

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Appointment to Fill a Vacancy : **CASES CONSOLIDATED**
in the Office of County Commissioner :

Appeal of: Lackawanna County : No. 653 C.D. 2025
and William Gaughan :

In re: Appointment of Fill Vacancy :
in the Office of County :
Commissioner :

Appeal of: Lackawanna County : No. 697 C.D. 2025
Democratic Committee : Submitted: June 4, 2025

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON

FILED: July 18, 2025

In these cross-appeals, the parties seek review of the Memorandum and Order filed May 22, 2025 (Trial Court Order), by a three-judge panel of the Court of Common Pleas of Lackawanna County (Trial Court)¹ that ordered the commissioned judges of the Trial Court to employ the procedures set forth in the Lackawanna County Home Rule Charter (HRC) in filling a Lackawanna County Commissioner vacancy. Upon review, we affirm the Trial Court Order.

¹ Because the Trial Court's Commissioned Judges ultimately will vote to fill the Lackawanna County Commissioner vacancy that underlies this matter, the three-judge panel that decided this matter in the Trial Court was composed of three Senior Judges of the Trial Court. *See* Trial Court Order at 1 & 2-3.

I. Background and Procedure

The basic facts underlying this matter are straightforward and not in dispute. Lackawanna County is a home rule county organized and existing under and pursuant to the laws of the Commonwealth of Pennsylvania including, without limitation, the Pennsylvania Home Rule Charter and Optional Plans Law² (Home Rule Law). On February 21, 2025, Lackawanna County Commissioner Matt McGloin (Outgoing Commissioner), a Democrat, provided notice of his resignation as a Lackawanna County Commissioner. *See* Trial Court at 1. The Lackawanna County Board of Commissioners (Board of Commissioners or Board) accepted the Outgoing Commissioner's resignation on March 5, 2025. *See id.* at 1-2. On March 6, 2025, the Trial Court formally accepted the Outgoing Commissioner's resignation. The Trial Court also entered an order on March 6, 2025 (March 6 Order), declaring that, per Section 1-2.206(b) of the HRC, the Trial Court would fill the vacancy by selecting one of three candidates submitted for consideration by the Lackawanna County Democratic Committee (LCDC) and providing a deadline of March 11, 2025, for the submission of names by the LCDC. *See id.* at 2 & 4. The LCDC timely submitted a list of names as directed.

On March 17, 2025, Lackawanna County and one of the remaining two Lackawanna County Commissioners, William Gaughan (collectively, Designated Appellants), filed a petition (Petition to Amend) requesting that the Trial Court amend the March 6 Order to institute procedures for selecting a replacement Lackawanna County Commissioner that comply with the County Code³ and

² 53 Pa.C.S. §§ 2901-3171.

³ 16 Pa.C.S. §§ 101-17509.

Pennsylvania Rule of Judicial Administration 1908 (Rule 1908). *See* Trial Court Order at 2 & 4-5. The LCDC filed a response to the Petition to Amend, arguing, first, that Designated Appellants lacked standing to bring such a challenge and further arguing that the Trial Court must comply with the HRC. *See id.* at 2.

On March 19, 2025, Christopher Chermak, the other remaining County Commissioner, filed an “Informational Filing” in the Trial Court. *See* Trial Court Order at 2. Commissioner Chermak then filed a “Praecipe to Withdraw Lackawanna County as a Party” on March 24, 2025. *See id.* These filings collectively challenged the standing and authority of Lackawanna County to act as a party and of Lackawanna County’s Chief Solicitor (County Solicitor) to bring the action on behalf of Lackawanna County. *See id.*

On April 7, 2025, the LCDC filed its “Answer to the Petition to Amend the March 6, 2025[] Order” followed by its “Amended Answer to the Petition to Amend” filed on April 8, 2025 (Amended Answer). *See* Trial Court Order at 2. In the Amended Answer, the LCDC alleged that the County Code does not apply to the instant matter because Lackawanna County has enacted the HRC, which includes provisions for filling vacancies for countywide elected offices. *See* Amended Answer. *See id.*

The Trial Court held oral argument on the matter on April 22, 2025. *See* Trial Court Order at 3; *see also* Transcript of Proceedings, April 22, 2025. Thereafter, the Trial Court issued the Trial Court Opinion on May 22, 2025, and Designated Appellants appealed to this Court on May 23, 2025. *See* Notice of Appeal filed in the Trial Court on May 23, 2025. The LCDC filed a cross-appeal on June 4, 2025. *See* Lackawanna County Democratic Committee Notice of Cross-

Appeal filed in the Trial Court on June 4, 2025 (LCDC Notice of Appeal).⁴ This Court consolidated the appeals by Order entered June 9, 2025.⁵ *See* Commonwealth Court Order, June 9, 2025. The parties have submitted their briefs to this Court, and the matter is now ready for disposition.

