

IN THE SUPREME COURT OF PENNSYLVANIA

Nos. 2, 3 & 4 EAP 2023 (CASES CONSOLIDATED)

LARRY KRASNER, IN HIS OFFICIAL CAPACITY AS THE DISTRICT
ATTORNEY OF PHILADELPHIA,

Designated Appellant,

v.

SENATOR KIM WARD, IN HER OFFICIAL CAPACITY AS
PRESIDENT PRO TEMPORE OF THE SENATE, ET AL.,

Designated Appellees.

**REPLY BRIEF FOR DESIGNATED APPELLEE
SENATOR KIM WARD**

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

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I. INTRODUCTION

Designated Appellant District Attorney Larry Krasner continues to sing the same refrain: the definition of “misbehavior in office” as used in the “closely related” and the “textually nearly-identical and thematically-related” removal provisions must control here because they are almost the same. Krasner Br. at 5.

But DA Krasner’s narrow focus on the similarities between Section 6 and Section 7 ignores the critical textual and contextual differences between the provisions. The provisions use different language (Section 6 includes the term “any”) and provide for different methods of removal—one extra-judicial (impeachment) and the other moored to the judicial process (removal). DA Krasner has not offered a cogent explanation for why these differences should be brushed aside in favor of the similarities. Because he cannot.

And because he cannot, DA Krasner’s second brief is loaded with policy arguments and platitudes that warn of democracy’s inevitable peril if his interpretation is rejected. *See, e.g.*, Krasner Br. at 6 (his interpretation “is a necessary limitation on the General Assembly’s ability to undo democratic elections.”); *id.* at 26 (Respondents are

seeking to “undo” his re-election); *id.* (his interpretation “is an essential democratic constraint on the General Assembly’s impeachment power.”); *id.* at 33 (the use of any “cannot possibly mean what Respondents argue”). The irony, of course, is that it is DA Krasner who is asking this Court to ignore our charter’s plain terms in favor of what he deems to be prudent and democratically acceptable. DA Krasner serves Philadelphia subject to the plain terms of our Constitution. And Senator Ward’s interpretation is the only one that affords fidelity to each of those terms.

II. ARGUMENT

DA Krasner has yet to credibly articulate why the *In re Braig* Court’s definition of “misbehavior in office” in the removal context must apply in the impeachment context. His primary argument is that *In re Braig*, 590 A.2d 284 (Pa. 1991), controls because Section 6 and Section 7 are similar and therefore the similar language in those sections should have the same meaning.¹ Krasner Br. at 30. He breezes past the differences in Section 6 and Section 7 without much legal analysis. But the differences control the outcome here. In the end, DA Krasner’s

¹ For ease of reference, Senator Ward refers only to Section 7 because the *In re Braig* Court concluded that “misbehavior in office” in Article V, Section 18(*l*)’s (now Section 18(d)(3)) has the same common law meaning as in Section 7.

position is fatally flawed because: (1) he is unable to explain why his interpretation does not render “any” superfluous; or (2) his *in para materia* analysis inadequately accounts for the differences between Section 6 and 7.

To begin, according to DA Krasner, the use of “any” in Section 6 “means that impeachment could be for conduct that amounts to anything that would satisfy the elements of the common-law crime.” Krasner Br. at 33. But that interpretation renders “any” entirely meaningless because “misbehavior in office” necessarily includes all conduct amounting to that offense.² *See Ball v. Chapman*, 289 A.3d 1, 26-27 (Pa. 2023) (The “familiar interpretive canon instructs courts to construe a statute’s language so that effect is given to all its provisions, [and] so that no part will be inoperative or superfluous, void or insignificant.” (internal quotations omitted)); *White Deer Tp. v. Napp*, 985 A.2d 745, 760 (Pa. 2008) (“we must give effect to the meaning of

² Ironically, DA Krasner asserts that Senator Ward’s interpretation “strips the phrase ‘misbehavior in office’ of all meaning.” Krasner Br. at 33. That’s simply not true. Senator Ward’s interpretation affords each of those three words their due meaning given their context. *See Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008) (“the meaning of a particular word cannot be understood outside the context of the section in which it is used”). DA Krasner seeks to force his loaded definition of “misbehavior in office” on Section 6 without regard for that provision’s existing language or context.

each distinct word as chosen”). Surely the framers intended “any” to mean something.³

Consider how “any” is used in Section 7. There, “any” is not attached to “misbehavior in office”; it is attached only to “infamous crime.” Pa. Const. art. VI, § 7. That is because “any” attached to the common law definition of “misbehavior in office” is meaningless: “shall be removed on conviction of [*any*] misbehavior in office.” *Id.*

Misbehavior in office, as used in Section 7, is a specific crime and its name speaks for itself. “Infamous crimes,” on the other hand, is a general term that includes several different crimes, *see In re Braig*, 590 A.2d at 286 n.4, and the term “any” makes plain that a conviction for one, some, or all of those crimes will result in removal. The framers used “any” with purpose.

