IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 2, 3, and 4 EAP 2023

LARRY KRASNER, in his official capacity as the District Attorney of Philadelphia,
Appellant in No. 3 EAP 2023,

v.

SENATOR KIM WARD, in her official capacity as Interim President Pro Tempore of the Senate,
Appellant in No. 4 EAP 2023;

REPRESENTATIVE TIMOTHY R. BONNER, in his official capacity as an impeachment manager; REPRESENTATIVE CRAIG WILLIAMS, in his official capacity as an impeachment manager,
Appellants in No. 2 EAP 2023;

REPRESENTATIVE JARED SOLOMON, in his official capacity as an impeachment manager; SENATOR JAY COSTA, in his official capacity as Minority Leader of the Senate; and JOHN DOES, in their official capacities as members of the SENATE IMPEACHMENT COMMITTEE.

REPRODUCED RECORD FOR
BRIEF OF APPELLANT DISTRICT ATTORNEY LARRY KRASNER

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

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Dated: May 18, 2023

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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. _____ MD 2022

PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT

Filed on behalf of Petitioner:
Larry Krasner, in his official capacity as the District Attorney of Philadelphia

Counsel of Record for Petitioner:

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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. _____ MD 2022

NOTICE TO PLEAD

TO: 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;
John Does, in their official capacities as members of the Senate Impeachment Committee;

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), or a judgment may be entered against you.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 2, 2022

By: 

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served, in accordance with Pennsylvania Rule of Appellate Procedure 1516(b), by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THESE OFFICES MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

MidPenn Legal Services
213-A North Front Street
Harrisburg, PA 17101
(717) 232-0581

Dauphin County Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

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. _____ MD 2022

PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

1. This Petition for Review concerns the unlawful impeachment proceedings currently pending against the twice-elected district attorney of Philadelphia, petitioner Larry Krasner.

2. It seeks a declaration that the impeachment proceedings against District Attorney Krasner – which commenced during the Two Hundred Sixth

Pennsylvania General Assembly upon the adoption of Amended Articles of Impeachment by the then Republican-controlled House on November 16, 2022, and the exhibition of those Articles to the Senate on November 30, 2022 – are unlawful and may not proceed during the Two Hundred Seventh Pennsylvania General Assembly that began on December 1, 2022.

3. The impeachment proceedings against District Attorney Krasner are unlawful and may not proceed for three reasons. *First*, the Amended Articles of Impeachment were adopted during the 206th General Assembly and Pennsylvania law – the Constitution, statutes, and other authorities – does not permit them to carry over to the (current) 207th General Assembly. *Second*, District Attorney Krasner is not subject to impeachment by the General Assembly because the Pennsylvania Constitution does not authorize impeachment of the Philadelphia district attorney by the General Assembly. *Third*, District Attorney Krasner is not subject to impeachment because the Amended Articles of Impeachment do not allege conduct that would constitute "any misbehavior in office," the standard for impeachment under the Pennsylvania Constitution.

4. Each of these reasons mandates a declaration that the Amended Articles are null and void, and that there is no authority to pursue them.

5. As a matter of Pennsylvania Constitutional and statutory law, the Amended Articles are dead because they cannot law carry over after November 30,

2022. And also as a matter of law, they fatally collide with the Constitutional requirement that only a statewide (not local) official can be impeached by the Pennsylvania General Assembly for an impeachable offense.

6. This action raises not only the enormously important concern of who leads the Philadelphia District Attorney's Office. It also highlights that the Commonwealth is at a hinge moment in its more than two-century history. The General Assembly has only twice exercised its great power of impeachment. In the early 1800s, it impeached and convicted a judge who had been convicted of the crime of sedition and then was imprisoned. In 1994, a Justice of the Pennsylvania Supreme Court was impeached and convicted *after* he had been convicted of two crimes and removed from that court.

7. The effort to impeach District Attorney Krasner stands the Constitution and this Commonwealth's history on its head. *Never* before has the legislature exercised its power to impeach and remove someone duly elected twice for things that do not come close to a crime. And *never* before has the statewide legislature exercised its power to impeach a locally elected officer like District Attorney Krasner.

8. Our courts are the bulwark to stop a majority political party's attempts to weaponize the General Assembly's impeachment powers against elected local officials from a different party to reverse the outcome of a local election. Left

unchecked, the gate will be opened wide. The Commonwealth's Constitution and the Rule of Law cannot allow this to occur.

9. Accordingly, District Attorney Krasner requests the following relief from this Honorable Court: (a) a declaration that the Amended Articles became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th General Assembly's legislative session; (b) a declaration that District Attorney Krasner is not subject to impeachment because, as the district attorney of Philadelphia, he is not subject to impeachment by the General Assembly; and (c) a declaration that District Attorney Krasner is not subject to impeachment because the Amended Articles do not allege "any misbehavior in office" within the meaning of Article VI, Section 6 of the Pennsylvania Constitution.

10. Indisputably, as a matter of law, District Attorney Krasner cannot be impeached under the fatally flawed Amended Articles that died with the end of the 206th General Assembly.

JURISDICTION

11. This Court has original jurisdiction pursuant to title 42 Pa. C.S. § 761(a)(2), which provides that the "Commonwealth Court shall have original jurisdiction of all civil actions or proceedings [] [a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity . . . "

PARTIES

12. Petitioner is Larry Krasner, in his official capacity as the District Attorney of Philadelphia and leader of the District Attorney's Office ("DAO").

13. Respondent Senator Kim Ward was elected to the Pennsylvania Senate in 2008 to represent Senate District 39. She is sued in her official capacity as Interim President Pro Tempore of the Senate. The Interim President Pro Tempore of the Senate presides over the Senate until the next legislative session begins on January 3, 2023 and functions as its majority leader.

14. Respondent Representative Timothy R. Bonner was elected to the Pennsylvania House of Representatives in 2020 to represent the 8th legislative district. He is sued in his official capacity as an impeachment manager for the impeachment proceedings in the Senate.

15. Respondent Representative Craig Williams was elected to the Pennsylvania House of Representatives in 2020 to represent the 160th legislative district. He is sued in his official capacity as an impeachment manager for the impeachment proceedings in the Senate.

16. Respondent Representative Jared Solomon was elected to the Pennsylvania House of Representatives in 2016 to represent the 202nd legislative district. He is sued in his official capacity as an impeachment manager for the impeachment proceedings in the Senate.

17. Respondents John Does are fictitiously-named members of the Pennsylvania Senate's Impeachment Committee. Upon a reasonable investigation with due diligence, District Attorney Krasner does not yet know the actual names of the John Doe respondents. The Senate Impeachment Committee was authorized by S. Res. 386, which was passed on November 29, 2022. Senate Resolution 386 provides that the President Pro Tempore may appoint members to the committee and is an ex officio member who may vote in case of a tie on any question before the committee. *See* S. Res. 386, at Section 10(a). The functions of the committee are, *inter alia*, to receive evidence and take testimony at times and places determined by the committee. *Id.* Section 10(b). The committee and its chairperson have the powers and duties conferred on the Senate and the President Pro Tempore or President of the Senate, respectively. *Id.*

STATEMENT OF FACTS

A. District Attorney Krasner is the Twice-Elected District Attorney of Philadelphia and a Frequent Target of Republican Politicians

18. District Attorney Krasner was first elected district attorney of Philadelphia in 2017, winning the general election with more than 74% of votes after prevailing in a competitive Democratic primary election with more than two-thirds of all Democratic votes. He was then re-elected in 2021, this time winning the general election with more than 69% of votes after defeating a challenger in the primary election. Each time he ran on a reform platform, which included a

promise to, among other things, reform the cash bail system and prioritize the prosecution and enforcement of serious crimes over minor ones.

19. Republican politicians in the Commonwealth frequently attack District Attorney Krasner to rally their political base and/or raise their political profile. Earlier this year, for example, State Senator Jake Corman tried (and failed) to obtain the Republican nomination for governor by calling for the impeachment of District Attorney Krasner on the (baseless) grounds that "crime" is the "result" of his "policies."[1] Former United States Attorney William McSwain promised to "rid the city of Larry Krasner" in his unsuccessful campaign in the Republican primary for governor.[2]

B. The Amended Articles of Impeachment Adopted by the House During the 206th General Assembly

20. On October 26, 2022, Rep. Martina White introduced HR 240, a resolution "Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia, for misbehavior in office; and providing for the appointment of trial managers." *See* Exhibit A, House Resolution 240, Printer's No. 3607 (Oct. 26, 2022) ("HR 240").

[1] Letter from Pennsylvania State Senator Jake Corman, Office of the President Pro Tempore, to the Honorable Bryan Cutler, Jerry Benninghoff, and Rob Kauffman, regarding Impeachment of Philadelphia DA Larry Krasner at 1 (Jan. 18, 2022).

[2] Tom Waring, *McSwain, in Mayfair, vows to oust Krasner*, Northeast Times, (Feb. 18, 2022), https://northeasttimes.com/2022/02/18/mcswain-in-mayfair-vows-to-oust-krasner/ (last visited Dec. 1, 2022).

21. HR 240 alleges two Articles of Impeachment against District Attorney Krasner.

22. The House did not vote on HR 240.

23. On or around November 16, 2022, Representative Torren Ecker, a member of the 206th General Assembly's House of Representatives Select Committee on Restoring Law and Order ("Select Committee"), sponsored Amendments to HR 240. The Amendments amend HR 240 by striking all of the lines on all of the pages in HR 240 with the exception of lines 1-3 on page 1 and inserting all of the lines on the pages in the Amended Articles.

24. On November 16, 2022, HR 240, as amended, was introduced. *See* Exhibit B, Amendments to House Resolution No. 240, A05891, Printer's No. 3607 (Nov. 10, 2022) ("Amended Articles" or "Amended Articles of Impeachment").

25. The Amended Articles contain seven articles. *See id*.

26. None of the seven articles allege that District Attorney Krasner committed a criminal offense or used the power of his office for personal or pecuniary gain. *See id.* Instead, they include:

- Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
- Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation

- Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

- Article IV: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Commonwealth v. Pownall*

- Article V: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter In re: Conflicts of Interest of Philadelphia District Attorney's Office

- Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights

- Article VII: Misbehavior in Office in the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

27. The Amended Articles state that upon their adoption, the Speaker of the House of Representatives "[s]hall appoint a committee of three members, two from the majority party and one from the minority party, to exhibit the same to the Senate, and on behalf of the House of Representatives to manage the trial thereof." *Id.* at 17.

28. On November 16, 2022, HR 240, as amended by the Amended Articles of Impeachment, passed the full House of Representatives by a vote of 107-85. *See* Exhibit C, House Resolution No. 240, Printer's No. 3634 (Nov. 16, 2022).

29. All but one Republican voted in favor of HR 240. All Democrats voted against HR 240.

C. Exhibition of the Amended Articles of Impeachment to the 206th General Assembly Senate

30. On November 18, 2022, in a press release, the Speaker of the House of Representatives of the 206th General Assembly, Representative Bryan D. Cutler, announced that the committee to "exhibit the articles of impeachment to the Senate, and manage the trial on behalf of the House" referenced in the Amended Articles of Impeachment would be comprised of Respondents Rep. Craig Williams, Rep. Timothy R. Bonner, and Rep. Jared Solomon.[3]

31. On November 29, the Senate of the 206th General Assembly adopted Senate Resolution 386 (SR 386), titled "A Resolution Proposing special rules of practice and procedure in the Senate when sitting on impeachment trials." *See* Exhibit D, Senate Resolution No. 386, Printer's No. 2020 (Nov. 29, 2022).

[3] Press Release, Speaker Names Impeachment Managers for Krasner Trial, Nov. 18, 2022, https://www.repcutler.com/News/31561/Latest-News/Speaker-Names-Impeachment-Managers-for-Krasner-Trial.

Among other "special rules of practice and procedure," the resolution states "the President pro tempore may appoint a committee of Senators, no more than half of whom must be members of the same political party. . . . The functions of the committee are to receive evidence and take testimony at times and places determined by the committee . . . The committee shall report to the Senate in writing that it has completed receiving evidence and taking testimony, and the committee shall provide a summary of the evidence and testimony . . . [which] shall be received by the Senate . . ." *Id.* Section 10. The "committee" referenced in Section 10 is comprised of the John Doe Respondents.

32. On November 29, 2022, the 206th General Assembly's Senate adopted Senate Resolution 387 (SR 387), titled "A Resolution Directing the House of Representatives to Exhibit the Articles of Impeachment." *See* Exhibit E, Senate Resolution No. 387, Printer's No. 2021 (Nov. 29, 2022). The Senate resolved that "the Secretary of the Senate inform the House of Representatives that the Senate will be ready to receive, at 10:30 a.m., the 30th day of November, 2022, the managers appointed by the House for the purpose of exhibiting Articles of Impeachment, agreeably to the notice communicated to the Senate." *Id.*

33. On November 30, the 206th General Assembly's Senate adopted a separate Resolution "[d]irecting a Writ of Impeachment Summons to be issued to the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia." *See*

Exhibit F, Senate Resolution No. 388, Printer's No. 2023 (Nov. 30, 2022). The Resolution provides that a Writ of Impeachment Summons be issued to District Attorney Krasner "immediately" and served by December 7, 2022. *Id.* at 2. The Resolution further provides, *inter alia*, that the Writ of Impeachment Summons shall "order and command" that District Attorney Krasner: (a) answer the Amended Articles by December 21, 2022; and (b) appear before the Senate on January 18, 2023, at 11:30 a.m., "to answer to the said Articles of Impeachment . . ." *Id.* at 1-2.

D. The Termination of the 206th General Assembly Legislative Session

34. On November 8, 2022, a general election was held to elect all members of the 207th General Assembly House of Representatives and one-half of the members of the Senate.

35. On November 30, 2022, at 11:59 p.m., the 206th General Assembly ended. *See* Pa. Const., Art. 2, secs. 2-4.

36. On December 1, 2022, after the termination of the 206th General Assembly, a copy of a Precept to the Sergeant-at-Arms of the Senate and Writ of Impeachment Summons were delivered to District Attorney Krasner. Those documents were purportedly signed on November 30, 2022, by the President Pro Tempore of the 206th General Assembly Senate, Jacob D. Corman, III, and the

Secretary of the Senate, Megan L. Martin. *See* Exhibit G, Precept to the Sergeant-At-Arms and Writ of Impeachment Summons, Nov. 30, 2022.

Claims for Declaratory Judgment

37. This Petition seeks declaratory relief only from this Court.

38. Declaratory relief, not injunctive relief, should be sufficient because District Attorney Krasner trusts that Respondents will not take action inconsistent with a declaration by the Court that (a) the Amended Articles became null and void on November 30, 2022 upon the adjournment *sine die* of the 206th General Assembly's legislative session; (b) that District Attorney Krasner is not subject to impeachment because, as the district attorney of Philadelphia, he is not subject to impeachment by the General Assembly; and (c) that District Attorney Krasner is not subject to impeachment because the Amended Articles do not allege "any misbehavior in office" within the meaning of Article VI, Section 6 of the Pennsylvania Constitution.

39. Notwithstanding this, if Respondents take action inconsistent with any such declarations, District Attorney Krasner reserves all rights to promptly file the necessary pleadings to obtain emergency injunctive relief.

CLAIM I

Declaratory Judgment
(District Attorney Krasner Is Not Subject to Impeachment Because the Amended Articles of Impeachment Do Not Survive the Adjournment of the Legislative Session *Sine Die*)

40. District Attorney Krasner incorporates herein the preceding allegations.

41. District Attorney Krasner is entitled to a declaration that the 207th General Assembly Senate cannot proceed with his impeachment because the Amended Articles and other related legislative business, including Senate Resolution Nos. 386, 387, and 388, do not carry over past November 30, 2022, the adjournment *sine die* of the 206th Pennsylvania General Assembly and end of the legislative session.

42. Under the Pennsylvania Constitution, the General Assembly lasts only two years. Pa. Const. Art. II, secs. 2, 3, 4. Pennsylvania statutes confirm that a General Assembly is a "continuing body" that lasts only two years and not more. 101 Pa. Code § 7.21(a); *see also* Pa. Const. Art. II, secs. 2, 4.

43. The two-year General Assembly consists of two one-year sessions, with the one held in odd-numbered years "referred to as the first regular session" and the one "held in even-numbered years . . . referred to as the second regular session." 101 Pa. Code § 7.21(a).

44. By law, all matters pending before the General Assembly in the first regular session are maintained in the second regular session. *See* 101 Pa. Code § 7.21(b) ("All matters pending before the General Assembly upon the adjournment sine die or expiration of a first regular session maintain their status and are pending before the second regular session.").[4] Importantly, it authorizes the General Assembly to carry over business only from the first regular session to the second regular session. *See id.* It does not authorize the General Assembly to carry over business from the second session of one General Assembly to the first session of an entirely different General Assembly. *See id*.

