a]rticle VI of the Constitution of Pennsylvania.

16 P.S. § 1401(o). Thus, under Section 1401(o), the Disciplinary Board and the Supreme Court are responsible for addressing alleged violations by a district attorney of the Rules of Professional Conduct *and* of the Code of Judicial Conduct, whereas the General Assembly may only exercise its article VI authority in the event "the Supreme Court deems the violation so grave as to warrant removal from office[.]" *Id.* As the Supreme Court has made no such determination here, the General Assembly cannot impeach or try District Attorney for allegedly violating either the Rules *or* the Code.

In Article VI of the Amended Articles, the House alleges that District Attorney and assistant district attorneys under his supervision repeatedly violated Section 201 of the Crime Victims Act, 18 P.S. § 11.201,[26] as well as 18 U.S.C. § 3771, "on multiple occasions by specifically failing to timely contact victims, deliberately misleading victims and[/]or disregarding victim input and treating victims with contempt and disrespect." PFR, Ex. C at 47-48. This would appear to facially present a claim that District Attorney failed to perform positive ministerial duties imposed upon him by law. However, the complicating factor is that the House fails to identify *any specific examples* of such behavior. Article VI, as currently constituted, therefore lacks the specificity required to sustain a charge of misbehavior in office against District Attorney. *See Hubbs*, 8 A.2d at 620-21 (indictment for misbehavior in office must be sufficiently specific in order

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to viably present charges against the accused of misbehavior in office).

Finally, as to Article VII of the Amended Articles, the House largely reasserts its allegations from Article I, albeit in slightly different language. PFR, Ex. C at 48-49. The House claims that District Attorney has elected to not prosecute certain types of crime, including "prostitution, theft[,] and drug-related offenses, among others[,]" in violation of the separation of powers and of the General Assembly's legislative authority. *Id.* at 49. However, Article VII runs into the same problems as Article I, in that District Attorney, as Philadelphia's chief law enforcement officer, has broad discretion regarding his policy decisions and prosecution choices. Given this, as well as the fact that the charges in Article VII do not rise to the level of alleging that District Attorney has exercised this discretion with improper or corrupt motive, Article VII fails to support an impeachable charge of misbehavior in office against District Attorney.

***22** Therefore, in sum, none of the Amended Articles viably allege that District Attorney has acted in a manner that constitutes "any misbehavior in office." As such, the Amended Articles do not comply with the requirements imposed by article VI, section 6 of the Pennsylvania Constitution and cannot serve as the basis for a constitutionally sound impeachment trial. Accordingly, we grant District Attorney's Application for Summary Relief, and deny Interim President's Cross-Application, regarding Count III.

E. Proposed Intervenor's Intervention Application

Lastly, we conclude that Proposed Intervenor satisfies the requirements of Pennsylvania Rule of Civil Procedure 2327(4), as the resolution of this matter will directly affect his interests as a member of the Senate. *See Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 225 A.3d 902, 911 (Pa. Cmwlth. 2020). Therefore, we grant his Intervention Application.

III. Conclusion

For the foregoing reasons, this opinion is issued in support of our December 30, 2022 order, which overruled Impeachment Managers' preliminary objections in full; granted Interim President's Cross-Application as to Counts I and II of District Attorney's PFR, and denied the Cross-Application as to Count III of the PFR and regarding Interim President's arguments pertaining to indispensable parties and ripeness; and denied District Attorney's Application for Summary Relief regarding Counts I and II, and granted it regarding Count III, of his PFR; and granted Proposed Intervenor's Intervention Application.

Judges Covey, Fizzano Cannon, Dumas, and Wallace did not participate in the decision of this case.

DISSENTING OPINION BY JUDGE McCULLOUGH

We cannot, at this juncture, rule on any of the claims presented in Petitioner Larry Krasner's (Krasner) Petition for Review (PFR). Although Krasner has raised serious and far-reaching issues concerning his reputation and the breadth and scope of the Pennsylvania General Assembly's (General Assembly) impeachment powers (the import of which should not be minimized), he has failed to join in this action the Senate of Pennsylvania (Senate) and the Senate Impeachment Committee (Impeachment Committee), both of which clearly are indispensable parties. As such, I respectfully believe this Court is without subject matter jurisdiction to decide any of the claims asserted in the PFR.

