

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, *et al.*

Respondents.

Docket No. 563 MD 2022

**MEMORANDUM OF LAW IN SUPPORT OF ANSWER OF
RESPONDENTS REPRESENTATIVE TIMOTHY R. BONNER AND
REPRESENTATIVE CRAIG WILLIAMS TO OPPOSE SENATOR JAY
COSTA'S APPLICATION FOR LEAVE TO INTERVENE**

I. INTRODUCTION

On December 2, 2022, Philadelphia District Attorney Larry Krasner (“Petitioner Krasner”) filed a Petition for Review in the Nature of a Complaint for Declaratory Judgment (“Petition”) asking this Court to grant him declaratory relief stopping the impeachment proceedings pending against him in the Pennsylvania General Assembly. Senator Jay Costa (“Proposed Intervenor”) filed an Application for Leave to Intervene on December 12, 2022. Proposed Intervenor contends he has standing to intervene based on his status as a member of the

Senate and that his interests are distinct from and therefore not adequately represented by other parties in this matter.

On the contrary, Proposed Intervenor lacks standing in his official capacity as the matter before this Court does not involve any alleged impairment of his ability to participate and cast his vote in proceedings of the Senate, nor infringe upon his exercise of the authority of his office. Rather, Proposed Intervenor 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 – a position already advanced by Petitioner Krasner. A generalized grievance about the correctness of governmental action is insufficient to confer standing upon Proposed Intervenor. *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016). Moreover, to the extent that Proposed Intervenor asserts an interest in a judicial determination of the appropriate boundaries of constitutional limits on legislative authority, this interest is zealously advanced by Respondents.

II. BACKGROUND

On November 16, 2022, the Pennsylvania House of Representatives passed House Resolution 240, as amended, which contains seven Articles of Impeachment

(“Articles”) against Petitioner Krasner. *See* Petition ¶¶ 24-26, 28, including Exhibit C, House Resolution No. 240, as amended (Nov. 16, 2022) (“HR 240”).¹

On November 18, 2022, consistent with the requirements of HR 240, the Speaker of the House of Representatives, Bryan D. Cutler, appointed Representatives Timothy R. Bonner, Craig Williams, and Jared Solomon to the committee responsible for managing the impeachment trial against Petitioner Krasner. *See* Petition ¶¶ 27, 30.

On November 29, 2022, the Pennsylvania Senate adopted a resolution establishing rules of practice and procedure for impeachment trials and a second resolution providing for the appointed House floor managers (Representatives Bonner, Williams, and Solomon) to exhibit the Articles to the Senate the following day. *See* Petition ¶¶ 31-32, including Exhibit D, Senate Resolution No. 386, Printer’s No. 2020 (Nov. 29, 2022) (“SR 386”) and Exhibit E, Senate Resolution No. 387, Printer’s No. 2021 (Nov. 29, 2022).

On November 30, 2022, the Pennsylvania Senate adopted a resolution directing that a Writ of Impeachment Summons be issued and served on Petitioner Krasner by December 7, 2022 (if possible) and that the Writ command that Petitioner Krasner file an Answer to the Articles by December 21, 2022, and

¹ The Constitution of the Commonwealth of Pennsylvania confers on the House of Representatives “the sole power of impeachment.” Pa. Const. art. VI, § 4.

appear before the Senate² on January 18, 2023, to answer to the Articles. *See* Petition ¶ 33, including Exhibit F, Senate Resolution No. 388, Printer’s No. 2023 (Nov. 30, 2022).

On November 30, 2022, the Writ of Impeachment Summons was signed by the President Pro Tempore of the Senate, Jacob D. Corman, III, and the Secretary of the Senate, Megan L. Martin, for service on Petitioner Krasner. *See* Petition ¶ 36, including Exhibit G, Precept to the Sergeant-at-Arms and Writ of Impeachment Summons (Nov. 30, 2022).

Instead of proceeding in accordance with the lawfully issued Writ of Impeachment Summons, Petitioner Krasner filed his Petition on December 2, 2022, and asked this Court to intervene to stop the impeachment proceedings on his behalf. The Petition seeks declaratory relief on the basis of three claims, which (as articulated by Petitioner Krasner) assert that Petitioner Krasner is not subject to impeachment because: (1) the Amended Articles of Impeachment do not survive the Adjournment of the legislative session *sine die*, (2) the Pennsylvania Constitution does not authorize the General Assembly to impeach a locally elected official like the Philadelphia District Attorney, and (3) Petitioner Krasner is not alleged to have engaged in any “misbehavior in office” as that term is used in

² Pennsylvania’s Constitution provides that “[a]ll impeachments shall be tried by the Senate.” Pa. Const. art. VI, § 5.