II. Issues

On appeal,⁶ Designated Appellants argue that the Trial Court erred by striking Lackawanna County as a party and, further, that Commissioner Gaughan and Lackawanna County have standing to challenge the procedures to be employed by the Trial Court in filling the Lackawanna County Commissioner vacancy. *See* Designated Appellants' Br. at 7 & 31-41. Substantively, Designated Appellants argue that Rule 1908 supersedes the HRC and establishes the process the Trial Court must employ in filling the Lackawanna County Commissioner vacancy. *See id.* at 7 & 20-31.

The LCDC, on the other hand, argues that the Trial Court correctly ruled that Lackawanna County was not a proper party to this action, but improperly determined that Commissioner Gaughan had standing in the matter.⁷ *See* LCDC's

⁴ The LCDC's Notice of Appeal was dated June 3, 2025, and time stamped as filed on June 4, 2025. *See* LCDC Notice of Appeal.

⁵ The Court designated Lackawanna County and Commissioner Gaughan as Designated Appellants and the LCDC and Commissioner Chermak as Designated Appellees. *See* Consolidation Order at 1. We observe that the LCDC Notice of Appeal listed only the LCDC as cross-appellant. *See* LCDC Notice of Appeal.

⁶ In reviewing a question of law of whether a statute or Rule of Judicial Administration directly conflicts with the HRC, our standard of review was *de novo* and its scope of review was plenary. *See Nutter v. Dougherty*, 938 A.2d 401, 412 n.20 (Pa. 2007).

⁷ The LCDC argues this point in response to the Designated Appellants' appeal and also in its own cross-appeal, which raises only the issue of whether the Trial Court erred in determining

Br. at 8-16. The LCDC further argues that the Trial Court correctly determined that the HRC governs the procedure to be employed by the Trial Court in filling the Lackawanna County Commissioner vacancy. *See id.* at 16-25.

Commissioner Chermak argues that the Trial Court properly determined that a single Lackawanna County Commissioner lacks authority to proceed in legal actions in the name of Lackawanna County and that the Lackawanna County Solicitor lacks authority to convene and prosecute claims on behalf of Lackawanna County in the absence of authority from a majority of the Lackawanna County Board of Commissioners to do so. *See* Commissioner Chermak's Br. at 20-28.

III. Discussion

A. Standing Questions

The Trial Court panel unanimously agreed that Lackawanna County has standing to proceed in this matter. *See* Trial Court Opinion at 7-8. The Trial Court determined, however, that the County Solicitor lacked authority to pursue claims on behalf of Lackawanna County in the absence of permission from a quorum of the Commissioners and therefore struck Lackawanna County as a party and struck the County Solicitor's appearance. *See id.* at 8-9 & 41. On the other hand, the Trial Court ruled that Commissioner Gaughan and Commissioner Chermak each have sufficient substantial interest in the method whereby the replacement Commissioner is selected to confer standing upon them. *See id.* at 10-12. The Trial Court further determined, in the alternative, that Commissioners Gaughan and Chermak each also

that Commissioner Gaughan had standing in his official capacity to initiate this litigation. *See* LCDC's Br. at 10-16; LCDC's Statement of Issues to Be Presented On Cross Appeal filed June 9, 2025.

had standing first, due to the existence of a risk that the matter would go unchallenged because no other party would prosecute the matter, and/or second, by virtue of each having taken an oath of office that included a promise to defend the Pennsylvania Constitution. *See id.* The parties forward multiple challenges to these standing determinations.

1. *Lackawanna County as a Party and the Authority of the County Solicitor*

First, Lackawanna County and Commissioner Gaughan argue that the Trial Court erred by determining that the County Solicitor lacked authority to commence litigation on behalf of Lackawanna County and, therefore, that the Trial Court erred by dismissing Lackawanna County from the matter. *See* Designated Appellants' Br. at 31-35. The LCDC, on the other hand, argues that Lackawanna County is an improper party to the action because the Commissioners did not authorize the County Solicitor to file suit. *See* LCDC's Br. at 8-9. Likewise, Commissioner Chermak argues that Lackawanna County and the County Solicitor lacked authority to file the Petition to Amend because the Commissioners had not authorized the same and Commissioner Gaughan lacked authority to initiate the lawsuit on Lackawanna County's behalf on his own. *See* Commissioner Chermak's Br. at 23-28.