45. No statute provides that matters pending at the end of the General Assembly's *second* regular session maintain their status or remain pending for the next General Assembly. *See id*. And no statute could because it would conflict with the Constitutional mandate that the General Assembly is a "continuing body" only "during the term for which its Representatives are elected," *i.e.*, from

[4] "The term 'sine die' means 'without day,' and a legislative body adjourns sine die when it adjourns 'without appointing a day on which to appear or assemble again.'" *Creamer v. Twelve Common Pleas Judges*, 281 A.2d 57, 65 (Pa. 1971). An adjournment *sine die* "end[s] a deliberative assembly's or court's session without setting a time to reconvene." *Scarnati v. Wolf*, 173 A.3d 1110, 1114 n.4 (Pa. 2017) (citing, e.g., BLACK'S LAW DICTIONARY 44 (8th ed. 2004)); *see also* P. Mason, MANUAL OF LEGISLATIVE PROCEDURES § 445(3), at 301 (1970) ("A motion to adjourn sine die has the effect of closing the session and terminating all unfinished business before the House, and all legislation pending upon adjournment sine die expires with the session").

December 1 of one year until November 30 two years later. Pa. Const. Art. II, secs. 2, 4.

46. Accordingly, it is clear from both the Constitution and Section 7.21 that pending matters do not "carry over" from one General Assembly to the next.

47. The 206th General Assembly House and Senate's work regarding the impeachment of District Attorney Krasner was conducted during the second regular session of that General Assembly. There is no statute that establishes an impeachment exception to the mandate that pending matters do not carry over from one General Assembly to the next. And the Constitution does not create one.

48. Now that November 30, 2022 has passed, the Amended Articles and all related legislation have died, including Senate Resolutions 386, 387, and 388.[5] The next General Assembly's Senate – formed on December 1, 2022 in the 207th General Assembly – cannot take them up and conduct an impeachment trial.

49. Because matters pending before the General Assembly do not "remain pending" after the expiration of the second regular session, the impeachment proceedings of District Attorney Krasner have ended and do not carry over to the

[5] Resolution No. 240 was introduced and referred to the House Judiciary Committee on October 26, 2022. The resolution was reported as committed by the Judiciary Committee on November 15, 2022. The House of Representatives amended and adopted Resolution No. 240 on November 16, 2022. *See* H.R. No. 240, Pa. 206th General Assembly - 2021-2022, available at https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2021&sind=0&body=H&type=R&bn=240.

207th General Assembly (*i.e.*, the 2023-2024 term). *See* 101 Pa. Code § 7.21(b); *accord* Pa. Senate R. 12(j); Pa. House of Representatives R. 45(A); *Brown v. Brancato*, 184 A. 89 (Pa. 1936); *Commonwealth v. Costello*, 1912 WL 3913 (Pa. Quar. Sess. 1912). *See also* Robert E. Woodside, PENNSYLVANIA CONSTITUTIONAL LAW 274-75 (1985) ("If the legislature adjourns *sine die* during the second annual session that terminates all business pending before it.") (underlining added).

50. Accordingly, District Attorney Krasner respectfully requests that the Court enter an Order declaring that (a) the Amended Articles and all related legislation, including Senate Resolutions 386, 387, and 388, terminated on November 30, 3022, upon the adjournment *sine die* of the 206th General Assembly legislative session; and (b) the Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

CLAIM II

Declaratory Judgment
(District Attorney Krasner Is Not Subject to Impeachment Because the Pennsylvania Constitution Does Not Authorize the General Assembly to Impeach a Locally Elected Official Like the Philadelphia District Attorney)

51. District Attorney Krasner incorporates herein the preceding allegations.

52. The General Assembly's impeachment power comes from Article VI, Section 6 of the Pennsylvania Constitution, titled "Officers liable to impeachment," which states that "[t]he Governor and all other civil officers shall

be liable to impeachment for any misbehavior in office…" That provision does not apply to a locally elected official like the Philadelphia District Attorney.

53. First, as a local official, District Attorney Krasner is not subject to impeachment because the District Attorney of Philadelphia is not a "civil officer" within the meaning of Article VI, Section 6 of the Pennsylvania Constitution.

54. The Pennsylvania Constitution's Article VI, Section 6 impeachment powers do not apply to locally-elected officials like District Attorney Krasner. In *Burger v. School Board of McGuffey School District*, former Chief Justice Saylor concluded that Article VI does not apply to local officials, and that "state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed." 923 A.2d 1155, 1167 (Pa. 2007) (Saylor, J., concurring).

55. Consistent with former Chief Justice Saylor's opinion, Article VI, Section 6 states: "judgment in [impeachment] cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit *under this Commonwealth*." Pa. Const., Art. VI, s.6 (emphasis added).

56. Thus, the consequences of a "civil officer['s]" impeachment is his removal and disqualification from holding *state-wide office*, demonstrating that only state-wide office holders are subject to impeachment. *Cf*. Pa. Const. Art. IX, § 13(f) (referencing "officers of the City of Philadelphia"); Pa. Const. Art. VII, § 3 (referencing "county, city, ward, borough, and township officers"); *see also*

Commonwealth ex rel. Woodruff v. Joyce, 139 A. 742, 742-43 (Pa. 1927) (local office not an office "under this Commonwealth")); *Emhardt v. Wilson*, 20 Pa. D. & C. 608, 609 (Com. Pl. 1934) (local office is not an office "under the Commonwealth" under art. II, § 6).

57. Second, the process for impeachment of the Philadelphia District Attorney is governed by statute, namely, the First Class Cities Government Law, 53 P.S. § 12199, *et seq*. *See* Pa. Const. Art. VI, s.1; *id.* Art. IX, s.13(a), (f).

58. Pursuant to these provisions, the General Assembly has exercised its power to establish by statute the conditions for the Philadelphia District Attorney's impeachment and removal. *See* 53 Pa. C.S. §§ 12199-12205; *see also Weiss v. Ziegler*, 193 A. 642, 644 (Pa. 1937); *In re Marshall*, 62 A.2d 30, 32 (Pa. 1948); *Marshall Impeachment Case*, 69 A.2d 619, 625 (Pa. 1949) ("*The* method of removing the Receiver of Taxes of Philadelphia from office *is provided for by statute*, and this method was not abrogated by the Constitution of Pennsylvania of 1873.") (emphases added)); *Watson v. Pennsylvania Tpk. Comm'n,* 125 A.2d 354, 356 (Pa. 1956); *Burger*, 923 A.2d at 1163-64. *See generally* Robert E. Woodside, PENNSYLVANIA CONSTITUTIONAL LAW 360 (1985) ("The power to impeach a municipal official may be given to local officials by statute . . .").

59. The City of Philadelphia – not the Pennsylvania House and Senate – has the oversight over any impeachment and removal of a Philadelphia District

Attorney, who is unquestionably a local, and not a statewide, officer. *See Chalfin v. Specter*, 233 A.2d 562, 565 (Pa. 1967) (Bell, C.J., concurring); *McMenamin v. Tartaglione*, 1991 WL 1011018 (Pa. Com. Pl. Mar. 26, 1991), *aff'd*, 590 A.2d 802 (Pa. Commw. 1991), *aff'd without opinion*, 590 A.2d 753 (mem.) (Pa. 1991); *accord Carter v. City of Philadelphia*, 181 F.3d 339, 350 (3d Cir. 1999) ("Consistent with its constitutional and statutory law, Pennsylvania's case law defines district attorneys—Philadelphia District Attorneys in particular—as local, and expressly not state, officials.").

60. The law in Pennsylvania – that locally-elected officials like the Philadelphia District Attorney are not subject to impeachment by the General Assembly – is also consistent with a fundamental principal of democracy: public officials elected by voters outside of Philadelphia should not and cannot impeach public officials elected by voters inside of Philadelphia.

61. Accordingly, District Attorney Krasner respectfully requests that the Court enter an Order declaring that (a) Article VI, Section 6 of the Pennsylvania Constitution does not authorize impeachment of the Philadelphia District Attorney by the General Assembly; and (b) the Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

CLAIM III

Declaratory Judgment
(District Attorney Krasner Is Not Subject to Impeachment Because He Is Not Alleged to Have Engaged in "Any Misbehavior in Office")

62. District Attorney Krasner incorporates herein the preceding allegations.

63. A "civil officer" may be impeached only for "any misbehavior in office." Art. VI, sec. 6. The Amended Articles, however, do not allege anything close to what the courts have defined as "misbehavior in office".

A. "Misbehavior in Office" Means Criminal Conduct, Including a Failure to Perform a Positive Ministerial Duty or the Performance of a Discretionary Duty with an Improper Motive

64. The Pennsylvania Supreme Court has interpreted "misbehavior in office" to mean conduct that would amount to the common law criminal offense of "misbehavior in office." *In re Braig*, 590 A.2d 284, 286 (Pa. 1991); *see also Commonwealth ex rel. Woods v. Davis*, 149 A. 176, 178 (Pa. 1930); *Commonwealth v. Shaver*, 3 W. & S. 338 (Pa. 1842).

65. Misbehavior in office requires a very high showing: a public official has engaged in "misbehavior in office" only if he "fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." *Braig*, 590 A.2d at 286; *Commonwealth v. Peoples*,

28 A.2d 792, 794 (Pa. 1942); *Commonwealth v. Green*, 211 A.2d 5, 9 (Pa. Super. 1965).[6]

66. Where, as here, "the nature of the duty is such as to permit the exercise of discretion, there must be present the additional element of an evil or corrupt design to warrant conviction [for misbehavior in office]." *Commonwealth v. Hubbs*, 8 A.2d 618, 620 (Pa. Super. 1939); *accord Braig*, 590 A.2d at 286; *Commonwealth v. Steinberg*, 362 A.2d 379, 386 (Pa. Super. 1976).[7]

67. The bar is especially high when it is applied to the actions of a district attorney because, as the Pennsylvania Supreme Court has held, the District Attorney is vested with "tremendous" "discretion" to make and implement his or her own policies and priorities. *See Commonwealth v. Clancy*, 192 A.3d 44, 53 (Pa. 2018) (a district attorney's "discretion is tremendous," and he "is afforded such great deference that this Court and the Supreme Court of the United States seldom interfere with a prosecutor's charging decision"); *Com. ex rel. Specter v. Martin*, 232 A.2d 729, 736 (Pa. 1967) ("[I]n the performance of his duties, the law

[6] "Misbehavior in office" is not defined in the Pennsylvania Constitution, and there is no judicial precedent defining that term specifically for purposes of the impeachment provision, *see Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 702 (Pa. Commw. 1994).

[7] Following the Supreme Court's decision in *Braig*, Pennsylvania courts regularly hold that "misbehavior in office" under the Pennsylvania Constitution means the common law crime of that name. *See, e.g.*, *In re Dalessandro*, 596 A.2d 798, 798 (Pa. 1991); *In re Ballentine*, 86 A.3d 958, 971 (Pa. Ct. Jud. Disc. 2013); *In re Berkhimer*, 877 A.2d 579, 591 (Pa. Ct. Jud. Disc. 2005).

grants to the district attorney wide discretion in the exercise of which he acts in a judicial capacity."). And, as a matter of law, the legislature may not interfere with District Attorney Krasner's lawful exercise of those discretionary duties: a district attorney "must be allowed to carry out [his discretionary powers] without hind[]rance from any source." *See Mummau v. Ranck*, 531 F. Supp. 402, 405 (E.D. Pa. 1982), *aff'd*, 687 F.2d 9 (3d Cir. 1982) (citing *Commonwealth ex rel. Spector v. Bauer*, 261 A.2d 573 (Pa. 1970)).

B. The Amended Articles of Impeachment Do Not Allege Any "Misbehavior in Office"

68. None of the Amended Articles allege conduct by District Attorney Krasner that meets the high bar of "misbehavior in office." The Amended Articles do not accuse District Attorney Krasner of committing any criminal offense or of using the power of his office for pecuniary or personal gain.

69. Three of the Articles (Articles I, VII, and VI) simply attack District Attorney Krasner's prosecution policies, approach to criminal justice, and management of the DAO. Specifically, Article I criticizes District Attorney Krasner for implementing "progressive" trainings and prosecutorial policies as they relate to cash bail, immigration, cannabis, plea offers, and prostitution. Article VII similarly criticizes District Attorney Krasner policies as they relate to the DAO's prosecution of minor offenses, including prostitution, theft, and minor drug offenses. Article VI criticizes District Attorney Krasner for allegedly "failing

to timely contact victims, deliberately misleading victims and or [sic] disregarding victim input and treating victims with contempt and disrespect." *See* Ex. B, Amended Articles, at 16.

70. Each of these Articles consists of criticism of how District Attorney Krasner exercised his prosecutorial discretion, advanced his priorities, and managed the office. But, as discussed above, that *criticism* is not grounds for impeachment because District Attorney Krasner's exercise of prosecutorial discretion and advancement of his priorities cannot, as a matter of law, amount to "any misbehavior in office." *See Clancy*, 192 A.3d at 53; *Martin*, 232 A.2d at 736; *Mummau*, 531 F. Supp. at 405 (citing *Bauer*, 261 A.2d 573).

71. Article II is also legally deficient. It accuses District Attorney Krasner of "Obstruction" of a House Select Committee Investigation due to his alleged non-compliance with a subpoena duces tecum. *See* Ex. B, Am. Articles, at 8. That plainly fails, because a district attorney's compliance or noncompliance with a subpoena arising out of a House investigation is not part of a district attorney's positive duties or discretionary authority.[8]

72. Also, as Article II acknowledges, District Attorney Krasner responded to the subpoena by first communicating his objections to the subpoena to the Select

[8] Similarly, testifying before a special master is not a positive duty of the office of the district attorney, and therefore the Amended Articles' allegations that District Attorney Krasner omitted facts while giving testimony is not actionable. *See* Ex. B, Am. Articles, at Art. V.

Committee's counsel and then by filing an action in Commonwealth Court on September 2, 2022, to quash the subpoena. This is no obstruction; it is what the Pennsylvania Supreme Court has advised. The Supreme Court has squarely held that a recipient of a legislative subpoena may seek relief in court. *See Commonwealth ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 5 n.4 (Pa. 1974) ("Had [the relator] wished to challenge the constitutionality of the committee's investigation without risking a contempt citation before the bar of the House, judicial recourse would have been available to him. Injunctive relief from the activities of the committee could have been sought in a court of equity.").

73. Articles III and IV fail as a matter of law because they hinge on the alleged misconduct of other lawyers in the DAO, not on the conduct of District Attorney Krasner. *See* Ex. B, Am. Articles, at 10-15. A public official may be found guilty of the common law crime of misbehavior in office only if the officer personally engaged in the wrongful conduct. *See Commonwealth v. Bready*, 286 A.2d 654, 657 & n.4 (Pa. Sup. Ct. 1971). It is not enough to allege that an official's subordinates committed misbehavior in office. As the court in *Bready* explained, there is no liability for misconduct that "was the product of mistake or

inadvertence" by the officer, even for "*intentional* or inadvertent acts of his employees." *See id.* (emphasis added).[9]

74. Articles III, IV, and V also fail as a matter of law because (legislative) impeachment may not be used to regulate or punish the conduct of lawyers alleged to have violated the rules of professional responsibility. *See* Ex. B, Am. Articles, at 11, 14, 15. The Pennsylvania Supreme Court has "exclusive and inherent authority" to "govern the conduct of attorneys practicing law within the Commonwealth." *Beyers v. Richmond*, 937 A.2d 1082, 1089 (Pa. 2007) (citing *Lloyd v. Fishinger*, 605 A.2d 1193, 1196 (Pa. 1992)) ("Any legislative enactment encroaching upon this Court's exclusive power to regulate attorney conduct would be unconstitutional."). The Supreme Court has observed that such an "encroachment upon the judicial power by the legislature is offensive to the fundamental scheme of our government." *Beyers*, 937 A.2d at 1090-91 (citing *Commonwealth v. Sutley*, 378 A.2d 780, 783 (Pa. 1977)). As the Court has explained, its "exclusive authority in this area is founded on the separation of powers of our Commonwealth's government," and "[t]he General Assembly has no authority under the Pennsylvania Constitution to regulate the conduct of lawyers in the practice of law." *Id*.

[9] The DAO employs hundreds of employees who are responsible for tens of thousands of criminal cases each year. Issues relating to the Rules of Professional conduct inevitably arise on occasion.

75. Additionally, the Canons of Judicial Conduct are not applicable to the conduct alleged in Articles III, IV, and V. First, 16 P.S. 1401(o) – the statute cited in the Amended Articles, Ex. B at 2 – does not apply to district attorneys in counties of the first class like the county of Philadelphia. Section 1401 is contained in Pennsylvania Statutes Title 16, "Counties," at Chapter 1, which is titled "The County Code." The County Code states that "Except incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12, Article XII-B and Article XXX, this act does not apply to counties of the first or second classes." 16 P.S. § 102(a). Thus, only where the County Code "incidentally" applies to counties of the first class would it apply to the Philadelphia District Attorney, a district attorney in a city and county of the first class. Critically, Section 1401(o) does not "incidentally" apply to counties of the first class and thus does not apply to the District Attorney of Philadelphia.