Article VI, § 6 of the Constitution. Also on December 2, 2022, Petitioner Krasner filed an Application for Summary Relief and Expedited Briefing (“Application”) and supporting brief seeking summary relief on the three claims that he asserts in his Petition.

On December 6, 2022, this Court issued an Order granting Petitioner Krasner’s Application in part (limited to the request for expedited briefing) and established a schedule for, *inter alia*, pleadings in response to the Petition, applications for leave to intervene, briefs in opposition to the Application, cross-motions for summary relief, and argument on the Application.

On December 12, 2022, Proposed Intervenor filed an Application for Leave to Intervene in the proceedings before this Court. On the same date, Respondents Bonner and Williams filed timely preliminary objections to the Petition and submitted a brief in support of those objections, in accordance with this Court’s Amended Order dated December 6, 2022. Respondents are also filing a brief in opposition to Petitioner Krasner’s Application for Summary Relief in accordance with this Court’s Amended Order.

III. ARGUMENT

- A. This Court should deny Proposed Intervenor’s Application because both Petitioner Krasner and Proposed Intervenor inappropriately ask this Court to intervene in nonjusticiable legislative matters in violation of the separation of powers doctrine.**

The Commonwealth’s Constitution vests legislative power in the General Assembly, which comprises the Senate and the House of Representatives, Pa. Const. art. II, § 1, and grants each of those bodies the “power to determine the rules of its proceedings.” Pa. Const. art. II, § 11. The General Assembly’s legislative power is both exclusive and, unless limited by the Constitution, plenary. *See Killam v. Killam*, 39 Pa. 120, 123 (1861) (where “our constitution is silent on [a] subject the legislative power is plenary”); *see also Com. v. Keiser*, 16 A.2d 307, 310 (Pa. 1940) (“[P]owers not expressly withheld from the Legislature inhere in it, and this is especially so when the Constitution is not self-executing.”).

The Constitution confers on the House of Representatives “the sole power of impeachment,” Pa. Const. art. VI, § 4, and provides that “[a]ll impeachments shall be tried by the Senate.” Pa. Const. art. VI, § 5. Impeachment proceedings are thus clearly the domain of the General Assembly, and absent any provision in our Constitution prohibiting such proceedings from carrying over from one General Assembly to the next (there is none), it is within the rulemaking power of the House and Senate to prescribe how such proceedings are to be carried out. Pa. Const. art. II, § 11.

For the reasons set forth in Respondents’ Brief in Support of Preliminary Objections to Petition for Review and in Respondents’ Brief in Opposition to Petitioner’s Application for Summary Relief, which Respondents incorporate

herein by reference, the impeachment proceedings against Petitioner Krasner are a lawful exercise of authority conferred on the General Assembly and Petitioner Krasner is not entitled to relief from this Honorable Court. Relatedly, since the action complained of does not present any harm to Proposed Intervenor's legally-enforceable interests, Proposed Intervenor lacks standing to seek a declaratory judgment in this matter, as explained below.

B. Proposed Intervenor lacks standing because he has not articulated a direct interest in the outcome of the litigation beyond the general public's interest in resolution of the question upon which declaration is sought.

To establish standing, a party must “demonstrate that he has been aggrieved” by the matter at hand, and to do this, the party must establish, *inter alia*, that “he has a . . . direct . . . interest in the outcome of the litigation.” *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). An interest is “direct” only where the party demonstrates that the conduct complained of caused him legally cognizable harm. *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 660 (Pa. 2005). Stated differently, “[t]he keystone to standing . . . is that the person must be negatively impacted in some real and direct fashion.” *Id.* Consistent with this, a plaintiff seeking relief under the Declaratory Judgments Act, 42 Pa. C.S. § 7531, *et seq.*, must demonstrate direct or imminent harm. *See Cnty. Comm’rs Ass’n of Pennsylvania v. Dinges*, 935 A.2d 926, 931 (Pa. Commw. 2007).

1. Proposed Intervenor lacks standing because he has not suffered a concrete impairment or deprivation of an official power or authority to act as a legislator.

Proposed Intervenor posits that he should be granted leave to intervene on the basis that he “could have joined as an original party in the action or could have been joined therein.” Pa. R.C.P. 2327(3). 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 the trial on the impeachment articles to be held in the Senate or on any preliminary matters relating to the Senate trial. Nor does it impair or deprive him of his official power and authority to act as a legislator. 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, 1055 (Pa. 2014).