None of DA Krasner’s offerings explain how his interpretation fits with Section 6’s plain language, or why the framers decided to use “any” in the two removal provisions but not in the one impeachment provision. The only credible answer is that the framers intended

³ “Any” must be interpreted “not in isolation, but with reference to the context in which it appears.” *Consulting Eng’s Council of Pa. v. State Architects Licensure Bd.*, 560 A.2d 1375, 1377 (Pa. 1989). “Any” has multiple definitions, but as used in Section 6, “any” means one, some or all. *See Commonwealth v. Ricker*, 170 A.3d 494, 511-513 (Pa. 2017) (Wecht, J., dissenting).

Section 6 to include conduct beyond the common law crime of misbehavior in office.⁴

Next, DA Krasner’s effort to engraft Section 7’s definition of “misbehavior in office” onto Section 6 is inconsistent with principles of interpretation. DA Krasner harps on the similarities between Sections 6 and 7 and maintains that “misbehavior in office” should have the same definition in both. *See* Krasner Br. at 30-32. But it is the differences, not the similarities, that matter here.

For starters, in addition to the inclusion of “any,” the impeachment process is distinct from the removal process because it does not require judicial involvement. It is clear from the text of both provisions that the framers intended Section 7’s first sentence to take effect after “conviction” of “misbehavior in office or any infamous crime.” Pa. Const. art. VI, § 7. The framers did not place those limits on Section 6. There is no mention of crime or conviction. And that is because the framers intended the similar provisions to provide *different*

⁴ Importantly, and despite DA Krasner’s assertions to the contrary, the House cannot impeach a civil officer for “*anything*” Krasner Br. at 33-34 (emphasis in original). As Section 6’s text makes plain, the misbehavior must occur “in office.” Pa. Const. art. VI, § 6. And the House, like everyone else, must follow the Constitution.

mechanisms for removal of a civil officer. *See* Sen. Ward Principal Br. at 64-76. If DA Krasner’s interpretation prevails and a civil officer has to commit a crime before he can be impeached, why would the House ever bother to impeach? If the framers provide “separate bases” for removal, they “must mean something different[.]” *See In re Braig*, 590 A.2d at 286.

In sum, an interpretation truly consistent with *in para materia* principles would preserve Section 6’s distinctions, rather than blend Section 6 with the removal mechanisms in Section 7. *See* 1 Pa.C.S. § 1932; *Berardocco v. Colden*, 366 A.2d 574, 577 (Pa. 1976) (“related provisions of the Constitution must be read in connection with one another so as properly to ascertain their meaning”). These related provisions must maintain *their* independent meaning. Senator Ward’s interpretation is the only interpretation that affords each term, and each provision, its due meaning.

III. CONCLUSION

Democracy is not in peril here; democracy is working in accordance with the Pennsylvania Constitution. The Constitution expressly allows the House to impeach DA Krasner for any misbehavior

in office, in a broad sense. DA Krasner’s arguments to the contrary are unpersuasive. His aggressive language and policy-based lectures on what democracy demands are a façade used to conceal an unviable legal analysis. Therefore, for the reasons set forth herein, and in addition to all the reasons set forth in Senator Ward’s Principal Brief, this Court should reverse the Commonwealth Court’s narrow interpretation of “any misbehavior in office” and restore the intended meaning to that phrase.

Respectfully submitted,

Dated: September 13, 2023

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WORD COUNT CERTIFICATION

I hereby certify that the above reply brief complies with the word count limits of Pa.R.A.P. 2135(a)(1). Based on the word count feature of the word processing system used to prepare this brief, it contains 1,379 words, exclusive of the cover page, tables, and the signature block.

Dated: September 13, 2023 /s/ Matthew H. Haverstick