Initially, we observe that "[p]olitical subdivisions . . . are legal persons, which have the right and indeed the duty to seek judicial relief[.]" *Robinson Twp., Wash. Cnty., PA v. Commonwealth*, 83 A.3d 901, 920 (Pa. 2013). Like other litigants, with respect to the criteria for standing, municipalities must have a substantial, direct, and immediate interest in a matter to bring or participate in a lawsuit. *See City of Phila. v. Schweiker*, 817 A.2d 1217, 1222 (Pa. Cmwlth. 2003)

(citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975)). As our Supreme Court has explained:

The requirement of standing under Pennsylvania law is prudential in nature, and stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete, rather than abstract. This principle is reflected in the doctrine's core conception that a party who is not negatively affected by the matter he seeks to challenge is not aggrieved, and thus, has no right to obtain judicial resolution of his challenge. A litigant can establish that he has been "aggrieved" if he can show that he has a substantial, direct and immediate interest in the outcome of the litigation. . . . A party has a substantial interest in the outcome of litigation if his interest exceeds that of all citizens in procuring obedience to the law. The interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative.

City of Phila. v. Commonwealth, 838 A.2d 566, 577 (Pa. 2003) (internal citations, footnote, and quotation marks omitted).

The Trial Court correctly found that Lackawanna County has standing in a lawsuit questioning the composition of the Lackawanna County Board of Commissioners. *See* Trial Court Opinion at 8. There can be little argument that Lackawanna County does not have a substantial, direct, and immediate interest in the composition of the Board of Commissioners. We find no error with the Trial Court's determination as to Lackawanna County's standing.

After concluding that Lackawanna County has standing to proceed, however, the Trial Court continued, questioning "the unilateral inclusion of [Lackawanna] County as a Co-Petitioner without proper Board of Commissioner[s]

voting authority to proceed.” Trial Court Opinion at 8. The LCDC and Commissioner Chermak each argue this point, stressing that, once Commissioners Gaughan and Chermak accepted the Outgoing Commissioner’s resignation, either Commissioner thereafter needed the agreement of the other to complete official Lackawanna County business, including the initiation of lawsuits. *See* LCDC’s Br. at 8-9; Commissioner Chermak’s Br. at 23-28. The Trial Court agreed with this position, observing that “[t]o permit a single commissioner without majority concurrence to unilaterally proceed in the name of the County would lead to chaotic results infused with political agendas[,]” a result the Trial Court was “not willing to sanction.” Trial Court Opinion at 8.

We agree that Commissioner Gaughan lacked authority to initiate this matter on behalf of Lackawanna County. Once the Board of Commissioners and the Trial Court accepted the Outgoing Commissioner’s resignation, the Board of Commissioners was left with only two commissioners. The HRC expressly states that “[t]he Board of Commissioners may take no action unless a quorum is present. A quorum shall consist of a majority of the members of the Board in office.” Section 1.3-305 of the HRC. Therefore, until the appointment of a replacement for the Outgoing Commissioner, unless they worked together, neither Commissioner Gaughan nor Commissioner Chermak could have formed the necessary quorum of the Board of Commissioners required by the HRC for the purpose of acting in the name of Lackawanna County. Accordingly, neither Commissioner could have approved a lawsuit in the name of Lackawanna County without the approval of the other.

Regarding whether the County Solicitor could have proceeded *sua sponte* in bringing this action without the Board of Commissioners approving or directing the County Solicitor to so proceed, the Trial Court found that

[t]o permit a County Solicitor in the interest of duty to commence and prosecute claims on behalf of [Lackawanna] County without the appropriate Board of Commissioner authority can also lead to chaotic results. The analogy would be to permit a lawyer to prosecute a claim on behalf of his client without authority from his client to proceed. . . . Sanctioning a County Solicitor's authority to commence and prosecute claims on behalf of [Lackawanna] County without appropriate authority to proceed is a result th[e Trial] Court is not willing to endorse.

Trial Court Opinion at 9.

As our Supreme Court has explained:

A county solicitor is not appointed for any fixed term or certain tenure but occupies his position at the will of the commissioners who appoint him. No functions of government are delegated to him. Nor can he lawfully exercise any powers of sovereignty. He serves as counsel to the commissioners in the discharge of their public duty just as any privately employed attorney serves his missioners and to represent the county in [sic] clients. His duties are to advise the commissioners and to represent the county in [actions or lawsuits] against the county.