Under circumstances analogous to those presented here, this Court recently held that a representative of the General Assembly *did not have standing* to bring claims alleging that Executive branch officials and the General Assembly violated the constitution by establishing unbalanced budgets and authorizing loans to cover deficits. *Brouillette v. Wolf*, 213 A.3d 341, 355 (Pa. Commw. 2019). The Court found that the representative did not assert an injury that was personal to him in his capacity as a legislator, but rather the claim was in the nature of a generalized grievance about the correctness of the governmental action, and that other parties to the action possessed standing and sufficient interest to vindicate the purported harms. *Id.*

Here, as in *Brouillette*, Proposed Intervenor has not articulated any injury that is personal to him in his capacity as a legislator. As a primary matter, Proposed Intervenor has articulated no direct interest in the impeachment proceedings that would entitle him to be joined as a plaintiff. Proposed Intervenor's sole argument in this vein is that he is a member of the Senate who contends that advancing the impeachment proceedings from one General Assembly to the next would be unlawful. Proposed Intervenor, as a Senator from Western Pennsylvania, can have no direct interest in the impeachment proceedings against the Philadelphia District Attorney. As Proposed Intervenor has no "substantial, direct, and immediate interest" in the impeachment proceedings "beyond the general public's interest in resolution of the question upon which a declaration is sought," he could not have been joined as a plaintiff in Petitioner Krasner's Petition for Review.

Proposed Intervenor also argues that he has standing to intervene on the basis that "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action." Pa. R.C.P. 2327(4). Proposed Intervenor does not allege that the proceedings in the impeachment of Petitioner Krasner will in any way impair his authority to legislate or to vote on proceedings in the Senate. Nor does Proposed Intervenor allege that the impeachment proceedings diminish or interfere with the

exercise of the authority of his office. 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.

To the contrary, Proposed Intervenor has adopted Petitioner 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 Petitioner's Application for Summary Relief, which Respondents incorporate herein by reference, Petitioner Krasner's, and by extension Proposed Intervenor's, contention lacks a sound 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.

2. On an alternative basis, this Court should deny Proposed Intervenor's Application because his interests are sufficiently represented by an existing party.

Even if this Court finds that Proposed Intervenor has standing on the basis of Pennsylvania Rule of Civil Procedure 2327(3) or (4), the Court may refuse an application for intervention, if:

- (1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or
- (2) the interest of the petitioner is already adequately represented; or
- (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

Pa. R.C.P. 2329.

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" *See* Senator Jay Costa's Appl. for Leave to Intervene, ¶ 38. 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). Proposed Intervenor likewise cannot establish standing on behalf of his constituents.

C. Even if the Court were to entertain Proposed Intervenor’s arguments in favor of standing, intervention is futile as the case presents a non-justiciable political question.

This Court has already ruled 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.” *Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 705 (Pa. Commw. 1994). As set forth in Respondents’ Brief in

Support of Preliminary Objections, nothing within provisions of the Pennsylvania Constitution prohibits the continuation of impeachment proceedings from one General Assembly to the next or limits the impeachment and procedural rulemaking powers that the Constitution confers on the General Assembly. There is ample affirmative authority—first in the Constitution’s bestowal of impeachment power on the General Assembly, and second in Jefferson’s Manual³—to support the conclusion that the continuation of impeachment proceedings is a matter to be taken up (if at all) within the legislative branch. Therefore, Petitioner Krasner raises a political question in his plea for declaratory relief challenging the continuation of the impeachment proceedings against him from one General Assembly to the next.

“Courts will not review actions of another branch of government where political questions are involved because the determination of whether the action taken is within the power granted by the constitution has been entrusted exclusively and finally to political branches of government for self-monitoring.”

³ Jefferson’s Manual was prepared by Thomas Jefferson during his Vice Presidency from 1797 to 1801 for his own guidance as President of the Senate. The House Rules explicitly endorse Jefferson’s Manual as authoritative. *See* Pennsylvania House Rule 78, Parliamentary Authority, provides: “Mason’s Manual supplemented by Jefferson’s Manual of Legislative Procedure shall be the parliamentary authority of the House, if applicable and not inconsistent with the Constitution of Pennsylvania, the laws of Pennsylvania applicable to the General Assembly, the Rules of the House, the established precedents of the House and the established customs and usages of the House.” *See* <https://www.house.state.pa.us/rules.cfm> (last visited December 16, 2022).