Further, even assuming, *arguendo*, this Court had jurisdiction, the Majority's decision nevertheless has hurriedly and needlessly plunged this Court into a wash of nonjusticiable political questions over which we currently have no decision-making authority. In so doing, the Majority transgresses longstanding separation of powers principles.

For these reasons, I must respectfully, but avidly, dissent.

I. Subject Matter Jurisdiction

Although my esteemed colleagues in the Majority set out the correct standard for determining whether indispensable parties have not been joined, I believe the Majority errs in applying those standards to the interests of the Senate and Impeachment Committee. The Pennsylvania Constitution expressly provides that "[a]ll impeachments shall be tried *by the Senate.*" Pa. Const. art. VI, § 5 (emphasis added). The entire Senate, not its individual members, officers, or caucus leaders, is the subject of this constitutional mandate. The Majority concludes that Respondent Senator Kim Ward, the Interim President Pro Tempore of the Senate (Senator

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Ward),[1] adequately represents the interests of the Senate and Impeachment Committee (the members of which have not yet been appointed). But, I believe the Majority misconstrues and largely ignores the actual interests of those parties.

***23** In his Prayer for Relief, Krasner requests that we declare unconstitutional and unlawful both the impeachment proceedings that have occurred to date and *any action that Respondents, the Senate, or the House of Representatives (House) might take in the future* on the Amended Articles of Impeachment (Amended Articles). *See* PFR at 30, Prayer for Relief ¶ E (emphasis added). Thus, the Senate and the Impeachment Committee have interests far more substantial and specific than the general interests involved in the case relied upon by the Majority, *City of Philadelphia v. Commonwealth*, 838 A.2d 566 (Pa. 2003), a case which involved a challenge to legislation *after it had been voted on and implemented* by the General Assembly.[2] Krasner here, by contrast, asks us to declare *in advance* that the Senate (and, by association, the Impeachment Committee) may not lawfully act on the Amended Articles. The Senate's specific, institutional interest in this regard is a far cry from the General Assembly's general interest in upholding the "procedural regularity" of its already-enacted legislation. *See* *City of Philadelphia*, 838 A.2d at 584. I cannot conceive of how we could afford any relief, declaratory or otherwise, against the Senate and the Impeachment Committee without their joinder.

Further, although I concur with the Majority's reasoning in dismissing the hypothetical "John Does" of the Impeachment Committee, their dismissal does not make the *actual* Impeachment Committee members dispensable. Rather, it only further emphasizes the point that this action is premature. Krasner named the "John Doe" Impeachment Committee members as respondents because he rightly acknowledged that the Impeachment Committee as a body has a substantial interest in this case. *See* PFR at 6 (the "[Impeachment C]ommittee and its chairperson have the powers and duties conferred *on the Senate* and the President Pro Tempore") (emphasis added). The Senate's resolutions confer on the Impeachment Committee the responsibility for receiving evidence, taking testimony, and providing a summary of that evidence and testimony to the entire Senate. *See* Senate Resolution 386, § 10; Senate Resolution 388 at 3, lines 8-14. Although the Majority seems bewildered at the notion that the Impeachment Committee "does not exist and yet is indispensable to the litigation," *see Krasner v. Ward* (Pa. Cmwlth., No. 564 M.D. 2022, filed January 9, 2023), slip. op. at 9 n.5 (Majority Opinion), respectfully, that precisely is the point.

It also is telling that, in permitting Senator Jay Costa's (Senator Costa) intervention, the Majority concludes under Pennsylvania Rule of Civil Procedure (Pa. R.Civ.P.) 2327(4) that our declarations in this case "will directly affect [Senator Costa's] interests as a member of the Senate." (Majority Opinion at 44.) I heartily agree. But Senator Costa and Senator Ward cannot by themselves answer Krasner's claims. The Senate and Impeachment Committee, as institutions, must be parties because they are among the entities against which Krasner seeks specific relief. In *Larsen v. Senate of Pennsylvania*, 646 A.2d 694 (Pa. Cmwlth. 1994), former Justice Rolf Larsen apparently recognized what the Majority here misses. Former Justice Larsen sought declaratory and injunctive relief very similar to that sought by Krasner here. But former Justice Larsen, unlike Krasner, asserted his claims against the Senate and the membership of the Senate's Impeachment Trial Committee, *i.e.*, the actual parties against whom he sought relief. *Id.* at 695.