Com. ex rel. Foreman v. Hampson, 143 A.2d 369, 372 (Pa. 1958). Otherwise stated, a county, through its commissioners, is a county solicitor's client, and a solicitor's duty and ability to bring lawsuits in the name of the county is bounded by the authority conferred upon the solicitor by such commissioners. Despite Designated

Appellants' argument to the contrary, there exists no independent duty of the County Solicitor to bring an unauthorized lawsuit.

For the above reasons, the County Solicitor lacked authority to bring the lawsuit on Lackawanna County's behalf. Thus, Lackawanna County was not properly made a party to this matter. Accordingly, the Trial Court correctly struck Lackawanna County as a party to the lawsuit and struck the County Solicitor's appearance on Lackawanna County's behalf.

2. Commissioners Gaughan and Chermak

As to the Commissioners, the Trial Court determined that both Commissioner Gaughan and Commissioner Chermak have standing to proceed as public officials with an interest independent of Lackawanna County. *See* Trial Court Opinion at 10-13 & 41.

Municipalities and their officials have standing to bring and/or participate in litigation pertaining to the constitutionality of actions or statutes that impact the function of their government. *See Robinson Twp.*, 83 A.3d at 920-21; *see also City of Phila.*, 838 A.2d at 579 (noting that assertion that a city is an aggrieved party based on alleged effect of legislation upon its interests and functions as a governing entity confers standing); *McLinko v. Dep't of State*, 270 A.3d 1243, 1267 (Pa. Cmwlth. Ct.), *aff'd in part, rev'd in part on other grounds*, 279 A.3d 539 (Pa. 2022) (belief that required duties were unconstitutional conferred standing on member of board of elections without participation of other board members).

Here, Commissioner Gaughan challenges a vacancy selection process that he feels is unconstitutional. Accordingly, the Trial Court found as follows:

In the case at bar, [Commissioner] Gaughan's substantial, direct, and immediate interest lies in the application of a constitutionally appropriate procedure in selecting a third

Commissioner with whom [Commissioner] Gaughan is mandated to work. The employment of an appropriate selection process can have an impact on Gaughan's ability to function as a Commissioner. Without [Commissioner] Gaughan's challenge, he would be conceding to a selection process which he feels is unconstitutional. Commissioner Gaughan is aggrieved because the HRC may limit the pool of applicants [to fill the vacant Commissioner position]. His interest is substantial, direct, and immediate because the selection process advanced by LCDC is allegedly unconstitutional implications [sic] and has an impact on his ability to function as a Lackawanna County Commissioner.

[Commissioner] Gaughan's substantial interest centers around his function as a single, incumbent commissioner which surpasses the interest of all citizens. More specifically, his interest, like Commissioner Chermak's interests, focus on the application of a selection procedure which is grounded in law. Lastly, [Commissioner] Gaughan's concern is direct and immediate. His concern is also immediate in that the Lackawanna County Government may not function on all levels with only two (2) Commissioners who are [of] opposing political parties, that is not to say in some instances they may agree.

Trial Court Opinion at 10-11.

We find no error in the Trial Court's assessment of the Commissioners' standing. Commissioner Gaughan also has standing due to the direct impact the selection of a replacement commissioner will have on his position as Commissioner. For the same reason, the other remaining Commissioner, Commissioner Chermak, also maintains standing to participate in this challenge to the constitutionality of the approved replacement Commissioner selection process. Accordingly, we find no

error in the Trial Court’s conclusion that both Commissioner Gaughan and Commissioner Chermak have standing in this matter.⁸

B. The Proper Selection Protocols

1. *Home Rule Charter Basics*

Initially, we observe that the Pennsylvania Constitution allows municipalities⁹ to choose to adopt home rule charters for their governance. *See* Pa. Const. art. IX, § 2. Article IX, section 2 of the Pennsylvania Constitution, entitled Home Rule, specifically provides that “[m]unicipalities shall have the right and power to frame and adopt home rule charters.” Pa. Const. art. IX, § 2.¹⁰ Our

⁸ We note that the Trial Court also found that Commissioners Gaughan and Chermak have standing by virtue of having taken an oath to uphold Pennsylvania’s Constitution. *See* Trial Court Opinion at 12-13. Given our conclusion that the Commissioners have standing by virtue of their challenges to the perceived unconstitutional procedure and the direct impact the selection process will have on their positions as Commissioners, we need not address this purported alternative justification for the Commissioners’ standing. We observe, however, that cases where standing stems from litigants having taken an oath to uphold the Constitution involve litigants whose duties or authority was directly affected by the challenged action. *See, i.e., Piunti v. Dept. of Lab. & Indust., Unemployment Comp. Bd. of Rev.*, 900 A.2d 1017 (Pa. Cmwlth. 2006).