Blackwell v. City of Philadelphia, 684 A.2d 1068, 1071 (Pa. 1996). Where—as Petitioner Krasner has here—a party presents “a challenge to legislative power which the Constitution commits exclusively to the legislature,” the matter constitutes a “non-justiciable political question” that is not properly before a court of law. *Id.* Proposed Intervenor adopts Petitioner Krasner’s challenge to legislative power, contending the articles are a legal nullity and that advancing them to trial would be unlawful. *See Appl. for Leave to Intervene*, ¶41. Thus, even if the Court were inclined to entertain Proposed Intervenor’s assertion of legislative standing, intervention would be futile, as the action complained of presents a non-justiciable political question not properly before the Court.

IV. CONCLUSION

Proposed Intervenor seeks to intervene in a non-justiciable legislative matter that was improperly brought to this Court by Petitioner Krasner in violation of the separation of powers doctrine. Moreover, Proposed Intervenor lacks standing to intervene because: (1) he has not suffered a concrete impairment or deprivation of an official power or authority to act as a legislator; (2) he has not articulated a direct interest in the outcome of the litigation beyond the general public’s interest in resolution of the question upon which declaration is sought; and (3) his interest in protecting the separation of powers is already sufficiently and extensively

represented by Respondents. For the foregoing reasons, Proposed Intervenor's Application for Leave to Intervene should be denied.

SAXTON & STUMP, LLC

Dated: December 16, 2022 By: /s/ Lawrence F. Stengel
Lawrence F. Stengel (ID No. 32809)
William C. Costopoulos (ID No. 22354)
Robert A. Graci (ID No. 26722)
Carson B. Morris (ID No. 208314)
Emily M. Bell (ID No. 208885)
280 Granite Run Drive, Suite 300
Lancaster, PA 17601
Telephone: (717) 556-1000
Facsimile: (717) 441-3810
[lfs@saxtonstump.com](mailto:-lfs@saxtonstump.com)
wcc@saxtonstump.com
rag@saxtonstump.com
cbm@saxtonstump.com
emb@saxtonstump.com

*Attorneys for Respondents
Representative Timothy R. Bonner and
Representative Craig Williams*

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.

Dated: December 16, 2022

/s/ Lawrence F. Stengel

Lawrence F. Stengel

William C. Costopoulos (ID No. 22354)

Robert A. Graci (ID No. 26722)

Carson B. Morris (ID No. 208314)

Emily M. Bell (ID No. 208885)

4250 Crums Mill Road #201

Harrisburg, PA 17112

Telephone: (717) 216-5505

ifs@saxtonstump.com

wcc@saxtonstump.com

rag@saxtonstump.com

cbm@saxtonstump.com

emb@saxtonstump.com

Attorneys for Respondents Representative

Timothy R. Bonner and Representative

Craig Williams

CERTIFICATE OF SERVICE

I, Lawrence F. Stengel, certify that, on this date, I filed the foregoing
MEMORANDUM OF LAW IN SUPPORT OF 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:

John S. Summers, Esquire
Andrew M. Erdlen, Esquire
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
Counsel for Petitioner

Michael J. Satin, Esquire
Timothy P. O'Toole, Esquire
Andrew T. Wise, Esquire
MILLER & CHEVALIER CHARTERED
900 16th Street, N.W.
Washington, D.C. 20006
Counsel for Petitioner

Matthew H. Haverstick, Esquire
Joshua J. Voss, Esquire
Shohin H. Vance, Esquire
Samantha G. Zimmer, Esquire
Francis G. Notarianni, Esquire
KLEINBARD, LLC
1717 Arch Street
Philadelphia, PA 19103
Counsel for Respondent Senator Kim Ward

Corrie Woods, Esquire
Woods Law Offices PLLC
200 Commerce Drive, Suite 210
Moon Township, PA 15108
Counsel for Proposed Intervenor Senator Jay Costa

Lam D. Truong, Esquire
Office of Chief Counsel, Democratic Caucus
Pennsylvania House of Representatives
Room 620 Main Capitol Building
Harrisburg, PA 17120
Counsel for Representative Jared G. Solomon

Dated: December 16, 2022

/s/ Lawrence F. Stengel
Lawrence F. Stengel

**APPENDIX A – SENATOR JAY COSTA’S
APPLICATION FOR LEAVE TO INTERVENE**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LARRY KRASNER, in his official
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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 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

v.