***24** Clearly, then, the *actual* Impeachment Committee (and not its hypothetical membership) is an indispensable party to this action. Its current nonexistence (and, therefore, absence) divests this Court of jurisdiction. For that reason, I would grant, in part, Senator Ward's Cross-Application for Summary Relief and dismiss this action in its entirety on the ground that we currently are without subject matter jurisdiction to decide it.

II. Justiciability

Even assuming that we had subject matter jurisdiction over this case, which I contend we do not, I also would conclude that the Majority invalidly appropriates to itself decision-making authority over questions reserved in the first instance for a coordinate branch of our Commonwealth government. Again, assuming that we had jurisdiction, and although I believe that we could at this juncture decide the first two claims presented in the PFR, the same does not hold true for the question presented in the third claim, namely, whether the Amended Articles state viable grounds for impeachment. In disposing of that claim, the Majority decides, in advance, an unripe political question that at this point is constitutionally reserved for the Senate's determination.[3]

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Questions of justiciability are threshold matters to be resolved before addressing the merits of a dispute. *Robinson Township, Washington County, Pennsylvania v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). In Pennsylvania, and unlike the federal approach, questions of justiciability "have no constitutional predicate, do not involve a court's jurisdiction, and are regarded instead as prudential concerns implicating courts' self-imposed limitations." *Id.* Further,

> [t]he applicable standards to determine whether a claim warrants the exercise of judicial abstention or restraint under the political question doctrine are well settled. Courts will refrain from resolving a dispute and reviewing the actions of another branch only where the determination whether the action taken is within the power granted by the Constitution has been entrusted exclusively and finally to the political branches of government for self-monitoring. To illustrate our approach to the political question doctrine, we customarily reference the several formulations by which the [United States (U.S.)] Supreme Court has described a "political question" in *Baker v. Carr*, 369 U.S. 186, 217 ... (1962). ***Cases implicating the political question doctrine include those in which: there is a textually demonstrable constitutional commitment of the disputed issue to a coordinate political department***; there is a lack of judicially discoverable and manageable standards for resolving the disputed issue; ***the issue cannot be decided without an initial policy determination of a kind clearly for non[-]judicial discretion; a court cannot undertake independent resolution without expressing lack of the respect due coordinate branches of government***; there is an unusual need for unquestioning adherence to a political decision already made; and there is potential for embarrassment from multifarious pronouncements by various departments on one question. We have made clear, however, that we will not refrain from resolving a dispute which involves only an interpretation of the laws of the Commonwealth, for the resolution of such disputes is our constitutional duty.

***25** *Id.* at 928 (most internal citations and quotations omitted) (emphasis added).

In accord with the above, there is a "textually demonstrable constitutional commitment" to the Senate of the question of whether the Amended Articles set forth sufficient allegations of "misbehavior in office." We at least implicitly recognized that principle in *Larsen*, a case largely sidestepped by the Majority. There, former Justice Larsen brought an action in this Court seeking declaratory and injunctive relief barring the Senate from proceeding on articles of impeachment adopted by the House and scheduled for trial. *Larsen*, 646 A.2d at 695-96. The respondents, the Senate, and members of the Senate Trial Impeachment Committee, argued in part that Larsen impermissibly sought advance review of non-justiciable political questions. *Id.* at 699. We acknowledged in *Larsen* that appellate courts may review and rule upon the constitutionality of the actions of other coordinate branches of government. Proceeding more prudently than the Majority does here, however, we also observed that "where the courts have undertaken to examine legislative actions as justiciable questions, the Pennsylvania Supreme Court and this [C]ourt were *reviewing actions already theretofore taken* by the processes of the legislative body." *Larsen*, 646 A.2d at 700 (emphasis in original). Although we discussed to some degree the questions former Justice Larsen presented for review, we ultimately declined to afford any relief in advance of trial in the Senate:

> Of most significance is our conviction, from study of the ***impeachment*** provisions of the Pennsylvania Constitution, that such process ***is committed by the Constitution to the Senate of Pennsylvania to an extent which clearly bars the courts from intervening with prior restraint.*** Impeachment involves an adjudicative process, but one which has been clearly set apart by the Constitution as distinguished from adjudications by the judicial branch of government, regardless of whatever powers the courts may have to interpret actions of the legislative body, by way of review, after they have been taken. As in the case of scrutinizing the constitutionality of statutes themselves, the courts clearly have no power to intervene by injunction in advance of legislative action, any more than a court would have any power to enjoin, in advance, the enactment of a law appearing (to the courts) to be constitutionally invalid.

