

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Larry Krasner, in his official capacity	:
as the District Attorney of	:
Philadelphia,	:
	:
Petitioner	:
	:
v.	:
	: No. 563 M.D. 2022
	: Argued: December 29, 2022
	:
Senator Kim Ward, in her official	:
capacity as Interim President Pro	:
Tempore of the Senate;	:
Representative Timothy R. Bonner,	:
in his official capacity as an	:
impeachment manager;	:
Representative Craig Williams, in	:
his official capacity as an	:
impeachment manager;	:
Representative Jared Solomon, in	:
his official capacity as an	:
impeachment manager; and	:
John Does, in their official capacities	:
as members of the Senate	:
Impeachment Committee,	:
	:
Respondents	:

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

OPINION NOT REPORTED

CONCURRING OPINION  
BY JUDGE WOJCIK

FILED: January 12, 2023

I agree with the Majority that the Pennsylvania House of Representatives (House) is without the constitutional or statutory authority to consider or determine whether Petitioner has violated the Rules of Professional Conduct and the Code of Judicial Conduct as alleged in Impeachment Articles III, IV, and V of the Amended House Resolution No. 240, because such authority is solely and exclusively vested in the Pennsylvania Supreme Court under article V, sections 1,<sup>1</sup> 2(a) and (c),<sup>2</sup> and 10(c) of the Pennsylvania Constitution<sup>3</sup> and Section

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<sup>1</sup> Pa. Const. art. V, §1. Article V, section 1 states:

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

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

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

The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct . . . for admission to the bar and to practice law, . . . if such rules are consistent with this

**(Footnote continued on next page...)**

1401(o) of The County Code.<sup>4</sup> In fact, the General Assembly specifically acknowledged the limitation to its impeachment authority in this regard in its enactment of Section 1401(o) of The County Code. Thus, the House's actions in this respect clearly infringe upon the Supreme Court's sole and exclusive authority as a separate and coequal branch of our Commonwealth's government, and Petitioner's claims in this regard are justiciable by this Court as an unconstitutional

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Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

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

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

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

exercise of the House’s impeachment authority conferred by article VI, section 4 of the Pennsylvania Constitution.<sup>5</sup> *See, e.g., In re Investigation by Dauphin County Grand Jury, September, 1938*, 2 A.2d 802, 803 (Pa. 1938) (“Therefore, the courts have no jurisdiction in impeachment proceedings, and no control over their conduct, *so long as actions taken are within constitutional lines.*”) (emphasis added).

I joined the position of the lead opinion when the matter was presented to this Court on an expedited basis. However, upon further reflection, I now firmly believe that the constitutional authority to issue and consider Impeachment Articles I, II, VI, and VII of the Amended House Resolution No. 240 has been solely and exclusively vested in the House pursuant to article VI, section 4, and trial on these Impeachment Articles has been solely and exclusively vested in the Pennsylvania Senate pursuant to article VI, sections 5<sup>6</sup> and 6<sup>7</sup> of the Pennsylvania Constitution.<sup>8</sup>

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<sup>5</sup> Pa. Const. art. VI, §4. Article VI, section 4 states: “The House of Representatives shall have the sole power of impeachment.”

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

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

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

<sup>8</sup> *See, e.g., In re Cohen for Office of Philadelphia City Council-at-Large*, 225 A.3d 1083, 1090 (Pa. 2020) (Donohue, J., concurring) (“I joined the position of the Lead Opinion placing [the appellant] on the general election ballot as a candidate for Philadelphia City Council-at-Large when the matter was presented to us on an expedited basis. . . . Having reviewed Justice Wecht’s thoughtful and well-reasoned Dissenting Opinion, however, I find it to be highly persuasive and, **(Footnote continued on next page...)**”

Thus, Petitioner's claims with respect to these Impeachment Articles should present nonjusticiable political questions that must ultimately be resolved by the General Assembly pursuant to its constitutional authority.<sup>9</sup>

Based on the foregoing, I would now sustain and overrule Respondents' preliminary objections, grant and deny Petitioner's and Respondents' cross-applications for summary relief, and grant and deny Petitioner's requested

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in my view, should be the prevailing interpretation of Section 976(e) of the [Pennsylvania] Election Code, [Act of Act of June 3, 1937, P.L. 1333, *as amended*,] 25 P.S. §2936(e), in future cases.”).

<sup>9</sup> As previously explained by this Court:

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

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

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

declaratory relief accordingly. I continue to be in complete agreement with the Majority's disposition of all remaining claims and issues in this matter.



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MICHAEL H. WOJCIK, Judge