SENATOR JAY COSTA, in his official
capacity

Proposed Intervenor

SENATOR JAY COSTA'S APPLICATION FOR LEAVE TO INTERVENE

AND NOW comes Proposed Intervenor Senator Jay Costa, via counsel,
Corrie Woods, Esq., and submits this Application for Leave To Intervene and
offers the following in support thereof:

BACKGROUND

1. Senator Costa is a member of the Senate of Pennsylvania representing the 43rd Senate District, which includes part of Allegheny County. Senator Costa serves as Leader of the Senate Democrats.

2. On December 2, 2022, Petitioner Larry Krasner, in his official capacity as the District Attorney of Philadelphia, filed a Petition for Review in the Nature of a Complaint for Declaratory Judgment in this Honorable Court, initiating this action.

3. Therein, District Attorney Krasner alleges essentially that the 206th Pennsylvania General Assembly adopted resolutions advancing articles of impeachment against him to a pretrial posture, but asserts that the advancement of the articles to trial would be unlawful for three reasons: (1) the 206th General Assembly did not advance them to trial prior to its adjournment *sine die*, such that the unfinished legislative business regarding his impeachment, like all unfinished legislative business, is now a nullity; (2) the General Assembly has no authority to impeach a local official; and (3) the articles do not allege that District Attorney Krasner has engaged in impeachable misconduct and are therefore insufficient to support his removal from office as a matter of law. District Attorney Krasner seeks a declaratory judgment to that end.

4. The same day, District Attorney Krasner filed an Application for Summary Relief, asserting the same arguments and seeking the same relief.

5. On December 6, 2011, this Honorable Court entered an order directing that, *inter alia*, any individual applying for leave to intervene file an application for leave to intervene, together with any proposed filings and memoranda of law, by December 12, 2022, at 3 p.m.

6. Senator Costa now files this Application for Leave to Intervene.

APPLICATION FOR LEAVE TO INTERVENE

7. This action in this Honorable Court's original jurisdiction is governed by the Pennsylvania Rules of Civil Procedure. *See* Pa.R.A.P. 106 (noting that such actions are governed by "the appropriate general rules applicable to practice and procedure in the courts of common pleas").

8. "At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if":

- (3) such person could have joined as an original party in the action or could have been joined therein; or
- (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa.R.Civ.P. 2327.

9. Procedurally, an application to intervene must be made in the form of and verified in the manner of an initial pleading in a civil action, set forth the basis for

intervention, and state the relief the petitioner seeks or the defense the petitioner seeks to demand. Pa.R.Civ.P. 2327(a).

10. Additionally, the petitioner must attach a copy of any pleading he intends to file if permitted to intervene or state in the petition that he adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed. Pa.R.Civ.P. 2327(a).

11. Additionally, the petitioner must serve the petition on all parties to the action. Pa.R.Civ.P. 2327(b).

12. After the petition is filed,

[A]fter hearing, of which due notice shall be given to all parties, the court, if the allegations of the petition have been established and are found to be sufficient, shall enter an order allowing intervention; but an application for intervention may be refused, if

- (1) the claim or defense of the petitioner is not in subordination to and in recognition of the action; or
- (2) the interest of the petitioner is already adequately represented; or
- (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass, or prejudice the trial or adjudication of the rights of the parties.

Pa.R.Civ.P. 2329.

Intervention Pursuant to Rule 2327(3)

13. As noted above, a person's intervention is warranted if "such person could have joined as an original party in the action or could have been joined therein."

Pa.R.Civ.P. 2327(3).

14. This rule applies to persons who could have joined as plaintiffs. *See Goodrich Amram 2d § 2327:6* (citing, *inter alia*, *Appeal of Denny Bldg. Corp.*, 127 A.2d 724 (Pa. 1956) (permitting purchasers of homes to intervene in contractor's appeal from adverse administrative decision)).

15. "Persons may join as plaintiffs who assert any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common questions of law or fact affecting the rights to relief of all such persons will arise in the action." Pa.R.Civ.P. 2229.

16. "Parties may join . . . in the alternative although the cause of action asserted by or against any one or more of them is inconsistent with the cause of action asserted by . . . the others so joined." Pa.R.Civ.P. 2229.

17. 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. Cmwlth. 1996) (citing *William Penn Parking*

Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975)); accord 42 Pa.C.S. § 7532 (noting that declaratory judgments are available to “declare rights, status, and other legal relations whether or not further relief is or could be claimed”)

18. As noted above, Senator Costa is a member of the Senate.

19. Like District Attorney Krasner, Senator Costa contends that advancing the articles to trial would be unlawful because the 206th General Assembly did not advance them to trial and judgement prior to its adjournment *sine die*, such that the unfinished legislative business regarding his impeachment, like all unfinished legislative business, is now a nullity.