Larsen, 646 A.2d at 705 (emphasis added).

Although *Larsen* involved a direct request for pre-trial injunctive relief (a request that Krasner strategically avoids here), the applicable principle from *Larsen* remains the same: judicial restraint and respect for constitutional separation of powers. Krasner requests that this Court act in advance and tell the Senate, the House, and (at least hypothetically) the Impeachment Committee, all non-parties, that they may not lawfully take any further action in these impeachment proceedings. Krasner also candidly has admitted, as he must, that any failure of any of these parties to comply with the Majority's pronouncements would precipitate a request for injunctive relief. As discussed *supra*, however, Krasner has not named as a respondent any party with independent authority to proceed with the impeachment proceedings. It

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therefore is not clear against whom he would seek such injunctive relief. This, once again, highlights in boldface the jurisdictional problems with permitting this action to proceed in its current form.

***26** Moreover, Krasner in this third claim does not ask us to review the constitutionality of legislation already enacted by the General Assembly. Nor does he request that we review and issue declarations (and, if necessary, injunctions) regarding a law's constitutionality before it is enforced by the executive branch. The courts' ability to conduct those kinds of review is firmly established. Instead, Krasner requests that we evaluate the substance of legislative action that has not yet occurred. The Majority's willingness to do so is ill-advised, particularly given that the legislative function at issue is judicial in character and has been constitutionally assigned to another branch of Commonwealth government. Whatever review we may conduct of the Senate's determination on the Amended Articles, we ought not conduct it now. In this respect, the question presented in Krasner's third claim is nonjusticiable both because it is a political question and because it is unripe. In concluding to the contrary, the Majority shirks the more prudential course of exercising judicial restraint.

Thus, and only if this Court had jurisdiction, I alternatively would concur with the Majority's disposition of Krasner's first and second claims regarding, respectively, whether the impeachment proceedings carry over from the 206th General Assembly and whether Krasner is a "civil officer" subject to impeachment under article VI, section 6 of the Pennsylvania Constitution. Unlike the Majority, however, I would sustain, in part, the Preliminary Objections of Respondent Representatives Timothy R. Bonner and Craig Williams and dismiss as nonjusticiable and unripe Krasner's third claim regarding whether the Amended Articles sufficiently allege impeachable "misbehavior in office." This, I believe, is the only disposition that properly would heed our Supreme Court's sage admonition that "[i]t is on the preservation of the lines which separate the cardinal branches of government [ ] that the liberties of the citizen depend." *Wilson v. School District of Philadelphia*, 195 A. 90, 93-96 (Pa. 1937).

III. Conclusion

Whatever may be this Court's preliminary reaction to the impeachment proceedings now underway in the General Assembly, I am convinced that we are duty-bound to decide only those legal questions that presently are within our jurisdictional purview. In its current form, this action presents us with none. It accordingly should be dismissed.

CONCURRING OPINION BY JUDGE WOJCIK

I agree with the Majority that the Pennsylvania House of Representatives (House) is without the constitutional or statutory authority to consider or determine whether Petitioner has violated the Rules of Professional Conduct and the Code of Judicial Conduct as alleged in Impeachment Articles III, IV, and V of the Amended House Resolution No. 240, because such authority is solely and exclusively vested in the Pennsylvania Supreme Court under article V, sections 1,[1] 2(a) and (c),[2] and 10(c) of the Pennsylvania Constitution[3] and Section 1401(o) of The County Code.[4] In fact, the General Assembly specifically acknowledged the limitation to its impeachment authority in this regard in its enactment of Section 1401(o) of The County Code. Thus, the House's actions in this respect clearly infringe upon the Supreme Court's sole and exclusive authority as a separate and coequal branch of our Commonwealth's government, and Petitioner's claims in this regard are justiciable by this Court as an unconstitutional exercise of the House's impeachment authority conferred by article VI, section 4 of the Pennsylvania Constitution.[5] *See, e.g.*, *In re Investigation by Dauphin County Grand Jury, September, 1938*, 2 A.2d 802, 803 (Pa. 1938) ("Therefore, the courts have no jurisdiction in impeachment proceedings, and no control over their conduct, ***so long as actions taken are within constitutional lines***.") (emphasis added).