76. Second, although the Code of Judicial Conduct applies to a district attorney's conduct "insofar as such canons apply to salaries, full-time duties and conflicts of interest" (16 P.S. § 1401(o)), Articles III and IV do not concern "salaries, full-time duties and conflicts of interest." Instead, they involve the duty of candor (R.P.C. 3.3), unsubstantiated and generalized professional misconduct allegations (R.P.C. 8.4), and vague allegations of impropriety or the appearance of

impropriety (Pa. Code Judicial Conduct, Canon 2) (stating, "A judge shall perform the duties of judicial office impartially, competently, and diligently").

77. Third, the exclusive remedy for a violation of the Canons of Judicial Conduct is discipline by the Disciplinary Board of the Supreme Court, not impeachment. Section 1401(o) states: "[a]ny 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." *Id.* Only upon a determination by the Supreme Court, which has not occurred, could the matter be referred to the House. *See id.*[10]

78. Finally, Article VI of the Amended Articles also fails as a matter of law because it is hopelessly conclusory and vague. It alleges, without identifying any supporting facts, that District Attorney Krasner violated federal and state victims' rights statutes by "failing to timely contact victims, deliberately misleading victims and or disregarding victims input and treating victims with contempt and disrespect." Ex. B, Am. Articles at 15-16. Such vague and conclusory assertions are plainly inadequate. To satisfy Due Process, the Articles must allege a sufficient basis for impeachment. *See In re Scott*, 596 A.2d 150, 151

[10] The Supreme Court's holding in *Commonwealth v. Robinson*, 204 A.3d 326, 349 (Pa. 2018), limits the application of judicial canons to cases of "actual impropriety [of representation] of sufficient severity to have tainted the proceedings" or "a personal interest in the outcome of the case," neither of which is alleged in the Amended Articles.

(Pa. 1991) ("The sparse record presented to this Court [*i.e.*, an information] is inadequate to sustain a determination that the Respondent has been convicted of misbehavior in office by a court."); *see also Hubbs*, 8 A.2d 618, 620 (Pa. Super. 1939) (indictment for misbehavior in office properly quashed because it failed to sufficiently allege the basis for the crime).

79. In sum, the Amended Articles fail because they do not allege that District Attorney Krasner committed "any misbehavior in office." Accordingly, District Attorney Krasner respectfully requests that the Court enter an Order declaring that (a) the Amended Articles fail to allege that District Attorney Krasner engaged in any "misbehavior in office" within the meaning of Article VI, Section 6; and (b) the Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court order the following relief:

(A) Declare that the Amended Articles and related legislative business, including Senate Resolutions 386, 387, and 388, became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th General Assembly legislative session.

(B) Declare that Article VI, Section 6 of the Pennsylvania Constitution does not authorize impeachment of District Attorney Krasner by the General Assembly.

(C) Declare that the Amended Articles against District Attorney Krasner do not allege conduct that constitutes "any misbehavior in office" within the meaning of Article VI, Section 6 of the Pennsylvania Constitution.

(D) Declare that the Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

(E) Declare that any effort by the Respondents, House of Representatives or Senate to take up the Amended Articles or related legislation, including Senate Resolutions 386, 387, or 388, is unlawful.

(F) Grant such other relief as is just and proper.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 2, 2022

By: 

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VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and correct based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa. Cons. Stat. § 4904, relating to unsworn falsification to authorities.

Dated: December 2, 2022

Larry Krasner
District Attorney of Philadelphia

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, 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 that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 2, 2022

John S. Summers

EXHIBIT A

PRINTER'S NO. 3607

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 240 Session of 2022

INTRODUCED BY WHITE, OCTOBER 26, 2022

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 26, 2022

A RESOLUTION

Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia, for misbehavior in office; and providing for the appointment of trial managers.

WHEREAS, Lawrence Samuel Krasner was elected to the position of District Attorney of Philadelphia on November 7, 2017, and re-elected to the position on November 2, 2021, pursuant to section 4 of Article IX of the Constitution of Pennsylvania; and

WHEREAS, Upon assuming office, District Attorney Krasner terminated more than 30 assistant district attorneys (ADA) from employment with the Philadelphia District Attorney's Office; and

WHEREAS, Many of these terminated assistant district attorneys were senior-level staffers in supervisory roles who possessed significant prosecutorial experience and knowledge of criminal procedure; and

WHEREAS, District Attorney Krasner replaced this vast institutional knowledge in the Philadelphia District Attorney's Office with attorneys who lacked any meaningful experience in prosecuting criminal cases, some of whom only recently graduated from law school; and

WHEREAS, District Attorney Krasner subsequently withdrew the office from membership in the Pennsylvania District Attorneys Association (PDAA) because, he asserted, PDAA supported regressive and punitive policies; and

WHEREAS, In withdrawing from PDAA, District Attorney Krasner denied the attorneys in his office the ability to participate in the various professional development and training programs provided by PDAA through its educational institute; and

WHEREAS, Rather than offering traditional prosecutorial training on such subjects as prosecutorial ethics, human trafficking, witness examination, trial advocacy, trial management and achieving justice for domestic violence and sexual assault victims, District Attorney Krasner offered attorneys seminars, including "A New Vision for Criminal Justice in Philadelphia," "Deportation: The Unforeseen Consequences of Prosecution in our Immigrant Community," and "Philadelphia and Safe Injection: Harm Reduction as Public Policy"; and

WHEREAS, The Philadelphia District Attorney's Office eventually returned to more traditional prosecutorial training, however, the office continued to focus on issues that promote District Attorney Krasner's progressive philosophies rather than how to effectively prosecute a criminal case; and

WHEREAS, Upon being elected to office, District Attorney Krasner established a series of office policies with the purported purpose to "end mass incarceration and bring balance back to sentencing," and later adopted a series of policies related to certain crimes or classes of people; and

WHEREAS, These policies include directives not to charge sex workers or individuals for certain classes of crimes such as prostitution or possession of marijuana and marijuana-related

drug paraphernalia; and

WHEREAS, These new policies identified a series of offenses for which the gradation may be reduced with the purpose of "reduc[ing] pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets," and requiring disposition of retail theft cases unless the value of the item stolen exceeds $500 or where the defendant has an extensive history of theft convictions; and

WHEREAS, District Attorney Krasner instituted policies to make plea offers below the bottom end of the mitigated range under the Sentencing Guidelines from the Pennsylvania Sentencing Commission and seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicate a range of incarceration below 24 months; and

WHEREAS, In February 2018, District Attorney Krasner established a policy that his office "will ordinarily no longer ask for cash bail for . . . misdemeanors and felonies" listed in the policy, because "The cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color"; and

WHEREAS, In November 2018, District Attorney Krasner adopted a policy in which a criminal defendant's immigration status should be considered in the plea-bargaining process, effectively providing that where an immigration consequence is detected pre-trial or with respect to a sentencing recommendation, counsel will advise if an offer can be made to avoid the consequence; and

WHEREAS, Other policies that District Attorney Krasner directed were as follows:

(1) Assistant district attorneys may not proceed in cases against defendants driving under the influence of cannabis when the defendants blood "contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC" and that "if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant."

(2) The District Attorney's Office "will only oppose motions for redactions or expungements in limited circumstances" and sets forth various scenarios in which the Office will agree to, seek or not oppose the expungement of a defendant's criminal history.

(3) The District Attorney's Office directed plea offers and sentencing recommendations:

(i) for felonies, "aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case";

(ii) for misdemeanors, aimed at an office-wide average of "6 months or less of total supervision, with a ceiling of 1 year";

(iii) for all matters, for "concurrent sentences"; and

(iv) for cases involving incarceration, "for a period of parole that is no longer than the period of incarceration";

and

WHEREAS, Nearly all of District Attorney Krasner's policies "create a presumption" for ADAs to follow and require approval from Krasner himself or a first assistant district attorney for

deviations from the policies; and

WHEREAS, District Attorney Krasner, in an April 2021 report published by the DAO titled "Ending Mass Supervision: Evaluating Reforms," wrote in his opening letter: "I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe"; and

WHEREAS, In reality, the policies and practices of the Philadelphia District Attorney's Office instituted under the direction of District Attorney Krasner have led to catastrophic consequences for the people of the City of Philadelphia; and

WHEREAS, According to the City Controller, spikes in gun violence and homicides have dramatically impacted historically disadvantaged neighborhoods, and those neighborhoods are "primarily low-income with predominately black or African American residents"; and

WHEREAS, The Philadelphia Police Department (PPD) reports that the number of homicide victims has increased every year since 2016, more than doubling from 2016 to 2021, with a year-over-year increase of 40% between 2019 and 2020; and

WHEREAS, As of October 16, 2022, there have already been 430 homicides in the City of Philadelphia in 2022; and

WHEREAS, As of October 17, 2022, reported trends gathered from the PPD's "incident" data, which tracks the reporting of all crimes in addition to homicides, shows a 12% increase in all reported offenses, a 6% increase in violent offenses and a 21% increase in property offenses; and

WHEREAS, While incidents of violent crime are increasing, prosecution of crime by the Philadelphia District Attorney's Office has decreased during this same period; and

WHEREAS, In 2016, the Philadelphia District Attorney's Office reported that only 30% of "all offenses" resulted in a dismissal or withdrawal, but that number spiked to 50% in 2019, 54% in 2020, 67% in 2021 and 65% to date in 2022; and

WHEREAS, A similar trend is evident when filtering the data for violent crimes, where, in 2016, the withdrawal and dismissed violent crime cases accounted for 48% of all violent crime case outcomes, but that percentage increased to 60% in 2019, to 68% in 2020, to 70% in 2021 and to 66% in 2022 to date; and

WHEREAS, Data from the Pennsylvania Sentencing Commission relating to violations of the Uniform Firearms Act (VUFA) evidences a similar jarring trend; and

WHEREAS, The Sentencing Commission reports that guilty dispositions in the City of Philadelphia declined from 88% in 2015 to 66% in 2020, compared to a decline from 84% to 72% in counties of the second class, with the driver of the decrease being nolle pros dispositions; and

WHEREAS, As compared to the Statewide data and other county classes, the percent of guilty verdicts has decreased significantly, while the percent of nolle prossed cases has increased in the City of Philadelphia; and

WHEREAS, Studies by the Delaware Valley Intelligence Center (DVIC) attempted to provide "an explanation for the increase in homicides and shootings in an effort to begin a conversation to address the challenge at a strategic level," significantly, the report notes:

"The rate of prosecution dismissal and withdrawal has been increase [sic] substantially since 2015 under DA [Seth] Williams, and has continued to increase after DA Krasner took office. Furthermore, a closer examination of these dropped cases

indicates that more cases are dismissed/withdrawn at the preliminary hearing state [sic] under DA Krasner than the actual trial state []. This implies that, even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had historically. Notably, the likelihood of being arrested is low to begin with. This means that, criminals know that their likelihood of getting caught with a gun is slim and, even if they get caught, they feel that they can leave without severe (or any) consequences."; and

WHEREAS, The DVIC conducted a "cursory examination" of dismissed/withdrawn cases in 2018/2019 and "found 6 offenders whose cases were dismissed (VUFA former convict charge) and got later involved in shootings . . . 2 of these shootings were fatal and 4 out of these 6 offenders were gang members"; and

WHEREAS, The DVIC studied the prosecution declination for narcotics, retail theft and prostitution arrests from 2016 to 2018, and concluded in its key findings that the percentage of all declinations, not just narcotics, prostitution and retail theft, increased "especially in 2018" to more than 7%, when it had been just 2% or less between 2007 and 2015; and

WHEREAS, In September 2020, the Philadelphia City Council authorized the Committee on Public Safety and the Special Committee on Gun Violence Prevention to study gun violence in the city. This study involved a collaboration between the Controller's Office, Defender Association, Department of Public Health, District Attorney's Office, First Judicial District, Managing Director's Office, Pennsylvania Attorney General and PPD. The published results, called the "100 Shooting Review Committee Report," discusses trends and general findings

regarding shootings in the City of Philadelphia; and

WHEREAS, The published results showed the following:

(1) The clearance rate (i.e., when an arrest was made or a suspect that could not be arrested was identified) for fatal shootings in 2020 was 37% and the rate for nonfatal shootings was 18%.

(2) There has been a "marked increase" in the number of people arrested for illegal gun possession without the accusation of an additional offense, including a doubling in arrests for illegal possession of a firearm without a license since 2018.

(3) The initial and final bail amounts set by courts in illegal possession of firearms cases declined between 2015 and 2019 and increased in 2020 and 2021.

(4) Conviction rates in shooting cases declined between 2016 and 2020 from 96% to 80% in fatal shootings and from 69% to 64% in nonfatal shootings.

(5) There is a long-term trend of a reduction in conviction rates for illegal gun possession cases, dropping from 65% in 2015 to 45% in 2020;

and

WHEREAS, In August 2022, the Philadelphia Police Commissioner indicated that her department is short-staffed by approximately 20%, or 1,300 officers, due to low morale, politics, increased scrutiny and "uniquely stringent hiring requirements" during a nationwide shortage; and

WHEREAS, Commissioner Danielle Outlaw stated, "The truth is the homicides are not happening in a vacuum - there are those who are determined to attack and kill their victims. While we are making constant adjustments to mitigate this sickening

reality, our officers, simply put, just can't keep up by being everywhere at all times."; and

WHEREAS, While the PPD may arrest a suspect for the commission of a crime, the Philadelphia District Attorney's Office is one of the few district attorney's offices in this Commonwealth that reserves unto itself the authority to charge a person for a criminal act; and

WHEREAS, In October 2022, following yet another act of violence against police in the City of Philadelphia, Police Commissioner Danielle Outlaw issued the following statement:

"We are tired of arresting the same suspects over and over again, only to see them right back out on the street to continue and sometimes escalate their criminal ways. We are tired of having to send our officers into harm's way to serve warrants on suspects who have no business being on the street in the first place.

No - not everyone needs to be in jail. But when we repeatedly see the extensive criminal histories of those we arrest for violent crime, the question needs to be asked as to why they were yet again back on the street and terrorizing our communities.

I am beyond disgusted by this violence. Our entire department is sickened by what is happening to the people that live, work, and visit our city. Residents are tired of it. Business owners are tired of it. Our children are tired of it.

We are long past 'enough is enough'.";

and

WHEREAS, Acts of violence, and particularly violent crimes committed with firearms, have exacted a heavy toll on victims and their families, with countless lives unnecessarily lost or

irretrievably broken, due to the increase of violent crime in the City of Philadelphia; and

WHEREAS, In his special concurrence in *Commonwealth v. Pownall*, Justice Dougherty highlighted what he feared to be an effort by the District Attorney's Office to deprive certain defendants of a fair and speedy trial; and

WHEREAS, Following the June 2017 incident in which former Philadelphia police officer Ryan Pownall shot and killed David Jones, the District Attorney's Office submitted the matter to an investigative grand jury; and

WHEREAS, The investigating grand jury issued a presentment recommending that Pownall be charged with criminal homicide, possession of an instrument of crime and recklessly endangering another person; and

WHEREAS, During trial, the prosecutor filed a motion in limine to preclude the standard peace officer justification defense instruction, based on the assertion that the instruction, which largely tracked language of statute, violated Fourth Amendment prohibition against unreasonable search and seizure; and

WHEREAS, The motion was denied and the prosecution appealed to the Superior Court, which quashed the appeal as unauthorized. The Supreme Court granted the prosecutor's request for allowance of appeal; and

WHEREAS, The Supreme Court ultimately denied the appeal, but the special concurrence filed by Justice Dougherty illuminated startling behavior by the District Attorney's Office; and

WHEREAS, Justice Dougherty held that the District Attorney's Office's actions during grand jury process "implicate[] a potential abuse" and stated that "the presentment in this case

is perhaps best characterized as a 'foul blow.'" He referred to the grand jury presentment, authored by the District Attorney's Office, as a "gratuitous narrative"; and

WHEREAS, Justice Dougherty also recognized that any abuse of the grand jury could have been remedied by "Statutory safeguards embedded in the process," such as a preliminary hearing. He went on to say "What is troubling is the DAO's effort to ensure that would not occur," i.e., their filing of a motion to bypass the preliminary hearing; and

WHEREAS, Justice Dougherty found it "inexplicable" that, in presenting a bypass motion to the Court of Common Pleas, the District Attorney's Office failed to highlight the Investigating Grand Jury Act Section 4551(e), which directs that a defendant "shall" be entitled to a preliminary hearing. He emphasized that the District Attorney's Office "appear[ed] to have known [about that requirement] at the time it filed its motion."; and

WHEREAS, As it related to the prosecutor's motion in limine and interlocutory appeal, Justice Dougherty observed that the District Attorney's Office's motion "presented only half the relevant picture." He went on to say that "this type of advocacy would be worrisome coming from any litigant," but coming from a prosecutor, "is even more concerning, particularly in light of the motion's timing . . .". He cited directly to Pennsylvania Rule of Professional Conduct 3.3 regarding candor to the tribunal; and

