

IN THE 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.

Docket No. 563 MD 2022

**ANSWER OF RESPONDENTS REPRESENTATIVE TIMOTHY R.
BONNER AND REPRESENTATIVE CRAIG WILLIAMS TO OPPOSE
SENATOR JAY COSTA’S APPLICATION FOR LEAVE TO INTERVENE**

Respondents Representative Timothy R. Bonner and Representative Craig
Williams, by their counsel, Saxton & Stump, LLC, file this Answer to Oppose
Senator Jay Costa’s (“Proposed Intervenor”) Application for Leave to Intervene
and, in support thereof, state as follows:

BACKGROUND

1. Admitted.

2. Admitted.

3. Admitted in part; denied in part. It is admitted that Petitioner Krasner's Petition for Review in the Nature of a Complaint for Declaratory Judgment ("Petition") concerns the subject matter and arguments described in this paragraph. It is denied that the impeachment proceedings against Petitioner Krasner are unlawful or that Petitioner Krasner is entitled to relief from this Honorable Court, for the reasons set forth in Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference.

4. Admitted in part; denied in part. It is admitted that Petitioner Krasner's Application for Summary Relief ("Application for Summary Relief") concerns the subject matter and arguments described in this paragraph. It is denied that the impeachment proceedings against Petitioner Krasner are unlawful or that Petitioner Krasner is entitled to relief from this Honorable Court, for the reasons set forth in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference.

5. Admitted.

6. Admitted.

APPLICATION FOR LEAVE TO INTERVENE

7. Admitted.

8. The averments of this paragraph are admitted to the extent that it is an accurate statement of Rule 2327 of the Pennsylvania Rules of Civil Procedure.

9. Denied as stated. The form and manner of filing an application to intervene are prescribed by Rule 2328(a) of the Pennsylvania Rules of Civil Procedure.

10. Denied as stated. The form and manner of filing an application to intervene are prescribed by Rule 2328(a) of the Pennsylvania Rules of Civil Procedure.

11. Denied as stated. The service requirements for an application to intervene are prescribed by Rule 2328(b) of the Pennsylvania Rules of Civil Procedure.

12. The averments of this paragraph are admitted to the extent that it is an accurate statement of Rule 2329 of the Pennsylvania Rules of Civil Procedure.

Intervention Pursuant to Rule 2327(3)

13. The averments of this paragraph consist of conclusions of law to which no response is required.

14. The averments of this paragraph consist of conclusions of law to which no response is required.

15. The averments of this paragraph are admitted to the extent that it is an accurate, though incomplete, statement of Rule 2229 of the Pennsylvania Rules of Civil Procedure.

16. The averments of this paragraph are admitted to the extent that it is an accurate, though incomplete, statement of Rule 2229 of the Pennsylvania Rules of Civil Procedure.

17. The averments of this paragraph consist of conclusions of law to which no response is required.

18. Admitted.

19. Admitted in part; denied in part. It is only admitted that Proposed Intervenor, as evidenced by the adoption of portions of Petitioner Krasner's Petition, shares Petitioner's Krasner's contention that the impeachment articles are a legal nullity. Proposed Intervenor's contention is denied for the reasons set forth in Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference.

20. Admitted in part; denied in part. It is admitted only that Proposed Intervenor advances the same contention as Petitioner Krasner in seeking a

declaratory judgment from this Honorable Court. Respondents deny that advancing the articles of impeachment against Petitioner Krasner to trial would be unlawful, for the reasons set forth in Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference.