20. Like District Attorney Krasner, Senator Costa seeks a declaratory judgment that advancing the articles to trial in a successive General Assembly would be unlawful for the reason stated in paragraph 19.

21. Senator Costa, as a member of the Senate, has standing to seek a declaratory judgment that advancing the articles to trial would be unlawful. *Accord, e.g., Zemprelli v. Thornburg*, 407 A.2d 102 (Pa. Cmwlth. 1979) (holding State Senator, as such, had standing to challenge gubernatorial nomination as constitutionally procedurally infirm); *Cohen*, 684 A.2d at 1105 (holding council member, as such, had standing to challenge ordinances’ adoption as procedurally infirm under the Philadelphia Home Rule Charter); *Morris v. Goode*, 529 A.2d 50 (Pa. Cmwlth.

1987) (holding council member, as such, had standing to challenge ordinances as violative of quorum requirement).

22. Senator Costa in this regard seeks relief separately in respect of or arising from the same transaction, occurrence, or series of transactions or occurrences as District Attorney Krasner.

23. The common questions of law and fact pertaining to the 206th General Assembly's efforts to impeach District Attorney Krasner and the putative trial's unlawfulness will arise in this action.

24. Thus, Senator Costa could have joined as a plaintiff.

25. Thus, Senator Costa is presumptively entitled to intervene pursuant to Rule 2327(3).

Intervention Pursuant to Rule 2327(4)

26. In the alternative, as noted above, a person's intervention is warranted if "the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action." Pa.R.Civ.P. 2327(4).

27. As noted above, Senator Costa is a member of the Senate.

28. In the context of legislators' intervention in their official capacities, the question of whether a legislator has satisfied Rule 2327(4) does not principally depend upon whether he has standing to initiate a complaint. *See Allegheny*

Reproductive Health Ctr. v. Pa. Dept. of Hum. Servs., 225 A.3d 902, 911 (Pa. Cmwlth. 2020) (permitting legislators to intervene in an action challenging legislative and administrative restrictions on appropriations for abortions as unconstitutional as interference with the legislature’s power of appropriation); *see also Sunoco Pipeline L.P. v. Dinniman*, 217 A.3d 1283, 1288 (Pa. Cmwlth. 2019) (“[T]he inquiry to determine whether a party has standing to initiate litigation is different than the inquiry to determine whether a party can intervene.”).

29. Indeed, while the test for standing to initiate a complaint requires a party to demonstrate “direct, immediate, and substantial interest in the subject matter of the controversy,” Rule 2327(4) permits a party to intervene if he or she demonstrates that a determination of the case will affect a “legally enforceable interest” of the party. *See Allegheny Reproductive Health Ctr.*, 225 A. 3d at 910-11 (“Simply, the test for standing to initiate litigation is not co-terminus with the test for intervention in existing litigation.”). As such, the principles of legislative standing are “relevant” to the question of whether a legislator has a “legally enforceable interest” under Rule 2327(4) and Proposed Intervenors do, indeed, adhere to these standards. *See id.* at 911.

30. “Legislators . . . are granted standing . . . when specific powers unique to their functions under the Constitution are diminished or interfered with.” *Wilt v. Beal*, 363 A.2d 876, 881 (Pa. Cmwlth. 1976); *see also Fumo v. City of Phila.*, 972

A.2d 487, 501 (Pa. 2009) (“Legislators . . . have been permitted to bring actions based upon their special status where there was a discernable and palpable infringement on their authority as legislators.”); *Markham v. Wolf*, 136 A.3d 134, 145 (Pa. 2016) (“Standing exists . . . when a legislator’s direct and substantial interest in his or her ability to participate in the voting process is negatively impacted, *see Wilt*, or when he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator, *see Fumo*”).

31. Here, District Attorney Krasner seeks relief that would identify procedural and substantive limits on the General Assembly’s power to impeach generally and the lawfulness of his impeachment trial specifically.

32. Thus, the claim would diminish and/or interfere with legislative authority generally and as it pertains to District Attorney Krasner’s impeachment trial specifically.

33. Thus, Senator Costa, in his official capacity, has legislative standing.

34. Indeed, the determination of this action not only may, but will, affect Senator Costa’s “legally enforceable interest” in his legislative authority.