WHEREAS, Further referencing ethical concerns, Justice Dougherty found that the timing of the motion in limine, "[w]hen combined with the other tactics highlighted throughout this concurrence," could lead to the conclusion that the decision to take "an unauthorized interlocutory appeal was intended to

deprive [Mr. Pownall] of a fair and speedy trial."; and

WHEREAS, Justice Dougherty went on to say:

Now, for the first time before this Court, the DAO finally admits its true intent in all this was simply to use Pownall's case as a vehicle to force judicial determination on 'whether Section 508(a)(1) is facially unconstitutional.' DAO's Reply Brief at 1; *see id.* at 6 (asserting Section 508's applicability to [Pownall] is not the subject of this appeal"). What's more, despite having assured the trial court it was not trying 'to bar [Pownall] from a defense[.]' N.T. 11/25/2019 at 8, the DAO now boldly asserts it would be appropriate for this Court to rewrite the law and retroactively apply it to Pownall's case because he supposedly 'had fair notice of his inability to rely on this unconstitutional defense[.]' DAO's Brief at 10.;

and

WHEREAS, Justice Dougherty concluded, "Little that has happened in this case up to this point reflects procedural justice. On the contrary, the DAO's prosecution of Pownall appears to be "driven by a win-at-all-cost office culture" that treats police officers differently than other criminal defendants. DAO CONVICTION INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2 (June 15, 2021) available at tinyurl.com/CIU report (last visited July 19, 2022). This is the antithesis of what the law expects of a prosecutor."; and

WHEREAS, On remand, Common Pleas Court Judge McDermott said that there were "so many things wrong" with the District Attorney's Office's instructions to the investigating grand jury that it warranted dismissing all charges against Mr. Pownall; and

WHEREAS, After hearing testimony from the assistant district

attorneys who handled the grand jury and preparation of the presentment, Judge McDermott concluded that the District Attorney's Office failed to provide the legal instructions to the grand jurors on the definitions for homicide and information regarding the use-of-force defense; and

WHEREAS, In her October 17, 2022, Statement of Findings of Fact and Conclusions of Law, Judge McDermott stated, "The Commonwealth made an intentional, deliberate choice not to inform the grand jurors about the justification defense under Section 508. While [the ADA] was aware of Section 508 and its applicability to the Defendant's case at the time of the Grand Jury proceedings, she decided not to advise the Grand Jury about Section 508 after consulting with other, more senior Assistant District Attorneys."; and

WHEREAS, As it related to Pownall's right to a preliminary hearing, Judge McDermott wrote:

> In its Motion to bypass the preliminary hearing, the Commonwealth demonstrated a lack of candor to the Court by misstating the law and providing Judge Coleman with incorrect case law.
>
> * * *
>
> The Commonwealth was also disingenuous with the Court when it asserted that it had good cause to bypass the preliminary hearing under Pa.R.Crim.P. 565(a) because of the complexity of the case, the large number of witnesses the Commonwealth would have to call, the expense, and the delay caused by a preliminary hearing. As a preliminary hearing was not held in this case, the Defendant's due process rights were violated and the Defendant suffered prejudice.;

and

WHEREAS, Judge McDermott told the District Attorney's Office that if defense counsel had made the decisions that the District Attorney's Office made, she would "declare them incompetent."; and

WHEREAS, The District Attorney's Office's own expert report from Gregory A. Warren, Ed.D., of American Law Enforcement Training and Consulting concluded that, given all the facts presented to him, Officer Pownall's "use of deadly force in this case was justified."; and

WHEREAS, This expert report was withheld from Pownall by the District Attorney's Office; and

WHEREAS, In the Federal habeas corpus proceeding in *Robert Wharton v. Donald T. Vaughn*, Federal District Court Judge Goldberg issued a memorandum order admonishing and sanctioning the District Attorney's Office; and

WHEREAS, Robert Wharton was convicted of murdering the parents of survivor Lisa Hart-Newman, who was seven months old at the time and was left to freeze to death with her deceased parents by Mr. Wharton; and

WHEREAS, After his conviction, Wharton pursued a death penalty habeas petition in the Federal district court; and

WHEREAS, The District Attorney's Office under prior administrations had opposed this petition; and

WHEREAS, In 2019, District Attorney Krasner's administration filed a "Notice of Concession of Penalty Phase Relief," stating that it would not seek a new death sentence, and, based on that sentencing relief, the litigation and appeals could end; and

WHEREAS, The concession noted only that the decision to concede was made "[f]ollowing review of this case by the Capital Case Review Committee of the Philadelphia [District Attorney's

Office], communication with the victims' family, and notice to [Wharton's] counsel."; and

WHEREAS, Judge Goldberg undertook an independent analysis of the merits of the claim and invited the Pennsylvania Office Attorney General (OAG) to file an amicus brief in the case; and

WHEREAS, In its amicus, the OAG submitted additional facts that the District Attorney's Office had not disclosed, including evidence of prison misconducts, attempted escapes and Department of Corrections concerns regarding "assaultiveness" and "escape" by Mr. Wharton; and

WHEREAS, The OAG concluded that "given the facts of this investigation and aggravating sentencing factors present in this case, Wharton could not establish a reasonable probability that the outcome of his penalty phase death sentence would have been different if the jury had heard evidence of his alleged 'positive' prison adjustment."; and

WHEREAS, The OAG further determined that members of the family, including victim Ms. Hart-Newman, were not contacted and that they opposed the concession by the District Attorney's Office; and

WHEREAS, After an evidentiary hearing, Judge Goldberg held as follows:

(1) The District Attorney's Office failed to advise the court of significant anti-mitigation evidence, including that Mr. Wharton had made an escape attempt at a court appearance.

(2) Two of the office's supervisors violated Federal Rule of Civil Procedure 11(b)(3) "based upon that Office's representations to this Court that lacked evidentiary support and were not in any way formed after 'an inquiry reasonable under the circumstances.'"

(3) Representations of communication with the victims' family were "misleading," "false," and "yet another representation to the Court made after an inquiry that was not reasonable under the circumstances."

(4) The Law Division Supervisor, Assistant Supervisor and District Attorney's Office violated Rule 11(b)(1), and concluding that the violation was "sufficiently 'egregious' and 'exceptional' under the circumstances to warrant sanctions,";

and

WHEREAS, Judge Goldberg imposed nonmonetary sanctions on the District Attorney's Office, requiring that separate written apologies be sent to the victim, Lisa Hart-Newman, and the victim's family members; and

WHEREAS, Given the testimony of the two Law Division supervisors that District Attorney Krasner approved and implemented internal procedures that created the need for this sanction, and that the District Attorney had the sole, ultimate authority to direct that the misleading Notice of Concession be filed, therefore "the apologies shall come from the District Attorney, Lawrence Krasner, personally."; and

WHEREAS, House Resolution 216 of 2022 established the House Select Committee to Restore Law and Order pursuant to Rule 51 of the General Operating Rules of the House; and

WHEREAS, The select committee is authorized and empowered "to investigate, review and make finding and recommendations concerning risking rates of crime, law enforcement and the enforcement of crime victim rights," in the City of Philadelphia; and

WHEREAS, House Resolution 216 further charges the select

committee to make findings and recommendations, including, but not limited to, the following:

(1) Determinations regarding the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment.

(2) Legislation or other legislative action relating to policing, prosecution, sentencing and any other aspect of law enforcement.

(3) Legislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims.

(4) Legislation or other legislative action relating to ensuring the appropriate expenditure of public funds intended for the purpose of law enforcement, prosecutions or to benefit crime victims.

(5) Other legislative action as the select committee finds necessary to ensure appropriate enforcement of law and order in the City of Philadelphia;

and

WHEREAS, In pursuit of these obligations, the resolution empowers the select committee chair to, among other things, "send for individuals and papers and subpoena witnesses, documents, including electronically stored information, and any other materials under the hand and seal of the chair."; and

WHEREAS, The chair issued subpoenas to a number of Philadelphia municipal offices, including the Controller, the Mayor, the Police Department, the Sheriff's Office, the Treasurer and the District Attorney's Office; and

WHEREAS, The subpoenas sought nonprivileged records necessary to fulfill the select committee's obligations to the House of Representatives pursuant to House Resolution 216; and

WHEREAS, While other municipal offices worked cooperatively with the select committee to respond to the subpoenas issued to them, District Attorney Krasner and his office chose instead to obstruct the select committee's work at every turn; and

WHEREAS, District Attorney Krasner and his office asserted that the select committee was illegitimate and that its subpoenas served "no valid legislative purpose, violating the separation of powers, invading legal privileges, and seeking to deny the constitutional rights of Philadelphia's citizens, especially their democratic right to vote and choose their local leaders"; and

WHEREAS, District Attorney Krasner asserted various claims that held no basis in fact or law, including the following:

(1) District Attorneys are not subject to impeachment.

(2) Impeaching the District Attorney violates the constitutional rights of the people who voted for him.

(3) The District Attorney committed no wrong, and therefore was not required to comply with the committee chair's subpoena.

(4) Impeachment of a public official requires a conviction for a criminal act;

and

WHEREAS, District Attorney Krasner and his Office refused to search for or produce any documents in response to the subpoena; and

WHEREAS, Despite multiple attempts by counsel to the select committee chair to bring District Attorney Krasner and his

office into compliance with the subpoenas, explaining on multiple occasions that the select committee was seeking nonprivileged records and, as it related to any record for which the District Attorney believed were privileged, the District Attorney should follow common practice in responding to a subpoena by providing a privilege log to identify those records for which the District Attorney asserts a privilege; and

WHEREAS, On September 12, 2022, after multiple exchanges between counsel and a Request to Show Cause why the District Attorney should not be held in contempt by the House, the select committee issued an interim report pursuant to Rule 51 of the General Operating Rules of the House of Representatives, notifying the House of District Attorney Krasner's refusal to comply with the subpoena and recommending that the House consider contempt proceedings; and

WHEREAS, The House of Representatives adopted House Resolution 227 on September 13, 2022, resolving that the House hold District Attorney Krasner in contempt; and

WHEREAS, House Resolution 227 was adopted by a bipartisan vote of 162 to 38; and

WHEREAS, District Attorney Krasner filed an action in Commonwealth Court on September 2, 2022, in which he raised the same arguments that fail to have any meaningful basis in law or fact; and

WHEREAS, District Attorney Krasner and his office have since feigned partial compliance with the subpoena, providing several public-facing records obtained without the need to engage in any legitimate effort to search for the records; and

WHEREAS, The select committee chair invited District Attorney Krasner to testify before the select committee in executive

session on October 21, 2022; and

WHEREAS, District Attorney Krasner refused to testify in executive session, demanding a public hearing instead; and

WHEREAS, District Attorney Krasner then published a press release which was misleading at best, mischaracterizing the invitation to Krasner to testify in yet another moment of grandstanding; and

WHEREAS, Given the District Attorney's rejection of the invitation to testify in executive session, the select committee was compelled to cancel the hearing; and

WHEREAS, Throughout the select committee's efforts to satisfy its charge under House Resolution 216, District Attorney Krasner steadfastly insisted that the select committee somehow had the power to impeach him; and

WHEREAS, Only the House of Representatives, as a body, has the power of impeachment; therefore be it

RESOLVED, That Lawrence Samuel Krasner, District Attorney of Philadelphia, be impeached for misbehavior in office and that the following Articles of Impeachment be exhibited to the Senate:

ARTICLE I

In its 1994 opinion in *Larsen v. Senate of Pennsylvania*, the Commonwealth Court spoke to the meaning of the current language "any misbehavior in office."

Justice Larsen argued that the applicable standard of "misbehavior in office" was nothing more than a codification of the common law offense of misconduct in office, meaning "the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."

In its opinion, the Commonwealth Court held that even if the strict definition espoused by Larsen were the appropriate rule, Larsen's conduct still met that heavy burden. More importantly, however, the court said that this "strict definition . . . finds no support in judicial precedents." In other words, there is no precedent that the current language is so constrained. The use of the word "any" necessarily implied a broad construction.

The Philadelphia District Attorney's Office's stated mission is to provide a voice for victims of crime and protect the community through zealous, ethical and effective investigations and prosecutions. District Attorney Krasner, by and through his failed policies and procedures, and throughout the discharge of his duties as Philadelphia's chief law enforcement officer, has been derelict in his obligations to the victims of crime, the people of the City of Philadelphia and of this Commonwealth.

Under District Attorney Krasner's administration, and as detailed herein, his lack of proper leadership serves as a direct and proximate cause of the crisis currently facing the City of Philadelphia. These policies have eviscerated the District Attorney's Office's ability to adequately enforce the laws of this Commonwealth; endangered the health, welfare and safety of more than 1.5 million Pennsylvanians that reside in Philadelphia and the tens of millions of Americans who visit the City every year; and, have brought the Office of District Attorney into disrepute.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

ARTICLE II

District Attorney Krasner has, at every turn, obstructed the efforts of the House Select Committee on Restoring Law and Order. He has consistently raised specious claims without a good faith basis in law or fact. Even after the House of Representatives resolved to hold him in contempt, District Attorney Krasner's efforts to comply with subpoenas issued by the select committee chair fall far short of what could be described as a reasonable good faith effort.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

The House of Representatives hereby reserves to itself the right and ability to exhibit at any time after adoption of this resolution further or more detailed Articles of Impeachment against District Attorney Lawrence Samuel Krasner, to reply to any answers that District Attorney Lawrence Samuel Krasner may make to any Articles of Impeachment which are exhibited and to offer proof at trial in the Senate in support of each and every Article of Impeachment which shall be exhibited by them.

Upon the articles of impeachment against Lawrence Samuel Krasner, Philadelphia District Attorney, being signed by the Speaker of the House of Representatives, the Speaker shall appoint a committee of three members, two from the majority party and one from the minority party to exhibit the same to the Senate, and on behalf of the House of Representatives to manage the trial thereof.

EXHIBIT B

AMENDMENTS TO HOUSE RESOLUTION NO. 240

Sponsor: REPRESENTATIVE ECKER

Printer's No. 3607

Amend Resolution, page 1, lines 4 through 19; pages 2 through 21, lines 1 through 30; page 22, lines 1 through 27; by striking out all of said lines on said pages and inserting

WHEREAS, Lawrence Samuel Krasner was elected to the position of District Attorney of Philadelphia on November 7, 2017, and re-elected to the position on November 2, 2021, pursuant to section 4 of Article IX of the Constitution of Pennsylvania; and

WHEREAS, Pursuant to section 4 of Article VI of the Constitution of Pennsylvania, only the House of Representatives, as a body, has the power of impeachment; and

WHEREAS, Pursuant to section 6 of Article VI of the Constitution of Pennsylvania, civil officers like District Attorney Krasner may be subject to impeachment by the House of Representatives for "any misbehavior in office"; and

WHEREAS, In its 1994 opinion in *Larsen v. Senate of Pennsylvania*, the Commonwealth Court spoke to the meaning of the language "any misbehavior in office" in section 6 of Article VI of the Constitution of Pennsylvania; and

WHEREAS, Justice Larsen argued that the applicable standard of "misbehavior in office" was nothing more than a codification of the common law offense of misconduct in office, meaning "the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive"; and

WHEREAS, In its opinion, the Commonwealth Court held that even if the strict definition espoused by Larsen were the appropriate rule, Larsen's conduct still met that heavy burden. More importantly, however, the court said that this "strict definition...finds no support in judicial precedents." Stated differently, there is no precedent that the current language is so constrained; and

WHEREAS, The Philadelphia District Attorney's Office's stated mission and statutory purpose is, among other things, to provide a voice for victims of crime, protect the community through zealous, ethical and effective investigations and prosecutions, and to uphold and prosecute violations of the laws of this Commonwealth and the provisions of Philadelphia's Home Rule

Charter; and

WHEREAS, District Attorney Krasner, by and through his failed policies and procedures, and throughout the discharge of his duties as Philadelphia's chief law enforcement officer, has been derelict in his obligations to the victims of crime, the people of the City of Philadelphia and of this Commonwealth and has failed to uphold his oath of office; and

WHEREAS, District Attorney Krasner is bound by the Rules of Professional Conduct adopted by the Supreme Court, which set forth the minimal ethical requirements for all attorneys licensed to practice law in this Commonwealth, as well as the Code of Judicial Conduct, which is applicable to all district attorneys in this Commonwealth. 16 Pa. Stat. Ann. § 1401(o) ("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 ..."); and

WHEREAS, There have been multiple incidents of District Attorney Krasner exhibiting unethical conduct by lacking candor to the Courts of this Commonwealth in violation of Rule of Professional Conduct 3.3, committing professional misconduct in violation of Rule of Professional Conduct 8.4 and engaging in impropriety and or appearances of impropriety in violation of Canon 2 of the Code of Judicial Conduct; and

WHEREAS, District Attorney Krasner has been in office since January 2018. Under District Attorney Krasner's administration, and as detailed herein, the city has descended into an unprecedented crisis of lawlessness. By way of example only, there were 562 murders in 2021, the most in the 340-year history of the city. Under District Attorney Krasner, murders and violence occur in every part of the city at every hour of the day. Shootings on public transportation, in populated neighborhoods with families and children, near schools and in the center city business district have now become frequent and routine. Open air drug markets have become ubiquitous. He has decriminalized prostitution effectively destroying programs designed to rescue women from addiction and human trafficking. District Attorney Krasner has decriminalized retail theft resulting in numerous businesses leaving the city. He has released criminals back on to the street who go on to commit even more heinous crimes of murder, rape and robbery against the people of Philadelphia, the overwhelming majority of whom are African American. This crisis of crime and violence is a direct result of District Attorney Krasner's incompetence, ideological rigidity and refusal to perform the duties he swore to carry out when he became District Attorney. He has deliberately eviscerated the District Attorney's Office's ability to adequately enforce the laws of this Commonwealth; endangered the health, welfare and safety of more than 1.5 million Pennsylvanians that reside in Philadelphia and the tens of millions of Americans who visit the city every year; and, his conduct has brought the Office of District Attorney and the

justice system itself into disrepute; therefore be it

RESOLVED, That Lawrence Samuel Krasner, District Attorney of Philadelphia, be impeached for misbehavior in office and that the following Articles of Impeachment be exhibited to the Senate pursuant to section 5 of Article VI of the Constitution of Pennsylvania:

ARTICLE I:

Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law

Upon assuming office, District Attorney Krasner terminated more than 30 assistant district attorneys (ADA) from employment with the Philadelphia District Attorney's Office. Many of these terminated assistant district attorneys were senior-level staffers in supervisory roles who possessed significant prosecutorial experience and knowledge of criminal procedure. District Attorney Krasner replaced this vast institutional knowledge in the Philadelphia District Attorney's Office with attorneys who lacked any meaningful experience in prosecuting criminal cases, some of whom only recently graduated from law school.