***27** I joined the position of the lead opinion when the matter was presented to this Court on an expedited basis. However, upon further reflection, I now firmly believe that the constitutional authority to issue and consider Impeachment Articles I, II, VI, and VII of the Amended House Resolution No. 240 has been solely and exclusively vested in the House pursuant to article VI, section 4, and trial on these Impeachment Articles has been solely and exclusively vested in the Pennsylvania Senate pursuant to article VI, sections 5[6] and 6 [7] of the Pennsylvania Constitution.[8] Thus, Petitioner's claims with respect to these Impeachment Articles should present nonjusticiable political questions that must ultimately be resolved by the General Assembly pursuant to its constitutional authority.[9]

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***28** Based on the foregoing, I would now sustain and overrule Respondents' preliminary objections, grant and deny Petitioner's and Respondents' cross-applications for summary relief, and grant and deny Petitioner's requested declaratory relief accordingly. I continue to be in complete agreement with the Majority's disposition of all remaining claims and issues in this matter.

All Citations

Slip Copy, 2023 WL 164777 (Table)

Footnotes

1 Interim President was elected President Pro Tempore of the Senate on January 3, 2023.

2 The other impeachment manager, Representative Jared Solomon, in his official capacity as an impeachment manager, filed a notice of non-participation in this action.

3 Interim President's Cross-Application comes after her initial filing of an answer with new matter.

4 Article VI, section 6 of the Pennsylvania Constitution reads as follows:

> The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Pa. Const. art. VI, § 6.

5 Of course, that also presents a problem for Interim President; how can she plausibly argue that a party both does not exist and yet is indispensable to the litigation?

6 Even so, we elect to dismiss the Committee as a party to this action, because "[n]o final judgment may be entered against a defendant designated by a Doe designation." Pa. R.Civ.P. 2005(g).

7 We note that, in *Larsen v. Senate of Pennsylvania*, our Court declined to declare claims relating to pending impeachment matters non-justiciable, but recognized

> that [the impeachment] process is committed by the Constitution to the Senate of Pennsylvania to an extent which clearly bars the courts from intervening with prior restraint. Impeachment involves an adjudicative process, but one which has been clearly set apart by the Constitution as distinguished from adjudications by the judicial branch of government, regardless of whatever powers the courts may have to interpret actions of the legislative body, by way of review, after they have been taken.

646 A.2d 694, 700, 705 (Pa. Cmwlth. 1994).

It appears that District Attorney has crafted his PFR to comply with the holding of *Larsen,* as he only seeks declaratory judgment in his favor, *but not injunctive relief.* Indeed, *Larsen* does not bar his action because of the nature of declaratory judgment actions.

> A declaratory judgment declares the rights, status, and other legal relations "whether or not further relief is or could be claimed." 42 Pa. C.S. § 7532.[ ] It has been observed that "[d]eclaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation." *Doe v. Johns-Manville Corp*[.], ... 471 A.2d 1252, 1254 ([Pa. Super.] 1984). Stated otherwise, "[t]he purpose of awarding declaratory relief is to finally settle and make certain the rights or legal status of parties." *Geisinger Clinic v. Di Cuccio*, ... 606 A.2d 509, 519 ([Pa. Super.] 1992)[.]

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> A declaratory judgment, unlike an injunction, does not order a party to act. This is so because "the distinctive characteristic of the declaratory judgment is that the declaration stands by itself; that is to say, no executory process follows as of course." *Petition of Kariher*, ... 131 A. 265, 268 ([Pa.] 1925).

Eagleview Corp. Ctr. Ass'n v. Citadel Fed. Credit Union, 150 A.3d 1024, 1029-30 (Pa. Cmwlth. 2016) (footnote omitted). A declaratory judgment in District Attorney's favor would not stop the Senate from conducting his impeachment trial, and would not act as a prior restraint, a fact which District Attorney appears to acknowledge in his PFR. *See* PFR ¶¶38-39 ("Declaratory relief, not injunctive relief, should be sufficient because ... [District Attorney] trusts that Respondents will not take action inconsistent with a [declaratory judgment of the nature sought by District Attorney].... Notwithstanding this, if Respondents take action inconsistent with any such declarations, ... [District Attorney] reserves all rights to promptly file the necessary pleadings to obtain emergency injunctive relief.").