35. Thus, Senator Costa, on this basis as well, is entitled to intervene pursuant to Pa.R.Civ.P. 2327(4).

Intervention Pursuant to Rule 2329

36. As detailed above, even if a proposed intervenor is presumptively entitled to intervene pursuant to Pa.R.Civ.P. 2327, intervention may nevertheless be denied if (1) the claim or defense of the petitioner is not in subordination to and in recognition of the action; or (2) the interest of the petitioner is already adequately represented; or; (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass, or prejudice the trial or adjudication of the rights of the parties. Pa.R.Civ.P. 2329.

37. Here, Senator Costa does not intend to present any claim “not in subordination to and in recognition of the action.” Pa.R.Civ.P. 2329.

38. Here, Senator Costa’s interests are not already adequately represented. Although District Attorney Krasner advances the same legal argument, he also advances others, and he lacks Senator Costa’s personal and official interest in protecting the appropriate boundaries of constitutional limits on legislative authority generally, as well as Senator Costa’s personal and official interest in representing his constituents’ interests vis-à-vis those boundaries and the specific subjects of this action.

39. Here, Senator Costa has not unduly delayed in making application for intervention; rather, he has done so according to this Honorable Court’s expedited scheduling order; and, upon information and belief, his intervention will not

unduly delay, embarrass, or prejudice the trial or adjudication of the rights of the currently named parties.

40. Thus, Senator Costa is entitled to intervene notwithstanding Pa.R.Civ.P. 2329.

Adoption of Pleadings

41. Senator Costa hereby adopts the by reference, in part, District Attorney Krasner's Petition for Review in the Nature of a Complaint for Declaratory Judgment and Application for Summary Relief. Specifically, Senator Costa adopts those parts:

a. identifying the basis for this Honorable Court's jurisdiction, *see* Petition for Review, 12/2/22, at 4;

b. identifying the parties, basic facts, and legislative actions giving rise to the present controversy, *see id.* at 5-12;

c. identifying that on November 8, 2022, the 206th General Assembly adjourned *sine die*, *see id.* at 12-13;

d. asserting that advancing the articles to trial would be unlawful because the 206th General Assembly did not advance them to trial prior to its adjournment *sine die*, such that the unfinished legislative business regarding his impeachment, like all unfinished legislative business, is now a nullity, *see id.* at 14-17; and

e. seeking a declaration that the legislative actions giving rise to the present controversy are null and void and that advancing the articles to trial would be unlawful, or such other relief as is just and proper, *see id.* at 30-31.

WHEREFORE, in light of the foregoing, Senator Costa respectfully requests that this Honorable Court enter an order granting the Application to Intervene.

Respectfully submitted,

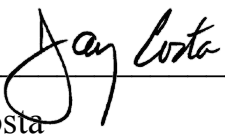


Corrie Woods
PA Bar # 314580
Woods Law Offices PLLC
200 Commerce Drive, Suite 210
Moon Township, PA 15108
Telephone: (412) 329-7751
Email: cwoods@woodslawoffices.com

Counsel for Proposed Intervenor
Senator Jay Costa

VERIFICATION

I, Senator Jay Costa, hereby verify that the allegations set forth herein are true and correct to the best of my knowledge or information and belief and subject to the provisions of the Crimes Code relating to unsworn falsification to authorities.



Senator Jay Costa

December 12, 2022

Date

CERTIFICATE OF COMPLIANCE

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* which require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,



Corrie Woods
PA Bar # 314580
Woods Law Offices PLLC
200 Commerce Drive, Suite 210
Moon Township, PA 15108
Telephone: (412) 329-7751
Email: cwoods@woodslawoffices.com

Counsel for Proposed Intervenor
Senator Jay Costa

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon the following persons in the following manners:

Via PACFile:

Andrew Martin Erdlen, Esq.
Hangley, Aronchick, Segal, Pudlin &
Schiller
1 Logan Sq 27th Fl
Philadelphia, PA 19103
Telephone: (215) 496-7036

Via e-mail and first class mail:

Timothy P. O'Toole
Miller & Chevalier Chartered
900 16th Street, NW
Washington, DC 20006
Telephone: (202) 626-5800
Email: totoole@milchev.com

Via e-mail and first class mail:

Michael J. Satin, Esq.
Miller & Chevalier Chartered
900 16th Street, NW
Washington, DC 20006
Telephone: (202) 626-6009
Email: msatin@milchev.com

Via PACFile:

John S. Summers, Esq.
Hangley, Aronchick, Segal, Pudlin &
Schiller
1 Logan Sq 27th Fl
Philadelphia, PA 19103
Telephone: (215) 496-7007

Via e-mail and first-class mail:

Andrew T. Wise, Esq.