⁹ Counties are considered as municipalities for purposes of home rule charters. *See generally In re Dist. Att’y*, 756 A.2d 711, 714 (Pa. Cmwlth. 2000).

¹⁰ In its entirety, article IX, section 2 of the Pennsylvania Constitution provides:

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this

Constitution further provides that “[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” Pa. Const. art. IX, § 2; *see also* Section 2961 of the Home Rule Law, 53 Pa.C.S. § 2961; *Holt’s Cigar Co. v. City of Phila.*, 10 A.3d 902, 906 (Pa. 2011). Thus, as this Court has explained: “[t]he essential principle underlying home rule is the transfer of authority to control certain municipal affairs from the state to the local level. . . . This transference results in home rule municipalities having broader powers of self[-]governance than non-home rule municipalities.” *Hartman v. City of Allentown*, 880 A.2d 737, 742 (Pa. Cmwlth. 2005). “In addition, grants of municipal power to a home rule municipality are to be liberally construed in favor of the municipality. Thus, in analyzing a home rule municipality’s exercise of power, we resolve ambiguities in favor of the municipality.” *Holt’s Cigar Co.*, 10 A.3d at 906-07; *see also* 53 Pa.C.S. § 2961 (“All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.” (internal citations and quotation marks omitted)); *Ziegler v. City of Reading*, 142 A.3d 119, 132 (Pa. Cmwlth. 2016). “Indeed, a presumption exists that the exercise of power by a municipality is valid if no restriction is found in the Constitution, the charter itself, or the acts of the General Assembly.” *Ziegler*, 142 A.3d at 132.

However, regarding Acts of the General Assembly, home rule charter municipalities may not “[e]xercise powers contrary to or in limitation or enlargement

Constitution, by its home rule charter or by the General Assembly at any time.

Pa. Const. art. IX, § 2.

of powers granted by statutes which are applicable in every part of this Commonwealth[,]” which is to say statutes of general application.¹¹ 53 Pa.C.S. § 2962(c)(2); *see also Siger v. City of Chester*, 309 A.3d 698, 721-22 (Pa. 2024); *Crawford v. Commonwealth*, 326 A.3d 850, 860 (Pa. 2024); *St. Fleur v. City of Scranton* (Pa. Cmwlth., No. 112 C.D. 2020, filed October 26, 2020) (*en banc*),¹² slip op. at 9-10 (noting that an act applicable to less than all classes of counties does not override the provisions of a county’s home rule charter). As further explained by our Supreme Court:

Of further note on the contours of municipal home rule governance, our precedent counsels that “the General Assembly may negate ordinances enacted by home rule municipalities when the General Assembly has enacted a conflicting statute concerning ‘substantive matters of statewide concern.’” *Devlin v. City of Phila.*,] 862 A.2d [1234,] 1242 [(Pa. 2004)] (quoting *Ortiz v. Commonwealth*, [] 681 A.2d 152, 156 ([Pa.] 1996)). This is as compared to ordinances pertaining to matters of purely local concern, which the General Assembly cannot abrogate. *Spahn v. Zoning Bd. of Adjustment*,] 977 A.2d [1132,] 1144 [(Pa. 2009)]. Substantive matters of statewide concern include those “involving ‘the health, safety, security and general welfare of all the inhabitants of the State,’” *Devlin*, 862 A.2d at 1242 (quoting *Lennox v. Clark*, [] 93 A.2d 834, 845 ([Pa.] 1953)), whereas matters “of purely local concern are those that affect the

¹¹ We observe that, in addition to not enlarging or limiting statutes of general application, home rule municipalities may not regulate matters of statewide concern originating in Pennsylvania’s Constitution. *See Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) (noting that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern”).

¹² This unreported decision is cited as persuasive authority pursuant to Section 414(a) of this Court’s Internal Operating Procedures, 210 Pa. Code § 69.414(a).

personnel and administration of the local government,” *Spahn*, 977 A.2d at 1144, and “which are of no concern to citizens elsewhere.” *Devlin*, 862 A.2d at 1242 (quoting *Lennox*, 93 A.2d at 845).