8 Applications for summary relief addressed to this Court's original or appellate jurisdiction are authorized under Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure, [Pa.R.A.P. 1532(b),] which provides: "At any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment *if the right of the applicant thereto is clear*." (Emphasis added.)

> Summary relief is similar to summary judgment under the Pennsylvania Rules of Civil Procedure, in that the requested relief is only appropriate where there are no disputed issues of material fact and it is clear that the applicant is entitled to the requested relief under the law. *See Scarnati v. Wolf*, ... 173 A.3d 1110, 1118 ([Pa.] 2017). Moreover, we review the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of disputed material facts against the moving party. *Id.*

Marcellus Shale Coal. v. Dep't of Env't Prot., 216 A.3d 448, 458 (Pa. Cmwlth. 2019).

9 Interim President also argues in her Cross-Application that this Court lacks subject matter jurisdiction, and that she is consequently entitled to summary relief on all counts, because both the Senate of Pennsylvania and the Senate Impeachment Committee are indispensable parties. Interim President's Br. at 75-82. This Court has already addressed the merits of this argument *supra* and declines to do so a second time here.

10 "The term '*sine die*' means 'without day,' and a legislative body adjourns *sine die* when it adjourns 'without appointing a day on which to appear or assemble again.' " *Creamer v. Twelve Common Pleas Judges*, 281 A.2d 57, 65 (Pa. 1971) (quoting *State ex rel. Jones v. Atterbury*, 300 S.W.2d 806, 811 (Mo. 1957)). The Senate's Rules pertaining to the 206th General Assembly are available here: https://www.pasen.gov/rules.cfm (last visited Jan. 12, 2023). It does not appear that the Senate has issued rules regarding the 207th General Assembly.

11 District Attorney also references House Rule 45(A), H.B. 243, 206th General Assembly, Pa. Rule 45(A) (Pa. 2021-2022), which pertains to the House's Government Oversight Committee, *see* District Attorney's Br. at 13, but that provision is irrelevant because the impeachment matter has already been passed from the House to the Senate.

12 *Griest* addressed the question of whether constitutional amendments had to be approved by the Governor, to which the Supreme Court answered that "such submission is not only not required, but cannot be permitted[,]" because the constitutional amendment process is established through a different article of the Pennsylvania Constitution that is entirely separate from the one which established the process by which legislation is enacted into law. 46 A. at 507.

13 While Senate Rule 12(j), quoted *supra*, does expressly state that "[a]ll ... other matters" shall not remain pending "beyond adjournment *sine die* or November 30th of such year, whichever first occurs[,]" the Senate's violation of its own internal procedural rules would not in this instance give this Court the ability to rule in District Attorney's favor regarding Count I. *Cf. Zemprelli v. Daniels*, 436 A.2d 1165, 1170 (Pa. 1981) ("Unquestionably the Senate has exclusive power over its internal affairs and proceedings. However, this power does not give the Senate the right to usurp the judiciary's function as ultimate interpreter of the Constitution under the guise of rulemaking, or for that matter, to make rules violative of the Constitution.").

14 Interestingly, former Justice Saylor wrote a concurrence in *Burger*, in which he cast doubt upon the viability of the preexisting line of case law, because "it is not clear that those decisions took into account the Commonwealth-official

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versus local-official distinction." 923 A.2d at 1167 (Saylor, J., concurring). The majority described former Justice Saylor's reading of article VI as "novel" and "cogent," but declined to join him, both because "it [was] not one raised by the parties" and because of the aforementioned "tension" between former Justice Saylor's analysis and extant case law. *Id.* at 1161 n.6.

15 *Martin* predates the current Pennsylvania Constitution, which went into effect in 1968, but the wording of article VI, section 7 is the same in both the current and pre-1968 versions of the Pennsylvania Constitution.

16 The *Martin* Court was evenly split regarding whether Specter was a state official or a local official, but this disagreement was resolved in *Chalfin*, in which four justices agreed that Specter, as Philadelphia's district attorney, was a local official. 233 A.2d at 565 (Bell, C.J., concurring) ("Justices JONES, O'BRIEN and ROBERTS remain of the opinion that the district attorney of Philadelphia is a State officer and is not subject to the City Charter, or compelled to resign in order to be a candidate for Mayor. However, the majority of this 7-Judge Court agree with me on this point and are convinced that under the Constitution of Pennsylvania and the Philadelphia Home Rule Charter, the district attorney of Philadelphia is a City officer and is subject to the Home Rule Charter."). However, unlike in *Martin*, the *Chalfin* Court did not address whether the Pennsylvania Constitution's removal process could be used against the district attorney of Philadelphia. As such, the portion of *Martin* that answered that question in the affirmative is still good law.