District Attorney Krasner subsequently withdrew the office from membership in the Pennsylvania District Attorneys Association (PDAA) because, he asserted, PDAA supported regressive and punitive policies. In withdrawing from PDAA, District Attorney Krasner denied the attorneys in his office the ability to participate in the various professional development and training programs provided by PDAA through its educational institute.

Rather than offering traditional prosecutorial training on such subjects as prosecutorial ethics, human trafficking, witness examination, trial advocacy, trial management and achieving justice for domestic violence and sexual assault victims, District Attorney Krasner offered attorneys seminars, including "A New Vision for Criminal Justice in Philadelphia," "Deportation: The Unforeseen Consequences of Prosecution in our Immigrant Community," and "Philadelphia and Safe Injection: Harm Reduction as Public Policy." The Philadelphia District Attorney's Office eventually returned to more traditional prosecutorial training, however, the office continued to focus on issues that promote District Attorney Krasner's radically progressive philosophies rather than how to effectively prosecute a criminal case.

Upon being elected to office, District Attorney Krasner established a series of office policies with the purported purpose to "end mass incarceration and bring balance back to sentencing," and later adopted a series of policies related to certain crimes or classes of people. These policies include directives not to charge sex workers or individuals for certain classes of crimes such as prostitution or possession of marijuana and marijuana-related drug paraphernalia.

These new policies identified a series of offenses for which

the gradation may be reduced with the purpose of "reduc[ing] pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets," and requiring disposition of retail theft cases unless the value of the item stolen exceeds $500 or where the defendant has an extensive history of theft convictions.

District Attorney Krasner instituted policies to make plea offers below the bottom end of the mitigated range under the Sentencing Guidelines from the Pennsylvania Sentencing Commission and seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicate a range of incarceration of less than 24 months.

In February 2018, District Attorney Krasner established a policy that his office "will ordinarily no longer ask for cash bail for...misdemeanors and felonies" listed in the policy, because "[T]he cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color."

In November 2018, District Attorney Krasner adopted a policy in which a criminal defendant's immigration status should be considered in the plea-bargaining process, effectively providing that if an immigration consequence is detected pre-trial or with respect to a sentencing recommendation, counsel will advise if an offer can be made to avoid the consequence.

Other policies that District Attorney Krasner directed were as follows:

(1) Assistant district attorneys may not proceed in cases against defendants driving under the influence of cannabis when the defendants' blood "contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC" and that "if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant."

(2) The District Attorney's Office "will only oppose motions for redactions or expungements in limited circumstances" and sets forth various scenarios in which the office will agree to, seek or not oppose the expungement of a defendant's criminal history.

(3) The District Attorney's Office directed plea offers and sentencing recommendations:

(i) for felonies, "aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case";

(ii) for misdemeanors, aimed at an office-wide average of "6 months or less of total supervision, with a ceiling of 1 year";

(iii) for all matters, for "concurrent sentences"; and

(iv) for cases involving incarceration, "for a period of parole that is no longer than the period of

incarceration."

Nearly all of District Attorney Krasner's policies "create a presumption" for ADAs to follow and require approval from District Attorney Krasner himself or a first assistant district attorney for deviations from the policies.

District Attorney Krasner, in an April 2021 report published by the District Attorney's Office (DAO) titled "Ending Mass Supervision: Evaluating Reforms," wrote in his opening letter: "I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe." In reality, the policies and practices of the Philadelphia District Attorney's Office instituted under the direction of District Attorney Krasner have led to catastrophic consequences for the people of the City of Philadelphia.

According to the City Controller, spikes in gun violence and homicides have dramatically impacted historically disadvantaged neighborhoods, and those neighborhoods are "primarily low-income with predominately black or African American residents." The Philadelphia Police Department (PPD) reports that the number of homicide victims has increased every year since 2016, more than doubling from 2016 to 2021, with a year-over-year increase of 40% between 2019 and 2020. As of October 16, 2022, there have already been 430 homicides in the City of Philadelphia in 2022. As of October 17, 2022, reported trends gathered from the PPD's "incident" data, which tracks the reporting of all crimes in addition to homicides, shows a 12% increase in all reported offenses, a 6% increase in violent offenses and a 21% increase in property offenses.

While incidents of violent crime are increasing, prosecution of crime by the Philadelphia District Attorney's Office has decreased during this same period. In 2016, the Philadelphia District Attorney's Office reported that only 30% of "all offenses" resulted in a dismissal or withdrawal, but that number spiked to 50% in 2019, 54% in 2020, 67% in 2021 and 65% to date in 2022.

A similar trend is evident when filtering the data for violent crimes, where, in 2016, the withdrawal and dismissed violent crime cases accounted for 48% of all violent crime case outcomes, but that percentage increased to 60% in 2019, to 68% in 2020, to 70% in 2021 and to 66% in 2022 to date. Data from the Pennsylvania Sentencing Commission relating to violations of the Uniform Firearms Act (VUFA) evidences a similar jarring trend. The Sentencing Commission reports that guilty dispositions in the City of Philadelphia declined from 88% in 2015 to 66% in 2020, compared to a decline from 84% to 72% in counties of the second class, with the driver of the decrease being nolle pros dispositions. As compared to the Statewide data and other county classes, in the City of Philadelphia the percent of guilty verdicts has decreased significantly, while the percent of nolle prossed cases has increased.

Studies by the Delaware Valley Intelligence Center (DVIC) attempted to provide "an explanation for the increase in homicides and shootings in an effort to begin a conversation to address the challenge at a strategic level," and, significantly, the report notes:

"The rate of prosecution dismissal and withdrawal has been increase [sic] substantially since 2015 under DA [Seth] Williams, and has continued to increase after DA Krasner took office. Furthermore, a closer examination of these dropped cases indicates that more cases are dismissed/withdrawn at the preliminary hearing state [sic] under DA Krasner than the actual trial state []. This implies that, even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had historically. Notably, the likelihood of being arrested is low to begin with. This means that, criminals know that their likelihood of getting caught with a gun is slim and, even if they get caught, they feel that they can leave without severe (or any) consequences."

The DVIC conducted a "cursory examination" of dismissed/withdrawn cases in 2018/2019 and "found 6 offenders whose cases were dismissed (VUFA former convict charge) and got later involved in shootings...2 of these shootings were fatal and 4 out of these 6 offenders were gang members."

The DVIC studied the prosecution declination for narcotics, retail theft and prostitution arrests from 2016 to 2018, and concluded in its key findings that the percentage of all declinations, not just narcotics, prostitution and retail theft, increased "especially in 2018" to more than 7%, when it had been just 2% or less between 2007 and 2015.

In September 2020, the Philadelphia City Council authorized the Committee on Public Safety and the Special Committee on Gun Violence Prevention to study gun violence in the city. This study involved a collaboration between the Controller's Office, Defender Association, Department of Public Health, District Attorney's Office, First Judicial District, Managing Director's Office, Pennsylvania Attorney General and PPD. The published results, called the "100 Shooting Review Committee Report," discusses trends and general findings regarding shootings in the City of Philadelphia. The published results showed the following:

(1) The clearance rate (*i.e.*, when an arrest was made or a suspect that could not be arrested was identified) for fatal shootings in 2020 was 37% and the rate for nonfatal shootings was 18%.

(2) There has been a "marked increase" in the number of people arrested for illegal gun possession without the accusation of an additional offense, including a doubling in arrests for illegal possession of a firearm without a license since 2018.

(3) The initial and final bail amounts set by courts in illegal possession of firearms cases declined between 2015

and 2019 and increased in 2020 and 2021.

(4) Conviction rates in shooting cases declined between 2016 and 2020 from 96% to 80% in fatal shootings and from 69% to 64% in nonfatal shootings.

(5) There is a long-term trend of a reduction in conviction rates for illegal gun possession cases, dropping from 65% in 2015 to 45% in 2020.

In August 2022, the Philadelphia Police Commissioner indicated that her department is short-staffed by approximately 20%, or 1,300 officers, due to low morale, politics, increased scrutiny and "uniquely stringent hiring requirements" during a nationwide shortage.

Police Commissioner Danielle Outlaw stated, "The truth is the homicides are not happening in a vacuum - there are those who are determined to attack and kill their victims. While we are making constant adjustments to mitigate this sickening reality, our officers, simply put, just can't keep up by being everywhere at all times." While the PPD may arrest a suspect for the commission of a crime, the Philadelphia District Attorney's Office is one of the few district attorney's offices in this Commonwealth that reserves unto itself the authority to charge a person for a criminal act.

In October 2022, following yet another act of violence against police in the City of Philadelphia, Police Commissioner Danielle Outlaw issued the following statement:

"We are tired of arresting the same suspects over and over again, only to see them right back out on the street to continue and sometimes escalate their criminal ways. We are tired of having to send our officers into harm's way to serve warrants on suspects who have no business being on the street in the first place.

No - not everyone needs to be in jail. But when we repeatedly see the extensive criminal histories of those we arrest for violent crime, the question needs to be asked as to why they were yet again back on the street and terrorizing our communities.

I am beyond disgusted by this violence. Our entire department is sickened by what is happening to the people that live, work, and visit our city. Residents are tired of it. Business owners are tired of it. Our children are tired of it.
We are long past 'enough is enough'."

Acts of violence, and particularly violent crimes committed with firearms, have exacted a heavy toll on victims and their families, with countless lives unnecessarily lost or irretrievably broken, due to the increase of violent crime in the City of Philadelphia. The foregoing acts constitute "misbehavior in office" by District Attorney Krasner in that such acts have substantially contributed to the increase in crime in the City of Philadelphia, undermined confidence in the criminal justice system, and betrayed the trust of the citizens of Philadelphia and the Commonwealth.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

ARTICLE II:

Misbehavior In Office In the Nature of Obstruction of House Select Committee Investigation

House Resolution 216 of 2022 established the House Select Committee to Restore Law and Order pursuant to Rule 51 of the General Operating Rules of the House. The select committee is authorized and empowered "to investigate, review and make finding and recommendations concerning risking rates of crime, law enforcement and the enforcement of crime victim rights," in the City of Philadelphia.

House Resolution 216 further charges the select committee to make findings and recommendations, including, but not limited to, the following:

(1) Determinations regarding the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment.

(2) Legislation or other legislative action relating to policing, prosecution, sentencing and any other aspect of law enforcement.

(3) Legislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims.

(4) Legislation or other legislative action relating to ensuring the appropriate expenditure of public funds intended for the purpose of law enforcement, prosecutions or to benefit crime victims.

(5) Other legislative action as the select committee finds necessary to ensure appropriate enforcement of law and order in the City of Philadelphia.

In pursuit of these obligations, the resolution empowers the select committee chair to, among other things, "send for individuals and papers and subpoena witnesses, documents, including electronically stored information, and any other materials under the hand and seal of the chair." The chair issued subpoenas to a number of Philadelphia municipal offices, including the Controller, the Mayor, the Police Department, the Sheriff's Office, the Treasurer and the District Attorney's Office. The subpoenas sought nonprivileged records necessary to fulfill the select committee's obligations to the House of Representatives pursuant to House Resolution 216.

While other municipal offices worked cooperatively with the select committee to respond to the subpoenas issued to them, District Attorney Krasner and his office chose instead to obstruct the select committee's work at every turn. District Attorney Krasner and his office asserted that the select

committee was illegitimate and that its subpoenas served "no valid legislative purpose, violating the separation of powers, invading legal privileges, and seeking to deny the constitutional rights of Philadelphia's citizens, especially their democratic right to vote and choose their local leaders."

District Attorney Krasner asserted various claims that held no basis in fact or law, including the following:

(1) District Attorneys are not subject to impeachment.

(2) Impeaching the District Attorney violates the constitutional rights of the people who voted for him.

(3) The District Attorney committed no wrong, and therefore was not required to comply with the committee chair's subpoena.

(4) Impeachment of a public official requires a conviction for a criminal act; and

District Attorney Krasner and his office refused to search for or produce any documents in response to the subpoena. Despite multiple attempts by counsel to the select committee chair to bring District Attorney Krasner and his office into compliance with the subpoenas, explaining on multiple occasions that the select committee was seeking nonprivileged records and, as it related to any record for which the District Attorney believed were privileged, the District Attorney should follow common practice in responding to a subpoena by providing a privilege log to identify those records for which the District Attorney asserts a privilege.

On September 12, 2022, after multiple exchanges between counsel and a Request to Show Cause why the District Attorney should not be held in contempt by the House, the select committee issued an interim report pursuant to Rule 51 of the General Operating Rules of the House of Representatives, notifying the House of District Attorney Krasner's refusal to comply with the subpoena and recommending that the House consider contempt proceedings.

The House of Representatives adopted House Resolution 227 on September 13, 2022, resolving that the House hold District Attorney Krasner in contempt. House Resolution 227 was adopted by a bipartisan vote of 162 to 38.

District Attorney Krasner filed an action in Commonwealth Court on September 2, 2022, in which he raised the same arguments that fail to have any meaningful basis in law or fact. District Attorney Krasner and his office have since feigned partial compliance with the subpoena, providing several public-facing records obtained without the need to engage in any legitimate effort to search for the records.

The select committee chair invited District Attorney Krasner to testify before the select committee in executive session on October 21, 2022. District Attorney Krasner refused to testify in executive session, demanding a public hearing instead. District Attorney Krasner then published a press release which was misleading at best, mischaracterizing the invitation to

District Attorney Krasner to testify in yet another moment of grandstanding.

Given the District Attorney's rejection of the invitation to testify in executive session, the select committee was compelled to cancel the hearing.

District Attorney Krasner has, at every turn, obstructed the efforts of the House Select Committee on Restoring Law and Order. He has consistently raised specious claims without a good faith basis in law or fact. Even after the House of Representatives resolved to hold him in contempt, District Attorney Krasner's efforts to comply with subpoenas issued by the select committee chair fall far short of what can be considered a reasonable good faith effort.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article III:
Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

In the Federal habeas corpus proceeding in *Robert Wharton v. Donald T. Vaughn*, Federal District Court Judge Goldberg issued a memorandum order admonishing and sanctioning the District Attorney's Office. Robert Wharton was convicted of murdering the parents of survivor Lisa Hart-Newman, who was seven months old at the time and was left to freeze to death with her deceased parents by Mr. Wharton.

After his conviction, Wharton pursued a death penalty habeas petition in the Federal district court. The District Attorney's Office under prior administrations had opposed this petition.

In 2019, District Attorney Krasner's administration filed a "Notice of Concession of Penalty Phase Relief," stating that it would not seek a new death sentence, and, based on that sentencing relief, the litigation and appeals could end. The concession noted only that the decision to concede was made "[f]ollowing review of this case by the Capital Case Review Committee of the Philadelphia [District Attorney's Office], communication with the victims' family, and notice to [Wharton's] counsel."

Judge Goldberg undertook an independent analysis of the merits of the claim and invited the Pennsylvania Office Attorney General (OAG) to file an amicus brief in the case. In its amicus, the OAG submitted additional facts that the District Attorney's Office had not disclosed, including evidence of prison misconducts, attempted escapes and Department of Corrections concerns regarding "assaultiveness" and "escape" by

Mr. Wharton.

The OAG concluded that "given the facts of this investigation and aggravating sentencing factors present in this case, Wharton could not establish a reasonable probability that the outcome of his penalty phase death sentence would have been different if the jury had heard evidence of his alleged 'positive' prison adjustment."