Via PACFile:

Matthew Hermann Haverstick, Esq.
Kleinbard, LLC
Three Logan Square
1717 Arch St Fl 5
Philadelphia, PA 19103
Telephone: (215) 568-2000

Francis Gerard Notarianni, Esq.

Kleinbard, LLC
Three Logan Square
1717 Arch St Fl 5
Philadelphia, PA 19103
Telephone: (570) 780-7838

Shohin Hadizadeh Vance

Kleinbard, LLC
Three Logan Square
1717 Arch St Fl 5
Philadelphia, PA 19103
Telephone: (215) 568-2000

Joshua John Voss

Kleinbard, LLC
Three Logan Square
1717 Arch St Fl 5
Philadelphia, PA 19103
Telephone: (570) 780-7838

Samantha G. Zimmer

Kleinbard, LLC
Three Logan Square
1717 Arch St Fl 5
Philadelphia, PA 19103

Miller & Chevalier Chartered
900 16th Street, NW
Washington, DC 20006
Telephone: (202) 626-6009
Email: awise@milchev.com

Counsel for Petitioner Larry Krasner

Telephone: (570) 352-8367

*Counsel for Respondent Senator Kim
Ward*

Via first-class mail:

Rep. Timothy R. Bonner
150A East Wing
P.O. Box 202008
Harrisburg, PA 17120-2008

Rep. Craig Williams
4 East Wing
P.O. Box 202160
Harrisburg, PA 17120-2160

Rep. Jared G. Solomon
104A East Wing
P.O. Box 202202
Harrisburg, PA 17120-2202

Respectfully submitted,



Corrie Woods
PA Bar # 314580
Woods Law Offices PLLC
200 Commerce Drive, Suite 210
Moon Township, PA 15108
Telephone: (412) 329-7751
Email: cwoods@woodslawoffices.com

*Counsel for Proposed Intervenor
Senator Jay Costa*

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

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*
Lawrence F. Stengel (ID No. 32809)
William C. Costopoulos (ID No. 22354)
Robert A. Graci (ID No. 26722)
Carson B. Morris (ID No. 208314)
Emily M. Bell (ID No. 208885)
4250 Crums Mill Road #201
Harrisburg, PA 17112
Telephone: (717) 216-5505
ifs@saxtonstump.com
wcc@saxtonstump.com
rag@saxtonstump.com

cbm@saxtonstump.com
emb@saxtonstump.com

*Attorneys for Respondents Representative
Timothy R. Bonner and Representative
Craig Williams*

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

Lawrence F. Stengel (ID No. 32809)
William C. Costopoulos (ID No. 22354)
Robert A. Graci (ID No. 26722)
Carson B. Morris (ID No. 208314)
Emily M. Bell (ID No. 208885)
4250 Crums Mill Road #201
Harrisburg, PA 17112
Telephone: (717) 216-5505
[lfs@saxtonstump.com](mailto:-lfs@saxtonstump.com)
wcc@saxtonstump.com
rag@saxtonstump.com
cbm@saxtonstump.com
emb@saxtonstump.com

*Attorneys for Respondents Representative
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:

John S. Summers, Esquire
Andrew M. Erdlen, Esquire
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
Counsel for Petitioner

Michael J. Satin, Esquire
Timothy P. O'Toole, Esquire
Andrew T. Wise, Esquire
MILLER & CHEVALIER CHARTERED
900 16th Street, N.W.
Washington, D.C. 20006
Counsel for Petitioner

Corrie Woods, Esquire
Woods Law Offices PLLC
200 Commerce Drive, Suite 210
Moon Township, PA 15108
Counsel for Proposed Intervenor

Matthew H. Haverstick, Esquire
Joshua J. Voss, Esquire
Shohin H. Vance, Esquire
Samantha G. Zimmer, Esquire
Francis G. Notarianni, Esquire
KLEINBARD, LLC
1717 Arch Street
Philadelphia, PA 19103
Counsel for Respondent Senator Kim Ward

Lam D. Truong, Esquire
Office of Chief Counsel, Democratic Caucus
Pennsylvania House of Representatives
Room 620 Main Capitol Building
Harrisburg, PA 17120
Counsel for Representative Jared G. Solomon

Dated: December 16, 2022

/s/ Lawrence F. Stengel
Lawrence F. Stengel