17 As noted *supra*, article VI, section 6 reads as follows:

> The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

18 Former article V, section 18(l) read as follows: "A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section eighteen [of the Pennsylvania Constitution] shall forfeit automatically his judicial office and thereafter be ineligible for judicial office." *Formerly* Pa. Const. art. V, § 18(l).

19 Article VI, section 7 reads as follows:

> All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.

20 18 Pa.C.S. §§ 101-9546.

21 Article V, section 18 of the Pennsylvania Constitution was repealed and replaced in its entirety in 1993. The amended provision contains virtually identical language in article V, section 18(d)(3) ("A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.").

22 As noted in *Braig*, common law crimes, of which misbehavior in office was one, were not abolished until the Crimes Code was enacted in June 1973.

23 This would, for example, have had the effect of adding an intent requirement to the General Assembly's equation when determining whether a public official could be impeached, tried, and removed for the unlawful performance of a discretionary duty. *See* *Com. v. Hubbs*, 8 A.2d 618, 620 (Pa. Super. 1939) ("Misbehaviour in office may arise from failure to perform a statutory duty, or from failure to perform a common law duty. In either case the indictment must charge more than negligence.... [T]he wil[l]ful failure to perform a ministerial duty comes within the common law definition of misdemeanor in public office, and it is not necessary to aver or prove that the officer acted with a corrupt, fraudulent or

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dishonest intent. But where the nature of the duty is such as to permit the exercise of discretion, there must be present the additional element of an evil or corrupt design to warrant conviction.").

24 Act of August 9, 1955, P.L. 323, *as amended*, 16 P.S. § 1401(o).

25 Section 102(a) of The County Code states that "[e]xcept incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12, [added by the Act of April 20, 2016, P.L. 136,] Article XII-B and Article XXX [of The County Code], this act does not apply to counties of the first or second classes." 16 P.S. § 102(a). Philadelphia is a county of the first class. *See Lohr v. Saratoga Partners, L.P.*, 238 A.3d 1198, 1200 (Pa. 2020). It is unclear what "incidentally" means in this context, or how exactly Section 1401, which is titled "District attorney; qualifications; eligibility; compensation[,]" "incidentally" applies to District Attorney; rather, it would appear to apply to him directly.

26 Act of November 24, 1998, P.L. 882, *as amended.*

1 Senator Ward was sworn in as the President Pro Tempore of the Senate on January 3, 2023.

2 In *City of Philadelphia*, the mayor and city filed a declaratory judgment action against the presiding officers and minority leaders of the General Assembly in this Court, challenging on constitutional grounds the procedural regularity of newly-enacted legislation. The presiding officer and minority leader respondents asserted that this Court, and, on appeal, the Supreme Court, lacked jurisdiction because not all indispensable parties had been joined. The Supreme Court concluded that exercising jurisdiction was proper because the presiding officers and minority leaders of the General Assembly could adequately represent its "general interest in defending the procedural regularity of the bills that it approves." 838 A.2d at 572.

3 The 206th General Assembly has adjourned and the 207th has begun. The House, the body with the constitutional authority to draft and deliver impeachment articles to the Senate for trial, determined that Krasner is a "civil officer" subject to impeachment pursuant to article VI, section 6 of the Pennsylvania Constitution. Pa. Const. art. IV, § 6. Because both of these events have occurred and concluded, we could review Krasner's first two claims without usurping the authority of the General Assembly or transgressing separation of powers principles. Thus, and again assuming our jurisdiction, I would not disagree with the Majority's disposition of those claims.

However, although I agree with the Majority that what constitutes "misbehavior in office" presents a potential constitutional question upon which we may rule, nevertheless, whether, to what extent, and in what format this Court may review the constitutionality of completed impeachment proceedings is not clear. In whatever form that review would take, it should happen on a developed record after the Senate, as constitutionally mandated, has had the opportunity to adjudicate the Amended Articles by trial, summary dismissal, or otherwise.