Crawford, 326 A.3d at 860-61.

2. Application to the Instant HRC and Facts

With the above-discussed law regarding home rule charters in mind, we turn to the pertinent law involved in the instant matter.

Section 1-2.206 of the HRC, entitled “Vacancies and Filling of Vacancies,” provides:

(a) The office of any elected officer shall become vacant upon death, resignation, removal, forfeiture, failure to assume such office after election thereto within forty-five (45) days after scheduled commencement of the term thereof or is unable by reason of physical or mental disability to perform the duties of the office.

(b) If a vacancy occurs, the executive committee of the political party of the person elected to the office in question shall submit a list of three persons to the judges of the court and bank [sic] within five (5) days of the vacancy. The court shall appoint one of the three (3) persons recommended to temporarily fill the vacancy.

(c) A special election according to the Laws of the Commonwealth of Pennsylvania shall be held at the next primary municipal or general election to permanently fill the vacancy.

(d) If a vacancy occurs in the last year of the term the temporary appointment of the court shall remain in office until his duly selected successor is sworn in.

Section 1-2.206 of the HRC.

In the instant matter, the Trial Court determined that the procedures listed in Section 1-2.206(b) of the HRC apply to fill the instant Commissioner vacancy because Lackawanna County is a home rule municipality. *See* Trial Court Order at 17-18. We find no error in this determination.

Firstly, we observe that the selection of a replacement Lackawanna County Commissioner upon a vacancy is a matter strictly local to Lackawanna County, not one of statewide concern. *See Crawford*. We acknowledge Designated Appellants' citation to this Court's decision in *In re District Attorney*, 756 A.2d 711 (Pa. Cmwlth. 2000), for the proposition that Lackawanna County is bound to follow the vacancy provisions in the County Code notwithstanding its status as a home rule municipality based on the argument that the County Code is of statewide importance. *See* Designated Appellants' Br. at 26. We observe, however, that *In re District Attorney* concerned the duration of the appointment of a replacement district attorney selected following a vacancy, not the procedure by which the district attorney was selected. *See In re Dist. Att'y*, 756 A.2d at 714 n.9. We further observe that the trial court in *In re District Attorney* selected from a list of three names submitted to it by the Lackawanna County Republican Party pursuant to Section 206(b) of the HRC, which selection process was independent of the duration of the term to be served by the replacement district attorney selected by the trial court. *See id.* at 712-13. Additionally, we note that, as to the question involved in the instant matter – the selection of a vacancy replacement as opposed to the duration of such term – the County Code requires only the appointment of “a member of the same political party as the vacating county commissioner at the time the vacating county commissioner was elected[,]” and thus does not conflict with Section 206(b) of the HRC.

We recognize that our previous decisions are not fully consistent in addressing what constitutes a statute applicable in every part of the Commonwealth. *See St. Fleur*, slip op. at 9-10 (quoting *In re Condemnation of Tax Parcel No. 38-3-25 Valley Station Road, Coatesville, PA 19320*, 898 A.2d 1186, 1191 (Pa. Cmwlth. 2006) (observing that “[w]hether a provision contained in a city or county code applicable to that particular class of city or county is a statute that is ‘uniform and applicable in every part of this Commonwealth’ has been decided somewhat inconsistently”) (additional quotation marks omitted)). In *Tax Parcel No. 38-3-25*, we reasoned:

Generally, we have held that various municipal and county codes are not uniform and applicable to every part of the Commonwealth because, by definition, those codes are not applicable to every part of the Commonwealth and the codes themselves are based on an exception to the uniformity provision contained in the Pennsylvania Constitution. As a result, in some cases we have held that a home rule municipality is free to adopt measures in contravention of the particular code that used to apply prior to its adoption of a home rule charter.

Tax Parcel No. 38-3-25, 898 A.2d at 1191-92 (citing *Cnty. of Del. v. Twp. of Middletown*, 511 A.2d 811 (Pa. 1986)); *see also Wecht v. Roddey*, 815 A.2d 1146 (Pa. Cmwlth. 2002); *Santangelo v. Borough of Norristown*, 789 A.2d 848 (Pa. Cmwlth. 2002); *Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh*, 644 A.2d 246 (Pa. Cmwlth. 1994); *but see also Tax Parcel No. 38-3-25*, 898 A.2d at 1192 (comparing other cases holding that home rule municipalities were not allowed to change certain statutory procedures, as well as cases applying “what can best be described as a hybrid approach, holding that while a particular code still applies, a home rule municipality has the power to supplement its terms under its

home rule powers”). Here, we find the reasoning of *Tax Parcel No. 38-3-25* and *St. Fleur* persuasive and conclude that a statute that is facially applicable to less than all classes of counties, and also not facially applicable to home rule charter counties, does not constitute a statute applicable in every part of the Commonwealth. *See Tax Parcel No. 38-3-25*, 898 A.2d at 1191-92; *St. Fleur*, slip op. at 10.