21. Denied. Proposed Intervenor lacks standing to seek a declaratory judgment in this matter. Legislators only have standing to litigate in their official capacity in limited circumstances. *Disability Rights Pennsylvania v. Boockvar*, 234 A.3d 390, 392 (Pa. 2020). "Standing exists only when a legislator's direct and substantial interest in his or her *ability to participate in the voting process is negatively impacted*, or when he or she has suffered a *concrete impairment or deprivation of an official power or authority to act as a legislator.*" *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016) (citations omitted) (emphasis supplied). A legislator lacks standing where he asserts an interest "which is unrelated to the voting or approval process, and akin to a general grievance about the correctness of governmental conduct." *Id.* Indeed, the authority cited by Proposed Intervenor does not support recognizing legislative standing in this matter, as those cases involved action in mandamus regarding the Governor's failure to nominate, effectively foreclosing a Senator's ability to vote on gubernatorial nominees

(*Zemprelli v. Thornburg*, 407 A.2d 102 (Pa. Commw. 1979)), and city council members seeking to enforce adherence to established voting procedures (*Cohen v. Rendell*, 684 A.2d 1102 (Pa. Commw. 1996); *Morris. v. Goode*, 529 A.2d 50 (Pa. Commw. 1987)). The instant matter before the Court does not involve any alleged impairment of Proposed Intervenor's ability to participate and cast his vote in impeachment proceedings, nor impairment or deprivation of his official power and authority to act as a legislator. The interest articulated by Proposed Intervenor implicates neither a defense of the power or authority of his office nor a defense of the potency of his right to vote. Rather, Proposed Intervenor simply seeks to offer his perspective on the correctness of governmental conduct, *i.e.*, that the General Assembly no longer has authority to act on the articles of impeachment. This is legally insufficient to confer party standing in a legal challenge to the constitutionality of legislative action. *See Robinson Twp. v. Com.*, 84 A.3d 1054 (Pa. 2014).

22. The averments of this paragraph constitute conclusions of law to which no response is required, and are, therefore, denied.

23. The averments of this paragraph constitute conclusions of law to which no response is required, and are, therefore, denied.

24. The averments of this paragraph constitute conclusions of law to which no response is required, and are, therefore, denied.

25. Denied. For the reasons set forth in Paragraph 21 above, and more fully in Respondents' accompanying Memorandum of Law, Proposed Intervenor lacks standing to intervene in this matter.

Intervention Pursuant to Rule 2327(4)

26. The averments of this paragraph consist of conclusions of law to which no response is required.

27. Admitted.

28. The averments of this paragraph consist of conclusions of law to which no response is required.

29. The averments of this paragraph consist of conclusions of law to which no response is required.

30. The averments of this paragraph consist of conclusions of law to which no response is required.

31. Denied as stated. Petitioner Krasner seeks a determination that the impeachment proceedings against him are unlawful. For the reasons set forth in Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference, this contention lacks legal basis.

32. Denied as stated. Petitioner Krasner seeks a determination that the impeachment proceedings against him are unlawful. For the reasons set forth in

Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference, this contention lacks legal basis.

33. Denied. For the reasons set forth in Paragraph 21 above and more fully in Respondents' accompanying Memorandum of Law, Proposed Intervenor lacks legislative standing in this matter.

34. Denied. The interest articulated by Proposed Intervenor implicates neither a *defense* of the power or authority of his office nor a *defense* of the potency of his right to vote. *See Robinson Twp.*, 84 A.3d at 1055. Furthermore, Proposed Intervenor has adopted Petitioner's Krasner's position that the articles are a legal nullity and thus advancing them to trial would be unlawful. For the reasons set forth in Respondents' Brief in Support of Preliminary Objections to Petition for Review and in Respondents' Brief in Opposition to Application for Summary Relief, which Respondents incorporate herein by reference, Petitioner Krasner's, and by extension Proposed Intervenor's, contention lacks legal basis. By adopting Petitioner Krasner's contention that advancing the articles to trial would be unlawful, Proposed Intervenor himself seeks to infringe on his "legally enforceable interest" to exercise legislative authority as a member of the State Senate. Legislative standing is not conferred for the purpose of empowering a legislator to affirmatively seek to restrict the power or authority of his own office.

35. Denied. For the reasons set forth herein, and more fully in Respondents' accompanying Memorandum of Law, Proposed Intervenor lacks standing to intervene in this matter.

Intervention Pursuant to Rule 2329

36. The averments of this paragraph consist of conclusions of law to which no response is required, and are therefore, denied.