1 Pa. Const. art. V, § 1. Article V, section 1 states:

> The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

2 Pa. Const. art. V, § 2(a) and (c). Article V, section 2(a) and (c) states: "The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth; ... and (c) shall have such jurisdiction as shall be provided by law." *See also* Section 501 of the Judicial Code, 42 Pa. C.S. § 501 ("The [Supreme C]ourt shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth."); Section 502 of the Judicial Code, 42 Pa. C.S. § 502 ("The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the [C]ourt, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise ... [a]ll powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law[, and t]he powers vested in it by statute, including the provisions of this title.").

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3 Pa. Const. art. V, § 10(c). Article V, section 10(c) states, in pertinent part:

> The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct ... for admission to the bar and to practice law, ... if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

See also Pa. R.D.E. 103 ("The Supreme Court declares that it has inherent and exclusive power to supervise the conduct of attorneys who are its officers (which power is reasserted in [s]ection 10(c) of [a]rticle V of the Constitution of Pennsylvania) and in furtherance thereof promulgates these rules.").

4 Act of August 9, 1955, P.L. 323, *as amended*, 16 P.S. § 1401(o). Section 1401(o) states:

> A district attorney shall be subject to the Rules of Professional Conduct and the canons of ethics as applied to judges in the courts of common pleas of this Commonwealth insofar as such canons apply to salaries, full-time duties and conflicts of interest. Any complaint by a citizen of the county that a full-time district attorney may be in violation of this section shall be made to the Disciplinary Board of the Supreme Court of Pennsylvania. If any substantive basis is found, the board shall proceed forthwith in the manner prescribed by the rules of the Supreme Court and make such recommendation for disciplinary action as it deems advisable, provided, however, that if the Supreme Court deems the violation so grave as to warrant removal from office, the prothonotary of the Supreme Court shall transmit its findings to the Speaker of the House of Representatives for such action as the House of Representatives deems appropriate under [a]rticle VI of the Constitution of Pennsylvania.

5 Pa. Const. art. VI, § 4. Article VI, section 4 states: "The House of Representatives shall have the sole power of impeachment."

6 Pa. Const. art. VI, § 5. Article VI, section 5 states: "All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present."

7 Pa. Const. art. VI, § 6. Article VI, section 6 states, in relevant part:

> [A]ll ... civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

8 *See, e.g.*, *In re Cohen for Office of Philadelphia City Council-at-Large*, 225 A.3d 1083, 1090 (Pa. 2020) (Donohue, J., concurring) ("I joined the position of the Lead Opinion placing [the appellant] on the general election ballot as a candidate for Philadelphia City Council-at-Large when the matter was presented to us on an expedited basis.... Having reviewed Justice Wecht's thoughtful and well-reasoned Dissenting Opinion, however, I find it to be highly persuasive and, in my view, should be the prevailing interpretation of Section 976(e) of the [Pennsylvania] Election Code, [Act of Act of June 3, 1937, P.L. 1333, *as amended*,] 25 P.S. § 2936(e), in future cases.").

9 As previously explained by this Court:

> Of most significance is our conviction, from study of the impeachment provisions of the Pennsylvania Constitution, that such process is committed by the Constitution to the Senate of Pennsylvania to an extent which clearly bars the courts from intervening with prior restraint. Impeachment involves an adjudicative process, but one which has been clearly set apart by the Constitution as distinguished from adjudications by the judicial branch of government, regardless of whatever powers the courts may have to interpret actions of the legislative body, by way of review, after they have been taken. As in the case of scrutinizing the constitutionality of statutes themselves, the courts clearly have no power to intervene by injunction in advance of legislative action, any more than a court would have any power to enjoin, in advance, the enactment of a law appearing (to the courts) to be constitutionally invalid.

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Larsen v. Senate of Pennsylvania, 646 A.2d 694, 705 (Pa. Cmwlth. 1994).

That being said, while the House has the constitutional authority to impeach Petitioner in this regard, and the Pennsylvania Senate has the constitutional authority to adjudicate those Articles of Impeachment, the question of whether the House and Senate ***should*** proceed down that path is not within our purview. Ultimately, it is for the electors of the Commonwealth to decide if this folly has been a wise use of legislative resources, just as it is for the electors of Philadelphia to decide if Petitioner is properly discharging his duties as District Attorney.

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