The OAG further determined that members of the family, including victim Ms. Hart-Newman, were not contacted and that they opposed the concession by the District Attorney's Office.

After an evidentiary hearing, Judge Goldberg held as follows:

(1) The District Attorney's Office failed to advise the court of significant anti-mitigation evidence, including that Mr. Wharton had made an escape attempt at a court appearance.

(2) Two of the office's supervisors violated Federal Rule of Civil Procedure 11(b)(3) "based upon that Office's representations to this Court that lacked evidentiary support and were not in any way formed after 'an inquiry reasonable under the circumstances.'"

(3) Representations of communication with the victims' family were "misleading," "false," and "yet another representation to the Court made after an inquiry that was not reasonable under the circumstances."

(4) The Law Division Supervisor, Assistant Supervisor and District Attorney's Office violated Rule 11(b)(1), and concluding that the violation was "sufficiently 'egregious' and 'exceptional' under the circumstances to warrant sanctions."

Judge Goldberg imposed nonmonetary sanctions on the District Attorney's Office, requiring that separate written apologies be sent to the victim, Lisa Hart-Newman, and the victim's family members. Given the testimony of the two Law Division supervisors that District Attorney Krasner approved and implemented internal procedures that created the need for this sanction, and that the District Attorney had the sole, ultimate authority to direct that the misleading Notice of Concession be filed, therefore "the apologies shall come from the District Attorney, Lawrence Krasner, personally."

District Attorney Krasner has the sole authority to approve court filings on behalf of Philadelphia District Attorney's office. While in office, District Attorney Krasner directed, approved and or permitted the filing of a "Notice of Concession" and presentation of other pleadings and statements in Federal court which contained materially false and or misleading affirmative statements and purposeful omissions of fact in violation of the Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal) and Rule 8.4 (Professional Misconduct), and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office

and disqualification to hold any office of trust or profit under this Commonwealth.

Article IV:
Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter of *Commonwealth vs. Pownall*

In his special concurrence in *Commonwealth v. Pownall*, Supreme Court Justice Dougherty highlighted what he feared to be an effort by the District Attorney's Office to deprive certain defendants of a fair and speedy trial. Following the June 2017 incident in which former Philadelphia police officer Ryan Pownall shot and killed David Jones, the District Attorney's Office submitted the matter to an investigative grand jury. The investigating grand jury issued a presentment recommending that Pownall be charged with criminal homicide, possession of an instrument of crime and recklessly endangering another person; and

During trial, the prosecutor filed a motion in limine to preclude the standard peace officer justification defense instruction, based on the assertion that the instruction, which largely tracked language of statute, violated Fourth Amendment prohibition against unreasonable search and seizure. The motion was denied and the prosecution appealed to the Superior Court, which quashed the appeal as unauthorized. The Supreme Court granted the prosecutor's request for allowance of appeal.

The Supreme Court ultimately denied the appeal, but the special concurrence filed by Justice Dougherty illuminated startling behavior by the District Attorney's Office. Justice Dougherty held that the District Attorney's Office's actions during grand jury process "implicate[s] a potential abuse" and stated that "the presentment in this case is perhaps best characterized as a 'foul blow.'" He referred to the grand jury presentment, authored by the District Attorney's Office, as a "gratuitous narrative."

Justice Dougherty also recognized that any abuse of the grand jury could have been remedied by "Statutory safeguards embedded in the process," such as a preliminary hearing. He went on to say "What is troubling is the DAO's effort to ensure that would not occur," *i.e.*, their filing of a motion to bypass the preliminary hearing.

Justice Dougherty found it "inexplicable" that, in presenting a bypass motion to the Court of Common Pleas, the District Attorney's Office failed to highlight the Investigating Grand Jury Act section 4551(e), which directs that a defendant "shall" be entitled to a preliminary hearing. He emphasized that the District Attorney's Office "appear[ed] to have known [about that requirement] at the time it filed its motion."

As it related to the prosecutor's motion in limine and

interlocutory appeal, Justice Dougherty observed that the District Attorney's Office's motion "presented only half the relevant picture." He went on to say that "this type of advocacy would be worrisome coming from any litigant," but coming from a prosecutor, "is even more concerning, particularly in light of the motion's timing...." He cited directly to Pennsylvania Rule of Professional Conduct 3.3 regarding candor to the tribunal.

Further referencing ethical concerns, Justice Dougherty found that the timing of the motion in limine, "[w]hen combined with the other tactics highlighted throughout this concurrence," could lead to the conclusion that the decision to take "an unauthorized interlocutory appeal was intended to deprive [Mr. Pownall] of a fair and speedy trial." Justice Dougherty went on to say:

> Now, for the first time before this Court, the DAO finally admits its true intent in all this was simply to use Pownall's case as a vehicle to force judicial determination on 'whether Section 508(a)(1) is facially unconstitutional.' DAO's Reply Brief at 1; see id. at 6 (asserting Section 508's applicability to [Pownall] is not the subject of this appeal"). What's more, despite having assured the trial court it was not trying 'to bar [Pownall] from a defense[.]' N.T. 11/25/2019 at 8, the DAO now boldly asserts it would be appropriate for this Court to rewrite the law and retroactively apply it to Pownall's case because he supposedly 'had fair notice of his inability to rely on this unconstitutional defense[.]' DAO's Brief at 10.

Justice Dougherty concluded, "Little that has happened in this case up to this point reflects procedural justice. On the contrary, the DAO's prosecution of Pownall appears to be "driven by a win-at-all-cost office culture" that treats police officers differently than other criminal defendants. DAO CONVICTION INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2 (June 15, 2021) available at tinyurl.com/CIU report (last visited July 19, 2022). This is the antithesis of what the law expects of a prosecutor."

On remand, Common Pleas Court Judge McDermott said that there were "so many things wrong" with the District Attorney's Office's instructions to the investigating grand jury that it warranted dismissing all charges against Mr. Pownall. After hearing testimony from the assistant district attorneys who handled the grand jury and preparation of the presentment, Judge McDermott concluded that the District Attorney's Office failed to provide the legal instructions to the grand jurors on the definitions for homicide and information regarding the use-of-force defense.

In her October 17, 2022, Statement of Findings of Fact and Conclusions of Law, Judge McDermott stated, "The Commonwealth made an intentional, deliberate choice not to inform the grand jurors about the justification defense under Section 508. While [the ADA] was aware of Section 508 and its applicability to the

Defendant's case at the time of the Grand Jury proceedings, she decided not to advise the Grand Jury about Section 508 after consulting with other, more senior Assistant District Attorneys."

As it related to Pownall's right to a preliminary hearing, Judge McDermott wrote:

> In its Motion to bypass the preliminary hearing, the Commonwealth demonstrated a lack of candor to the Court by misstating the law and providing Judge Coleman with incorrect case law.
>
> * * *
>
> The Commonwealth was also disingenuous with the Court when it asserted that it had good cause to bypass the preliminary hearing under Pa.R.Crim.P. 565(a) because of the complexity of the case, the large number of witnesses the Commonwealth would have to call, the expense, and the delay caused by a preliminary hearing. As a preliminary hearing was not held in this case, the Defendant's due process rights were violated and the Defendant suffered prejudice.

Judge McDermott told the District Attorney's Office that if defense counsel had made the decisions that the District Attorney's Office made, she would "declare them incompetent." The District Attorney's Office's own expert report from Gregory A. Warren, Ed.D., of American Law Enforcement Training and Consulting concluded that, given all the facts presented to him, Officer Pownall's "use of deadly force in this case was justified." This expert report was withheld from Pownall by the District Attorney's Office.

District Attorney Krasner has the sole authority to approve court filings on behalf of Philadelphia District Attorney's office. While in office District Attorney Krasner directed, approved and or permitted the filing of motions, presentations of other pleadings and statements to the Grand Jury and the Court which intentionally omitted, concealed and or withheld material facts and legal authority relevant to the judicial proceedings in violation of the Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article V:

Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter In re: Conflicts of Interest of Philadelphia District

Attorney's Office

During sworn testimony, District Attorney Krasner withheld material facts from the Supreme Court when he testified under oath before the Supreme Court's Special Master. The Special Master was appointed by the Supreme Court pursuant to its King's Bench jurisdiction to investigate whether District Attorney Krasner had a conflict of interest favoring the defendant and appellant, Mumia Abu-Jamal, who had been convicted of first-degree murder of Officer Daniel Faulkner. District Attorney Krasner testified that he "never represented any advocacy organization for Mumia Abu-Jamal."

While affirmatively stating he never represented an "organization" which advocated for Mumia Abu-Jamal, District Attorney Krasner omitted the fact that he had, in fact, represented at least one pro-Mumia activist who was arrested for seeking to intimidate the judge deciding Abu-Jamal's Post Conviction Relief Act ("PCRA") Petition. That activist, who at the time was the "Director" of the "Youth Action Coalition," was arrested along-side local leaders of The International Concerned Family and Friends of Mumia Abu-Jamal, all of whom were protesting outside the home of Abu-Jamal's PCRA judge in an effort to illegally influence the very proceedings at issue in Mumia Abu-Jamal's nunc pro tunc appeal.

District Attorney Krasner represented this "Director," and potentially other pro-Mumia activists, against charges for violating a criminal statute that prohibits protesting outside the homes of judicial officers to influence the outcome of cases pending before the judicial officers. Yet, in testifying that he "never represented any advocacy organization for Mumia Abu-Jamal," District Attorney Krasner omitted these material facts, providing a partial and misleading disclosure regarding his connection to the effort to exonerate and free Mumia Abu-Jamal. District Attorney Krasner's misleading disclosure was directly relevant to the subject matter under investigation by the Supreme Court in that he was concealing material facts concerning his conflicts of interest in the Mumia Abu-Jamal matter, an issue at the very heart of the Supreme Court's review of the King's Bench Petition filed by the widow of Officer Faulkner. District Attorney Krasner therefore violated Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article VI:
Misbehavior in Office in Nature of
Violation of Victims Rights

Federal and State law provides for certain rights for victims related to the prosecution and sentencing of the defendants who

victimized them or their family members (18 U.S.C. § 3771 (b)(2)(A) and section 201 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act). Chief among the rights provided to victims is the right to be kept informed at all stages of the prosecution through clear, respectful and honest communication and to be consulted with regard to sentencing. District Attorney Krasner repeatedly violated, and allowed Assistant District Attorneys under his supervision to violate, the Federal and state victims' rights acts on multiple occasions by specifically failing to timely contact victims, deliberately misleading victims and or disregarding victim input and treating victims with contempt and disrespect.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article VII:
Misbehavior In Office In the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

Pursuant to Article II of the Constitution of Pennsylvania, the legislative power is vested in the General Assembly. District Attorney Krasner as an elected executive in the City of Philadelphia has no authority to create, repeal or amend any state law. Despite this clear separation of powers, District Attorney Krasner has contravened the authority of the legislature by refusing to prosecute specifically prohibited conduct under state law. Rather than exercising his inherent discretionary powers to review and determine charges on a case-by-case basis, District Attorney Krasner, in his capacity as the Commonwealth's Attorney in the City of Philadelphia, unilaterally determined, directed and ensured that certain crimes would no longer be prosecuted and were therefore de facto legal.

These crimes include prostitution, theft and drug-related offenses, among others. In particular, the *de facto* legalization of prostitution by District Attorney Krasner has had a devastating impact on women who are victims of sex trafficking and the communities where they are trafficked. Refusing to prosecute retail theft of property with less than a value of $500, District Attorney Krasner has created an atmosphere of lawlessness in Philadelphia, with the direct effect of causing businesses to curtail activity or cease doing business altogether in Philadelphia. District Attorney Krasner's refusal to prosecute those caught driving under the influence of marijuana, aside from contributing to the lawlessness in the city, has created dangerous situations for the health, safety and welfare of the people in Philadelphia. District Attorney Krasner *de facto* legalizing such acts that the General Assembly has determined to be illegal is a clear usurpation of legislative powers in violation of the Constitution of

Pennsylvania, and thus constitutes misbehavior in office.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

The House of Representatives hereby reserves to itself the right and ability to exhibit at any time after adoption of this resolution further or more detailed Articles of Impeachment against District Attorney Lawrence Samuel Krasner, to reply to any answers that District Attorney Lawrence Samuel Krasner may make to any Articles of Impeachment which are exhibited and to offer proof at trial in the Senate in support of each and every Article of Impeachment which shall be exhibited by them.

Upon the articles of impeachment against Lawrence Samuel Krasner, Philadelphia District Attorney, being signed by the Speaker of the House of Representatives, the Speaker shall appoint a committee of three members, two from the majority party and one from the minority party, to exhibit the same to the Senate, and on behalf of the House of Representatives to manage the trial thereof.

The expenses of the committee shall be paid by the Chief Clerk from appropriation accounts under the Chief Clerk's exclusive control and jurisdiction upon a written request approved by the Speaker of the House of Representatives, the Majority Leader of the House of Representatives or the Minority Leader of the House of Representatives.

EXHIBIT C

PRIOR PRINTER'S NO. 3607 PRINTER'S NO. 3634

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 240 Session of 2022

INTRODUCED BY WHITE, ROSSI, STAATS, O'NEAL, OWLETT, SONNEY, GREINER, R. MACKENZIE, E. NELSON, DIAMOND, DUNBAR, TWARDZIK, GLEIM, KLUNK, RYAN, WARNER, MILLARD, ARMANINI, BENNINGHOFF, KERWIN, M. MACKENZIE, FEE, HICKERNELL, HEFFLEY, LEWIS DELROSSO, GREGORY, KAIL, CAUSER AND GILLESPIE, OCTOBER 26, 2022

AS AMENDED, HOUSE OF REPRESENTATIVES, NOVEMBER 16, 2022

A RESOLUTION

Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia, for misbehavior in office; and providing for the appointment of trial managers.

~~WHEREAS, Lawrence Samuel Krasner was elected to the position of District Attorney of Philadelphia on November 7, 2017, and re-elected to the position on November 2, 2021, pursuant to section 4 of Article IX of the Constitution of Pennsylvania; and~~ <--

~~WHEREAS, Upon assuming office, District Attorney Krasner terminated more than 30 assistant district attorneys (ADA) from employment with the Philadelphia District Attorney's Office; and~~

~~WHEREAS, Many of these terminated assistant district attorneys were senior-level staffers in supervisory roles who possessed significant prosecutorial experience and knowledge of criminal procedure; and~~

~~WHEREAS, District Attorney Krasner replaced this vast institutional knowledge in the Philadelphia District Attorney's~~

~~Office with attorneys who lacked any meaningful experience in prosecuting criminal cases, some of whom only recently graduated from law school; and~~

~~WHEREAS, District Attorney Krasner subsequently withdrew the office from membership in the Pennsylvania District Attorneys Association (PDAA) because, he asserted, PDAA supported regressive and punitive policies; and~~

~~WHEREAS, In withdrawing from PDAA, District Attorney Krasner denied the attorneys in his office the ability to participate in the various professional development and training programs provided by PDAA through its educational institute; and~~

~~WHEREAS, Rather than offering traditional prosecutorial training on such subjects as prosecutorial ethics, human trafficking, witness examination, trial advocacy, trial management and achieving justice for domestic violence and sexual assault victims, District Attorney Krasner offered attorneys seminars, including "A New Vision for Criminal Justice in Philadelphia," "Deportation: The Unforeseen Consequences of Prosecution in our Immigrant Community," and "Philadelphia and Safe Injection: Harm Reduction as Public Policy"; and~~

~~WHEREAS, The Philadelphia District Attorney's Office eventually returned to more traditional prosecutorial training, however, the office continued to focus on issues that promote District Attorney Krasner's progressive philosophies rather than how to effectively prosecute a criminal case; and~~

~~WHEREAS, Upon being elected to office, District Attorney Krasner established a series of office policies with the purported purpose to "end mass incarceration and bring balance back to sentencing," and later adopted a series of policies related to certain crimes or classes of people; and~~

~~WHEREAS, These policies include directives not to charge sex workers or individuals for certain classes of crimes such as prostitution or possession of marijuana and marijuana-related drug paraphernalia; and~~

~~WHEREAS, These new policies identified a series of offenses for which the gradation may be reduced with the purpose of "reduc[ing] pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets," and requiring disposition of retail theft cases unless the value of the item stolen exceeds $500 or where the defendant has an extensive history of theft convictions; and~~

~~WHEREAS, District Attorney Krasner instituted policies to make plea offers below the bottom end of the mitigated range under the Sentencing Guidelines from the Pennsylvania Sentencing Commission and seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicate a range of incarceration below 24 months; and~~

~~WHEREAS, In February 2018, District Attorney Krasner established a policy that his office "will ordinarily no longer ask for cash bail for . . . misdemeanors and felonies" listed in the policy, because "The cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color"; and~~

~~WHEREAS, In November 2018, District Attorney Krasner adopted a policy in which a criminal defendant's immigration status should be considered in the plea-bargaining process, effectively providing that where an immigration consequence is detected pre-trial or with respect to a sentencing recommendation, counsel will advise if an offer can be made to avoid the consequence;~~

and

WHEREAS, Other policies that District Attorney Krasner directed were as follows:

(1) Assistant district attorneys may not proceed in cases against defendants driving under the influence of cannabis when the defendants blood "contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC" and that "if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant."