Procedurally, Pennsylvania Rule of Judicial Administration 1908 provides as follows:

When a court of common pleas is filling a vacancy to an elected office under *a statutory duty*, the following procedures shall apply:

(a) The Court shall receive applications from any interested candidates for the position pursuant to a deadline established by the court.

(b) The names of all candidates under consideration and any written application materials submitted by any candidate are public information and shall be made available to any member of the public upon request. The following items included in any written application materials shall not be publicly released: the candidate’s Social Security number; the candidate’s home address, personal telephone number, and personal email address; and information pertaining to the name, home address, or date of birth of children under 17 years of age.

(c) Selection shall be by a vote of the commissioned judges of the court, including the president judge. In the event of a tie vote, the president judge will cast the deciding vote.

Pa.R.J.A. 1908.

The application of Rule 1908 is triggered when a court of common pleas is filling a vacancy to an elected office under a statutory duty. *See* Rule 1908. Designated Appellants argue that Section 1250(b) of the County Code¹³ represents the statutory duty triggering the application of Rule 1908 in this case. *See* Designated Appellants’ Br. at 20-30. They are incorrect.

Lackawanna County is a third-class county that adopted the HRC in 1977. As this Court has observed, “[o]nce a political subdivision adopts a home rule charter, it is no longer a city of the second class, a county of the third class, a borough or a township of the first or second class, but a ‘home rule municipality’ and its ‘code’ is the Home Rule Charter and Optional Plans Law.” *Danzilli v. Lomeo*, 944 A.2d 813, 815 n.6 (Pa. Cmwlth. 2008). Accordingly, once a municipality enacts a home rule charter, it is no longer governed by the previously controlling municipal code. *See Danzilli*, 944 A.2d at 815 n.6 (“Once Monroeville enacted a home rule charter, it was no longer a borough, but a home rule municipality no longer governed by the Borough Code”); *see also Wecht v. Roddey*, 815 A.2d 1146 (Pa. Cmwlth. 2002) (the adoption of a home rule charter acts to remove municipality from operation of code provisions regarding that particular class of municipality); *Fraternal Ord. of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh*, 644 A.2d 246

¹³ The County Code provides, in pertinent part:

A vacancy in the office of county commissioners shall be filled for the balance of the unexpired term by the court of common pleas of the county in which the vacancy occurs by the appointment of a registered elector of the county who was a member of the same political party as the vacating county commissioner at the time the vacating county commissioner was elected.

¹⁶ Pa.C.S. § 1250(b).

(Pa. Cmwlth. 1994) (the City of Pittsburgh was permitted, under its home rule charter, to establish new hiring procedures, even in contravention of the Second Class City Code). Thus, by enacting the HRC, Lackawanna County became a home rule charter municipality governed by the HRC and removed from the operation of the County Code, which applies in the Commonwealth's non-home rule counties. *See also* Pa. Const. art. IX, § 4. As such, Lackawanna County operates under the HRC, and, therefore, the “statutory duty” found in Section 1250(b) of the County Code that Designated Appellants argue triggers the implementation of Rule 1908 does not apply for Lackawanna County. *See Danzilli; Wecht; see also* Pa. Const. art. IX, § 4. Instead, the “statutory duty” under which Lackawanna County operates for the purpose of selecting a replacement in a County Commissioner vacancy situation is Section 1-2.206 of the HRC, not Section 1250(b) of the County Code. *See Spencer v. City of Reading Charter Bd.*, 97 A.3d 844, 850 (Pa. Cmwlth. 2014) (noting that “[a] home rule charter has the force and status of an enactment of the legislature”).

To that end, Section 1-2.206 of the HRC provides conditions under which a “vacancy” occurs (Section 1-2.206(a)), instructions for the selection of prospective replacement candidates in Lackawanna County when such a vacancy occurs, and for the forwarding of such candidates to the Trial Court (Section 1-2.206(b)), and the procedures to be employed to permanently fill the vacancy once the Trial Court fills the vacancy (Section 1-2.206(c) & (d)).