37. The averments of this paragraph consist of conclusions of law to which no response is required, and are therefore, denied.

38. Denied. Respondents' extensive defense of the separation of powers as outlined in their Brief in Support of Preliminary Objections to Petition for Review protects Proposed Intervenor's "personal and official interest in protecting the appropriate boundaries of constitutional limits on legislative authority" Rather than allow a third party to intervene whose interests are sufficiently represented by an existing party, Proposed Intervenor may more appropriately file an amicus brief. *See Cherry Valley Assocs. v. Stroud Twp. Bd. of Supervisors*, 530 A.2d 1039, 1040-41 (Pa. Commw. 1987) (affirming the trial court's decision to deny permission to intervene and allow appellants to file an amicus brief where the appellants' interests were adequately represented). As to Proposed Intervenor's contention that he uniquely represents his constituents' interests vis-à-vis those boundaries, this Court has previously held that a petitioner lacks standing to assert

a claim on behalf of all voters or citizens of Pennsylvania. *See Sierra Club, Pennsylvania Chapter v. Hartman*, 567 A.2d 339, 342 (Pa. Commw. 1989) (“Petitioners do assert injury suffered by the citizens of Pennsylvania as a whole. However, this is precisely the type of abstract interest which will not confer standing.”); *see also Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) (“it is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.”). Indeed, Proposed Intervenor himself states in Paragraph 17 of his Application for Leave to Intervene that “a plaintiff seeking a declaratory judgment must have standing – *i.e.*, a substantial, direct, and immediate interest **beyond the general public’s interest** in the resolution of the question upon which a declaration is sought. *See, e.g., Cohen v. Rendell*, 684 A.2d 1102, 1104 (Pa. Commw. 1996)” (emphasis supplied).

39. Admitted in part and denied in part. It is admitted that Proposed Intervenor applied for intervention in accordance with the Court’s expedited scheduling order. It is denied that Proposed Intervenor’s intervention will not unduly delay, embarrass, or prejudice the trial or adjudication of the rights of the currently named parties. Proposed Intervenor’s interests are sufficiently represented by the existing parties and therefore his involvement would be unnecessarily duplicative.

40. The averments of this paragraph consist of conclusions of law to which no response is required, and are therefore, denied.

Adoption of Pleadings

41. This paragraph and its subparts are admitted in part and denied in part. It is admitted that Senator Costa adopted portions of Petitioner Krasner’s Petition for Review in the Nature of a Complaint for Declaratory Judgment and Application for Summary Relief. It is denied that the impeachment proceedings against Petitioner Krasner are unlawful or that Petitioner Krasner is entitled to relief from this Honorable Court. *See* Respondents’ Brief in Support of Preliminary Objections to Petition for Review and Respondents’ Brief in Opposition to Petitioner’s Application for Summary Relief.

WHEREFORE, Respondents Bonner and Williams request the Court deny the Proposed Intervenor’s Application to Intervene.

SAXTON & STUMP, LLC

Dated: December 16, 2022 By: */s/ Lawrence F. Stengel*
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PUBLIC ACCESS POLICY CERTIFICATION

I, Lawrence F. Stengel, hereby certify that the foregoing 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 requires the filing of confidential information and documents to be performed differently than nonconfidential information and documents and Pa. R.A.P. 127.

SAXTON & STUMP, LLC

Dated: December 16, 2022

By: /s/ Lawrence F. Stengel

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Timothy R. Bonner and Representative

Craig Williams

CERTIFICATE OF SERVICE

I, Lawrence F. Stengel, certify that on this date, I filed the foregoing ANSWER OF RESPONDENTS REPRESENTATIVE TIMOTHY R. BONNER AND REPRESENTATIVE CRAIG WILLIAMS TO OPPOSE SENATOR JAY COSTA'S APPLICATION FOR LEAVE TO INTERVENE electronically and also served a certified true and correct copy upon the following counsel of record, by depositing the same in the United States mail, postage prepaid, addressed as follows:

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