(2) The District Attorney's Office "will only oppose motions for redactions or expungements in limited circumstances" and sets forth various scenarios in which the Office will agree to, seek or not oppose the expungement of a defendant's criminal history.

(3) The District Attorney's Office directed plea offers and sentencing recommendations:

(i) for felonies, "aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case";

(ii) for misdemeanors, aimed at an office-wide average of "6 months or less of total supervision, with a ceiling of 1 year";

(iii) for all matters, for "concurrent sentences"; and

(iv) for cases involving incarceration, "for a period of parole that is no longer than the period of incarceration";

and

WHEREAS, Nearly all of District Attorney Krasner's policies "create a presumption" for ADAs to follow and require approval from Krasner himself or a first assistant district attorney for deviations from the policies; and

WHEREAS, District Attorney Krasner, in an April 2021 report published by the DAO titled "Ending Mass Supervision: Evaluating Reforms," wrote in his opening letter: "I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe"; and

WHEREAS, In reality, the policies and practices of the Philadelphia District Attorney's Office instituted under the direction of District Attorney Krasner have led to catastrophic consequences for the people of the City of Philadelphia; and

WHEREAS, According to the City Controller, spikes in gun violence and homicides have dramatically impacted historically disadvantaged neighborhoods, and those neighborhoods are "primarily low-income with predominately black or African American residents"; and

WHEREAS, The Philadelphia Police Department (PPD) reports that the number of homicide victims has increased every year since 2016, more than doubling from 2016 to 2021, with a year-over-year increase of 40% between 2019 and 2020; and

WHEREAS, As of October 16, 2022, there have already been 430 homicides in the City of Philadelphia in 2022; and

WHEREAS, As of October 17, 2022, reported trends gathered from the PPD's "incident" data, which tracks the reporting of all crimes in addition to homicides, shows a 12% increase in all reported offenses, a 6% increase in violent offenses and a 21% increase in property offenses; and

~~WHEREAS, While incidents of violent crime are increasing, prosecution of crime by the Philadelphia District Attorney's Office has decreased during this same period; and~~

~~WHEREAS, In 2016, the Philadelphia District Attorney's Office reported that only 30% of "all offenses" resulted in a dismissal or withdrawal, but that number spiked to 50% in 2019, 54% in 2020, 67% in 2021 and 65% to date in 2022; and~~

~~WHEREAS, A similar trend is evident when filtering the data for violent crimes, where, in 2016, the withdrawal and dismissed violent crime cases accounted for 48% of all violent crime case outcomes, but that percentage increased to 60% in 2019, to 68% in 2020, to 70% in 2021 and to 66% in 2022 to date; and~~

~~WHEREAS, Data from the Pennsylvania Sentencing Commission relating to violations of the Uniform Firearms Act (VUFA) evidences a similar jarring trend; and~~

~~WHEREAS, The Sentencing Commission reports that guilty dispositions in the City of Philadelphia declined from 88% in 2015 to 66% in 2020, compared to a decline from 84% to 72% in counties of the second class, with the driver of the decrease being nolle pros dispositions; and~~

~~WHEREAS, As compared to the Statewide data and other county classes, the percent of guilty verdicts has decreased significantly, while the percent of nolle prossed cases has increased in the City of Philadelphia; and~~

~~WHEREAS, Studies by the Delaware Valley Intelligence Center (DVIC) attempted to provide "an explanation for the increase in homicides and shootings in an effort to begin a conversation to address the challenge at a strategic level," significantly, the report notes:~~

~~"The rate of prosecution dismissal and withdrawal has been~~

~~increase [sic] substantially since 2015 under DA [Seth] Williams, and has continued to increase after DA Krasner took office. Furthermore, a closer examination of these dropped cases indicates that more cases are dismissed/withdrawn at the preliminary hearing state [sic] under DA Krasner than the actual trial state []. This implies that, even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had historically. Notably, the likelihood of being arrested is low to begin with. This means that, criminals know that their likelihood of getting caught with a gun is slim and, even if they get caught, they feel that they can leave without severe (or any) consequences.";~~ ~~and~~

~~WHEREAS, The DVIC conducted a "cursory examination" of dismissed/withdrawn cases in 2018/2019 and "found 6 offenders whose cases were dismissed (VUFA former convict charge) and got later involved in shootings . . . 2 of these shootings were fatal and 4 out of these 6 offenders were gang members"; and~~

~~WHEREAS, The DVIC studied the prosecution declination for narcotics, retail theft and prostitution arrests from 2016 to 2018, and concluded in its key findings that the percentage of all declinations, not just narcotics, prostitution and retail theft, increased "especially in 2018" to more than 7%, when it had been just 2% or less between 2007 and 2015; and~~

~~WHEREAS, In September 2020, the Philadelphia City Council authorized the Committee on Public Safety and the Special Committee on Gun Violence Prevention to study gun violence in the city. This study involved a collaboration between the Controller's Office, Defender Association, Department of Public Health, District Attorney's Office, First Judicial District,~~

~~Managing Director's Office, Pennsylvania Attorney General and PPD. The published results, called the "100 Shooting Review Committee Report," discusses trends and general findings regarding shootings in the City of Philadelphia; and~~

~~WHEREAS, The published results showed the following:~~

~~(1) The clearance rate (i.e., when an arrest was made or a suspect that could not be arrested was identified) for fatal shootings in 2020 was 37% and the rate for nonfatal shootings was 18%.~~

~~(2) There has been a "marked increase" in the number of people arrested for illegal gun possession without the accusation of an additional offense, including a doubling in arrests for illegal possession of a firearm without a license since 2018.~~

~~(3) The initial and final bail amounts set by courts in illegal possession of firearms cases declined between 2015 and 2019 and increased in 2020 and 2021.~~

~~(4) Conviction rates in shooting cases declined between 2016 and 2020 from 96% to 80% in fatal shootings and from 69% to 64% in nonfatal shootings.~~

~~(5) There is a long-term trend of a reduction in conviction rates for illegal gun possession cases, dropping from 65% in 2015 to 45% in 2020;~~

~~and~~

~~WHEREAS, In August 2022, the Philadelphia Police Commissioner indicated that her department is short-staffed by approximately 20%, or 1,300 officers, due to low morale, politics, increased scrutiny and "uniquely stringent hiring requirements" during a nationwide shortage; and~~

~~WHEREAS, Commissioner Danielle Outlaw stated, "The truth is~~

~~the homicides are not happening in a vacuum - there are those who are determined to attack and kill their victims. While we are making constant adjustments to mitigate this sickening reality, our officers, simply put, just can't keep up by being everywhere at all times."; and~~

~~WHEREAS, While the PPD may arrest a suspect for the commission of a crime, the Philadelphia District Attorney's Office is one of the few district attorney's offices in this Commonwealth that reserves unto itself the authority to charge a person for a criminal act; and~~

~~WHEREAS, In October 2022, following yet another act of violence against police in the City of Philadelphia, Police Commissioner Danielle Outlaw issued the following statement:~~

~~"We are tired of arresting the same suspects over and over again, only to see them right back out on the street to continue and sometimes escalate their criminal ways. We are tired of having to send our officers into harm's way to serve warrants on suspects who have no business being on the street in the first place.~~

~~No - not everyone needs to be in jail. But when we repeatedly see the extensive criminal histories of those we arrest for violent crime, the question needs to be asked as to why they were yet again back on the street and terrorizing our communities.~~

~~I am beyond disgusted by this violence. Our entire department is sickened by what is happening to the people that live, work, and visit our city. Residents are tired of it. Business owners are tired of it. Our children are tired of it.~~

~~We are long past 'enough is enough'.";~~

~~and~~

~~WHEREAS, Acts of violence, and particularly violent crimes committed with firearms, have exacted a heavy toll on victims and their families, with countless lives unnecessarily lost or irretrievably broken, due to the increase of violent crime in the City of Philadelphia; and~~

~~WHEREAS, In his special concurrence in *Commonwealth v. Pownall*, Justice Dougherty highlighted what he feared to be an effort by the District Attorney's Office to deprive certain defendants of a fair and speedy trial; and~~

~~WHEREAS, Following the June 2017 incident in which former Philadelphia police officer Ryan Pownall shot and killed David Jones, the District Attorney's Office submitted the matter to an investigative grand jury; and~~

~~WHEREAS, The investigating grand jury issued a presentment recommending that Pownall be charged with criminal homicide, possession of an instrument of crime and recklessly endangering another person; and~~

~~WHEREAS, During trial, the prosecutor filed a motion in limine to preclude the standard peace officer justification defense instruction, based on the assertion that the instruction, which largely tracked language of statute, violated Fourth Amendment prohibition against unreasonable search and seizure; and~~

~~WHEREAS, The motion was denied and the prosecution appealed to the Superior Court, which quashed the appeal as unauthorized. The Supreme Court granted the prosecutor's request for allowance of appeal; and~~

~~WHEREAS, The Supreme Court ultimately denied the appeal, but the special concurrence filed by Justice Dougherty illuminated startling behavior by the District Attorney's Office; and~~

~~WHEREAS, Justice Dougherty held that the District Attorney's Office's actions during grand jury process "implicate[] a potential abuse" and stated that "the presentment in this case is perhaps best characterized as a 'foul blow.'" He referred to the grand jury presentment, authored by the District Attorney's Office, as a "gratuitous narrative"; and~~

~~WHEREAS, Justice Dougherty also recognized that any abuse of the grand jury could have been remedied by "Statutory safeguards embedded in the process," such as a preliminary hearing. He went on to say "What is troubling is the DAO's effort to ensure that would not occur," i.e., their filing of a motion to bypass the preliminary hearing; and~~

~~WHEREAS, Justice Dougherty found it "inexplicable" that, in presenting a bypass motion to the Court of Common Pleas, the District Attorney's Office failed to highlight the Investigating Grand Jury Act Section 4551(e), which directs that a defendant "shall" be entitled to a preliminary hearing. He emphasized that the District Attorney's Office "appear[ed] to have known [about that requirement] at the time it filed its motion."; and~~

~~WHEREAS, As it related to the prosecutor's motion in limine and interlocutory appeal, Justice Dougherty observed that the District Attorney's Office's motion "presented only half the relevant picture." He went on to say that "this type of advocacy would be worrisome coming from any litigant," but coming from a prosecutor, "is even more concerning, particularly in light of the motion's timing . . .". He cited directly to Pennsylvania Rule of Professional Conduct 3.3 regarding candor to the tribunal; and~~

~~WHEREAS, Further referencing ethical concerns, Justice Dougherty found that the timing of the motion in limine, "[w]hen~~

~~combined with the other tactics highlighted throughout this concurrence," could lead to the conclusion that the decision to take "an unauthorized interlocutory appeal was intended to deprive [Mr. Pownall] of a fair and speedy trial."; and~~

~~WHEREAS, Justice Dougherty went on to say:~~

~~Now, for the first time before this Court, the DAO finally admits its true intent in all this was simply to use Pownall's case as a vehicle to force judicial determination on 'whether Section 508(a)(1) is facially unconstitutional.' DAO's Reply Brief at 1; *see id.* at 6 (asserting Section 508's applicability to [Pownall] is not the subject of this appeal"). What's more, despite having assured the trial court it was not trying 'to bar [Pownall] from a defense[.]' N.T. 11/25/2019 at 8, the DAO now boldly asserts it would be appropriate for this Court to rewrite the law and retroactively apply it to Pownall's case because he supposedly 'had fair notice of his inability to rely on this unconstitutional defense[.]' DAO's Brief at 10.;~~

~~and~~

~~WHEREAS, Justice Dougherty concluded, "Little that has happened in this case up to this point reflects procedural justice. On the contrary, the DAO's prosecution of Pownall appears to be "driven by a win-at-all-cost office culture" that treats police officers differently than other criminal defendants. DAO CONVICTION INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2 (June 15, 2021) available at tinyurl.com/CIU report (last visited July 19, 2022). This is the antithesis of what the law expects of a prosecutor."; and~~

~~WHEREAS, On remand, Common Pleas Court Judge McDermott said that there were "so many things wrong" with the District Attorney's Office's instructions to the investigating grand jury~~

that it warranted dismissing all charges against Mr. Pownall; and

WHEREAS, After hearing testimony from the assistant district attorneys who handled the grand jury and preparation of the presentment, Judge McDermott concluded that the District Attorney's Office failed to provide the legal instructions to the grand jurors on the definitions for homicide and information regarding the use-of-force defense; and

WHEREAS, In her October 17, 2022, Statement of Findings of Fact and Conclusions of Law, Judge McDermott stated, "The Commonwealth made an intentional, deliberate choice not to inform the grand jurors about the justification defense under Section 508. While [the ADA] was aware of Section 508 and its applicability to the Defendant's case at the time of the Grand Jury proceedings, she decided not to advise the Grand Jury about Section 508 after consulting with other, more senior Assistant District Attorneys."; and

WHEREAS, As it related to Pownall's right to a preliminary hearing, Judge McDermott wrote:

> In its Motion to bypass the preliminary hearing, the Commonwealth demonstrated a lack of candor to the Court by misstating the law and providing Judge Coleman with incorrect case law.
>
> * * *
>
> The Commonwealth was also disingenuous with the Court when it asserted that it had good cause to bypass the preliminary hearing under Pa.R.Crim.P. 565(a) because of the complexity of the case, the large number of witnesses the Commonwealth would have to call, the expense, and the delay caused by a preliminary hearing. As a preliminary hearing was

~~not held in this case, the Defendant's due process rights were violated and the Defendant suffered prejudice.;~~ ~~and~~

~~WHEREAS, Judge McDermott told the District Attorney's Office that if defense counsel had made the decisions that the District Attorney's Office made, she would "declare them incompetent."; and~~

~~WHEREAS, The District Attorney's Office's own expert report from Gregory A. Warren, Ed.D., of American Law Enforcement Training and Consulting concluded that, given all the facts presented to him, Officer Pownall's "use of deadly force in this case was justified."; and~~

~~WHEREAS, This expert report was withheld from Pownall by the District Attorney's Office; and~~

~~WHEREAS, In the Federal habeas corpus proceeding in *Robert Wharton v. Donald T. Vaughn*, Federal District Court Judge Goldberg issued a memorandum order admonishing and sanctioning the District Attorney's Office; and~~

~~WHEREAS, Robert Wharton was convicted of murdering the parents of survivor Lisa Hart-Newman, who was seven months old at the time and was left to freeze to death with her deceased parents by Mr. Wharton; and~~

~~WHEREAS, After his conviction, Wharton pursued a death penalty habeas petition in the Federal district court; and~~

~~WHEREAS, The District Attorney's Office under prior administrations had opposed this petition; and~~

~~WHEREAS, In 2019, District Attorney Krasner's administration filed a "Notice of Concession of Penalty Phase Relief," stating that it would not seek a new death sentence, and, based on that sentencing relief, the litigation and appeals could end; and~~

WHEREAS, The concession noted only that the decision to concede was made "[f]ollowing review of this case by the Capital Case Review Committee of the Philadelphia [District Attorney's Office], communication with the victims' family, and notice to [Wharton's] counsel."; and

WHEREAS, Judge Goldberg undertook an independent analysis of the merits of the claim and invited the Pennsylvania Office Attorney General (OAG) to file an amicus brief in the case; and

WHEREAS, In its amicus, the OAG submitted additional facts that the District Attorney's Office had not disclosed, including evidence of prison misconducts, attempted escapes and Department of Corrections concerns regarding "assaultiveness" and "escape" by Mr. Wharton; and

WHEREAS, The OAG concluded that "given the facts of this investigation and aggravating sentencing factors present in this case, Wharton could not establish a reasonable probability that the outcome of his penalty phase death sentence would have been different if the jury had heard evidence of his alleged 'positive' prison adjustment."; and

WHEREAS, The OAG further determined that members of the family, including victim Ms. Hart-Newman, were not contacted and that they opposed the concession by the District Attorney's Office; and

WHEREAS, After an evidentiary hearing, Judge Goldberg held as follows:

(1) The District Attorney's Office failed to advise the court of significant anti-mitigation evidence, including that Mr. Wharton had made an escape attempt at a court appearance.

(2) Two of the office's supervisors violated Federal Rule of Civil Procedure 11(b)(3) "based upon that Office's

representations to this Court that lacked evidentiary support and were not in any way formed after 'an inquiry reasonable under the circumstances.'"

(3) Representations of communication with the victims' family were "misleading," "false," and "yet another representation to the Court made after an inquiry that was not reasonable under the circumstances."