Importantly, Section 1-2.206 of the HRC and Rule 1908 are not in conflict. The HRC controls the protocols Lackawanna County employs to compile the list of three recommended persons to be sent to the Trial Court within five days of the vacancy, from which list the Trial Court will then appoint the individual to fill

the vacancy. *See* Section 1-2.206(b) of the HRC. This list of names forwarded by the executive committee of the political party of the Outgoing Commissioner pursuant to Section 1-2.206(b) of the HRC forms the universe of interested candidates from which the Trial Court will make its selection to fill the vacancy under the judicial procedures set forth in Rule 1908.¹⁴ Thus, the universe of candidates to be considered by the Trial Court to replace the Outgoing Commissioner is comprised of the list of persons selected by the executive committee of the political party of the Outgoing Commissioner pursuant to HRC Section 1-2.206(b). Section 1-2.206 of the HRC, however, does not provide the procedure by which the Trial Court makes its selection of the replacement candidates.

Finally, we observe that the Pennsylvania Constitution vests in the Supreme Court of Pennsylvania the authority to establish rules governing the practice, procedure, and conduct of all courts within the Commonwealth. *See* Pa. Const. art. V, § 10.¹⁵ The Supreme Court's rule-making authority is not subject to

¹⁴ To wit: the acceptance of names of interested candidates recommended by the executive committee of the Outgoing Commissioner's political party; the publication of the recommended candidates' application materials (and the restrictions on such disclosures); and the Trial Court's voting procedures to determine the candidate selected. *See* Rule 1908(a)-(c).

¹⁵ Article V, Section 10(c) of the Pennsylvania Constitution provides, in pertinent part:

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, . . . 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

legislative regulation. *See Renner v. Ct. of Common Pleas of Lehigh Cnty.*, 234 A.3d 411, 422 (Pa. 2020) (“While the judiciary and the legislature may both advance similar, and admirable, policies, our Court does so independently and exclusively for the judiciary and judicial employees through the promulgation of its own rules, policies, and procedures.”); *see also Commonwealth v. Lockridge*, 810 A.2d 1191, 1194-95 (Pa. 2002) (“We have held that the Constitution’s grant to this Court of rule-making authority is exclusive. Thus, a statute cannot abrogate any of the procedural rules this court has duly adopted.” (internal citation omitted)). Accordingly, HRC Section 1-2.206 cannot be deemed to override any aspect of Rule 1908.

In summary, Rule 1908 controls judicial administration in relation to the selection by trial courts of replacements when vacancies occur in elected county positions. To this end, Rule 1908 requires that the Trial Court establish a date by which it will receive candidate applications from the universe of applicants named pursuant to HRC Section 1-2.206(b) and then receive such applications by the specified date (Rule 1908(a)); explains that the information contained in the candidate’s applications is public and subject to public release upon request, with certain specified exceptions (Rule 1908(b)); and outlines that Trial Court’s procedures for selecting the candidate who will fill the vacancy (Rule 1908(c)). The Trial Court then applies the Rule 1908 administrative procedures to the list of candidates to make the selection. The HRC Section 1-2.206 and Rule 1908 protocols work in concert in relation to different stages of the replacement selection process

the extent that they are inconsistent with rules prescribed under these provisions.

Pa. Const. art. V, § 10(c).

and thus do not conflict. The HRC controls the process Lackawanna County follows for selecting the names of candidates for submission to the Trial Court to fill vacancies, and Rule 1908 controls the protocols the Trial Court follows when a statutory duty to select a vacancy replacement arises under the HRC.

IV. Conclusion

For the reasons stated above, we find no error in the Trial Court's direction that the commissioned judges of the Trial Court employ the procedures set forth in the HRC to fill the extant Lackawanna County Commissioner vacancy. Accordingly, we affirm the Trial Court Order.

CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Appointment to Fill a Vacancy in the Office of County Commissioner	:	CASES CONSOLIDATED
	:	
	:	
Appeal of: Lackawanna County and William Gaughan	:	No. 653 C.D. 2025
	:	
In re: Appointment of Fill Vacancy in the Office of County Commissioner	:	
	:	
	:	
	:	
Appeal of: Lackawanna County Democratic Committee	:	No. 697 C.D. 2025
	:	

ORDER

AND NOW, this 18th day of July, 2025, the Memorandum and Order filed May 22, 2025 by the Court of Common Pleas of Lackawanna County is AFFIRMED.

CHRISTINE FIZZANO CANNON, Judge