(4) The Law Division Supervisor, Assistant Supervisor and District Attorney's Office violated Rule 11(b)(1), and concluding that the violation was "sufficiently 'egregious' and 'exceptional' under the circumstances to warrant sanctions,";

and

WHEREAS, Judge Goldberg imposed nonmonetary sanctions on the District Attorney's Office, requiring that separate written apologies be sent to the victim, Lisa Hart-Newman, and the victim's family members; and

WHEREAS, Given the testimony of the two Law Division supervisors that District Attorney Krasner approved and implemented internal procedures that created the need for this sanction, and that the District Attorney had the sole, ultimate authority to direct that the misleading Notice of Concession be filed, therefore "the apologies shall come from the District Attorney, Lawrence Krasner, personally."; and

WHEREAS, House Resolution 216 of 2022 established the House Select Committee to Restore Law and Order pursuant to Rule 51 of the General Operating Rules of the House; and

WHEREAS, The select committee is authorized and empowered "to investigate, review and make finding and recommendations concerning risking rates of crime, law enforcement and the

enforcement of crime victim rights," in the City of Philadelphia; and

WHEREAS, House Resolution 216 further charges the select committee to make findings and recommendations, including, but not limited to, the following:

(1) Determinations regarding the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment.

(2) Legislation or other legislative action relating to policing, prosecution, sentencing and any other aspect of law enforcement.

(3) Legislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims.

(4) Legislation or other legislative action relating to ensuring the appropriate expenditure of public funds intended for the purpose of law enforcement, prosecutions or to benefit crime victims.

(5) Other legislative action as the select committee finds necessary to ensure appropriate enforcement of law and order in the City of Philadelphia;

and

WHEREAS, In pursuit of these obligations, the resolution empowers the select committee chair to, among other things, "send for individuals and papers and subpoena witnesses, documents, including electronically stored information, and any other materials under the hand and seal of the chair."; and

WHEREAS, The chair issued subpoenas to a number of

~~Philadelphia municipal offices, including the Controller, the Mayor, the Police Department, the Sheriff's Office, the Treasurer and the District Attorney's Office; and~~

~~WHEREAS, The subpoenas sought nonprivileged records necessary to fulfill the select committee's obligations to the House of Representatives pursuant to House Resolution 216; and~~

~~WHEREAS, While other municipal offices worked cooperatively with the select committee to respond to the subpoenas issued to them, District Attorney Krasner and his office chose instead to obstruct the select committee's work at every turn; and~~

~~WHEREAS, District Attorney Krasner and his office asserted that the select committee was illegitimate and that its subpoenas served "no valid legislative purpose, violating the separation of powers, invading legal privileges, and seeking to deny the constitutional rights of Philadelphia's citizens, especially their democratic right to vote and choose their local leaders"; and~~

~~WHEREAS, District Attorney Krasner asserted various claims that held no basis in fact or law, including the following:~~

~~(1) District Attorneys are not subject to impeachment.~~

~~(2) Impeaching the District Attorney violates the constitutional rights of the people who voted for him.~~

~~(3) The District Attorney committed no wrong, and therefore was not required to comply with the committee chair's subpoena.~~

~~(4) Impeachment of a public official requires a conviction for a criminal act;~~

~~and~~

~~WHEREAS, District Attorney Krasner and his Office refused to search for or produce any documents in response to the subpoena;~~

and

WHEREAS, Despite multiple attempts by counsel to the select committee chair to bring District Attorney Krasner and his office into compliance with the subpoenas, explaining on multiple occasions that the select committee was seeking nonprivileged records and, as it related to any record for which the District Attorney believed were privileged, the District Attorney should follow common practice in responding to a subpoena by providing a privilege log to identify those records for which the District Attorney asserts a privilege; and

WHEREAS, On September 12, 2022, after multiple exchanges between counsel and a Request to Show Cause why the District Attorney should not be held in contempt by the House, the select committee issued an interim report pursuant to Rule 51 of the General Operating Rules of the House of Representatives, notifying the House of District Attorney Krasner's refusal to comply with the subpoena and recommending that the House consider contempt proceedings; and

WHEREAS, The House of Representatives adopted House Resolution 227 on September 13, 2022, resolving that the House hold District Attorney Krasner in contempt; and

WHEREAS, House Resolution 227 was adopted by a bipartisan vote of 162 to 38; and

WHEREAS, District Attorney Krasner filed an action in Commonwealth Court on September 2, 2022, in which he raised the same arguments that fail to have any meaningful basis in law or fact; and

WHEREAS, District Attorney Krasner and his office have since feigned partial compliance with the subpoena, providing several public-facing records obtained without the need to engage in any

~~legitimate effort to search for the records; and~~

~~WHEREAS, The select committee chair invited District Attorney Krasner to testify before the select committee in executive session on October 21, 2022; and~~

~~WHEREAS, District Attorney Krasner refused to testify in executive session, demanding a public hearing instead; and~~

~~WHEREAS, District Attorney Krasner then published a press release which was misleading at best, mischaracterizing the invitation to Krasner to testify in yet another moment of grandstanding; and~~

~~WHEREAS, Given the District Attorney's rejection of the invitation to testify in executive session, the select committee was compelled to cancel the hearing; and~~

~~WHEREAS, Throughout the select committee's efforts to satisfy its charge under House Resolution 216, District Attorney Krasner steadfastly insisted that the select committee somehow had the power to impeach him; and~~

~~WHEREAS, Only the House of Representatives, as a body, has the power of impeachment; therefore be it~~

~~RESOLVED, That Lawrence Samuel Krasner, District Attorney of Philadelphia, be impeached for misbehavior in office and that the following Articles of Impeachment be exhibited to the Senate:~~

~~ARTICLE I~~

~~In its 1994 opinion in *Larsen v. Senate of Pennsylvania*, the Commonwealth Court spoke to the meaning of the current language "any misbehavior in office."~~

~~Justice Larsen argued that the applicable standard of "misbehavior in office" was nothing more than a codification of the common law offense of misconduct in office, meaning "the~~

~~breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."~~

~~In its opinion, the Commonwealth Court held that even if the strict definition espoused by Larsen were the appropriate rule, Larsen's conduct still met that heavy burden. More importantly, however, the court said that this "strict definition . . . finds no support in judicial precedents." In other words, there is no precedent that the current language is so constrained. The use of the word "any" necessarily implied a broad construction.~~

~~The Philadelphia District Attorney's Office's stated mission is to provide a voice for victims of crime and protect the community through zealous, ethical and effective investigations and prosecutions. District Attorney Krasner, by and through his failed policies and procedures, and throughout the discharge of his duties as Philadelphia's chief law enforcement officer, has been derelict in his obligations to the victims of crime, the people of the City of Philadelphia and of this Commonwealth.~~

~~Under District Attorney Krasner's administration, and as detailed herein, his lack of proper leadership serves as a direct and proximate cause of the crisis currently facing the City of Philadelphia. These policies have eviscerated the District Attorney's Office's ability to adequately enforce the laws of this Commonwealth; endangered the health, welfare and safety of more than 1.5 million Pennsylvanians that reside in Philadelphia and the tens of millions of Americans who visit the City every year; and, have brought the Office of District Attorney into disrepute.~~

~~WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office~~

and disqualification to hold any office of trust or profit under this Commonwealth.

ARTICLE II

District Attorney Krasner has, at every turn, obstructed the efforts of the House Select Committee on Restoring Law and Order. He has consistently raised specious claims without a good faith basis in law or fact. Even after the House of Representatives resolved to hold him in contempt, District Attorney Krasner's efforts to comply with subpoenas issued by the select committee chair fall far short of what could be described as a reasonable good faith effort.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

The House of Representatives hereby reserves to itself the right and ability to exhibit at any time after adoption of this resolution further or more detailed Articles of Impeachment against District Attorney Lawrence Samuel Krasner, to reply to any answers that District Attorney Lawrence Samuel Krasner may make to any Articles of Impeachment which are exhibited and to offer proof at trial in the Senate in support of each and every Article of Impeachment which shall be exhibited by them.

Upon the articles of impeachment against Lawrence Samuel Krasner, Philadelphia District Attorney, being signed by the Speaker of the House of Representatives, the Speaker shall appoint a committee of three members, two from the majority party and one from the minority party to exhibit the same to the Senate, and on behalf of the House of Representatives to manage the trial thereof.

WHEREAS, LAWRENCE SAMUEL KRASNER WAS ELECTED TO THE POSITION <-- OF DISTRICT ATTORNEY OF PHILADELPHIA ON NOVEMBER 7, 2017, AND RE-ELECTED TO THE POSITION ON NOVEMBER 2, 2021, PURSUANT TO SECTION 4 OF ARTICLE IX OF THE CONSTITUTION OF PENNSYLVANIA; AND

WHEREAS, PURSUANT TO SECTION 4 OF ARTICLE VI OF THE CONSTITUTION OF PENNSYLVANIA, ONLY THE HOUSE OF REPRESENTATIVES, AS A BODY, HAS THE POWER OF IMPEACHMENT; AND

WHEREAS, PURSUANT TO SECTION 6 OF ARTICLE VI OF THE CONSTITUTION OF PENNSYLVANIA, CIVIL OFFICERS LIKE DISTRICT ATTORNEY KRASNER MAY BE SUBJECT TO IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES FOR "ANY MISBEHAVIOR IN OFFICE"; AND

WHEREAS, IN ITS 1994 OPINION IN *LARSEN V. SENATE OF PENNSYLVANIA*, THE COMMONWEALTH COURT SPOKE TO THE MEANING OF THE LANGUAGE "ANY MISBEHAVIOR IN OFFICE" IN SECTION 6 OF ARTICLE VI OF THE CONSTITUTION OF PENNSYLVANIA; AND

WHEREAS, JUSTICE LARSEN ARGUED THAT THE APPLICABLE STANDARD OF "MISBEHAVIOR IN OFFICE" WAS NOTHING MORE THAN A CODIFICATION OF THE COMMON LAW OFFENSE OF MISCONDUCT IN OFFICE, MEANING "THE BREACH OF A POSITIVE STATUTORY DUTY OR THE PERFORMANCE BY A PUBLIC OFFICIAL OF A DISCRETIONARY ACT WITH AN IMPROPER OR CORRUPT MOTIVE"; AND

WHEREAS, IN ITS OPINION, THE COMMONWEALTH COURT HELD THAT EVEN IF THE STRICT DEFINITION ESPOUSED BY LARSEN WERE THE APPROPRIATE RULE, LARSEN'S CONDUCT STILL MET THAT HEAVY BURDEN. MORE IMPORTANTLY, HOWEVER, THE COURT SAID THAT THIS "STRICT DEFINITION...FINDS NO SUPPORT IN JUDICIAL PRECEDENTS." STATED DIFFERENTLY, THERE IS NO PRECEDENT THAT THE CURRENT LANGUAGE IS SO CONSTRAINED; AND

WHEREAS, THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE'S STATED MISSION AND STATUTORY PURPOSE IS, AMONG OTHER THINGS, TO PROVIDE

A VOICE FOR VICTIMS OF CRIME, PROTECT THE COMMUNITY THROUGH ZEALOUS, ETHICAL AND EFFECTIVE INVESTIGATIONS AND PROSECUTIONS, AND TO UPHOLD AND PROSECUTE VIOLATIONS OF THE LAWS OF THIS COMMONWEALTH AND THE PROVISIONS OF PHILADELPHIA'S HOME RULE CHARTER; AND

WHEREAS, DISTRICT ATTORNEY KRASNER, BY AND THROUGH HIS FAILED POLICIES AND PROCEDURES, AND THROUGHOUT THE DISCHARGE OF HIS DUTIES AS PHILADELPHIA'S CHIEF LAW ENFORCEMENT OFFICER, HAS BEEN DERELICT IN HIS OBLIGATIONS TO THE VICTIMS OF CRIME, THE PEOPLE OF THE CITY OF PHILADELPHIA AND OF THIS COMMONWEALTH AND HAS FAILED TO UPHOLD HIS OATH OF OFFICE; AND

WHEREAS, DISTRICT ATTORNEY KRASNER IS BOUND BY THE RULES OF PROFESSIONAL CONDUCT ADOPTED BY THE SUPREME COURT, WHICH SET FORTH THE MINIMAL ETHICAL REQUIREMENTS FOR ALL ATTORNEYS LICENSED TO PRACTICE LAW IN THIS COMMONWEALTH, AS WELL AS THE CODE OF JUDICIAL CONDUCT, WHICH IS APPLICABLE TO ALL DISTRICT ATTORNEYS IN THIS COMMONWEALTH. 16 PA. STAT. ANN. § 1401(O) ("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 ..."); AND

WHEREAS, THERE HAVE BEEN MULTIPLE INCIDENTS OF DISTRICT ATTORNEY KRASNER EXHIBITING UNETHICAL CONDUCT BY LACKING CANDOR TO THE COURTS OF THIS COMMONWEALTH IN VIOLATION OF RULE OF PROFESSIONAL CONDUCT 3.3, COMMITTING PROFESSIONAL MISCONDUCT IN VIOLATION OF RULE OF PROFESSIONAL CONDUCT 8.4 AND ENGAGING IN IMPROPRIETY AND OR APPEARANCES OF IMPROPRIETY IN VIOLATION OF CANON 2 OF THE CODE OF JUDICIAL CONDUCT; AND

WHEREAS, DISTRICT ATTORNEY KRASNER HAS BEEN IN OFFICE SINCE JANUARY 2018. UNDER DISTRICT ATTORNEY KRASNER'S ADMINISTRATION, AND AS DETAILED HEREIN, THE CITY HAS DESCENDED INTO AN

UNPRECEDENTED CRISIS OF LAWLESSNESS. BY WAY OF EXAMPLE ONLY, THERE WERE 562 MURDERS IN 2021, THE MOST IN THE 340-YEAR HISTORY OF THE CITY. UNDER DISTRICT ATTORNEY KRASNER, MURDERS AND VIOLENCE OCCUR IN EVERY PART OF THE CITY AT EVERY HOUR OF THE DAY. SHOOTINGS ON PUBLIC TRANSPORTATION, IN POPULATED NEIGHBORHOODS WITH FAMILIES AND CHILDREN, NEAR SCHOOLS AND IN THE CENTER CITY BUSINESS DISTRICT HAVE NOW BECOME FREQUENT AND ROUTINE. OPEN AIR DRUG MARKETS HAVE BECOME UBIQUITOUS. HE HAS DECRIMINALIZED PROSTITUTION EFFECTIVELY DESTROYING PROGRAMS DESIGNED TO RESCUE WOMEN FROM ADDICTION AND HUMAN TRAFFICKING. DISTRICT ATTORNEY KRASNER HAS DECRIMINALIZED RETAIL THEFT RESULTING IN NUMEROUS BUSINESSES LEAVING THE CITY. HE HAS RELEASED CRIMINALS BACK ON TO THE STREET WHO GO ON TO COMMIT EVEN MORE HEINOUS CRIMES OF MURDER, RAPE AND ROBBERY AGAINST THE PEOPLE OF PHILADELPHIA, THE OVERWHELMING MAJORITY OF WHOM ARE AFRICAN AMERICAN. THIS CRISIS OF CRIME AND VIOLENCE IS A DIRECT RESULT OF DISTRICT ATTORNEY KRASNER'S INCOMPETENCE, IDEOLOGICAL RIGIDITY AND REFUSAL TO PERFORM THE DUTIES HE SWORE TO CARRY OUT WHEN HE BECAME DISTRICT ATTORNEY. HE HAS DELIBERATELY EVISCERATED THE DISTRICT ATTORNEY'S OFFICE'S ABILITY TO ADEQUATELY ENFORCE THE LAWS OF THIS COMMONWEALTH; ENDANGERED THE HEALTH, WELFARE AND SAFETY OF MORE THAN 1.5 MILLION PENNSYLVANIANS THAT RESIDE IN PHILADELPHIA AND THE TENS OF MILLIONS OF AMERICANS WHO VISIT THE CITY EVERY YEAR; AND, HIS CONDUCT HAS BROUGHT THE OFFICE OF DISTRICT ATTORNEY AND THE JUSTICE SYSTEM ITSELF INTO DISREPUTE; THEREFORE BE IT

RESOLVED, THAT LAWRENCE SAMUEL KRASNER, DISTRICT ATTORNEY OF PHILADELPHIA, BE IMPEACHED FOR MISBEHAVIOR IN OFFICE AND THAT THE FOLLOWING ARTICLES OF IMPEACHMENT BE EXHIBITED TO THE SENATE PURSUANT TO SECTION 5 OF ARTICLE VI OF THE CONSTITUTION OF

PENNSYLVANIA:

ARTICLE I:

MISBEHAVIOR IN OFFICE IN THE NATURE OF DERELICTION OF DUTY AND REFUSAL TO ENFORCE THE LAW

UPON ASSUMING OFFICE, DISTRICT ATTORNEY KRASNER TERMINATED MORE THAN 30 ASSISTANT DISTRICT ATTORNEYS (ADA) FROM EMPLOYMENT WITH THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE. MANY OF THESE TERMINATED ASSISTANT DISTRICT ATTORNEYS WERE SENIOR-LEVEL STAFFERS IN SUPERVISORY ROLES WHO POSSESSED SIGNIFICANT PROSECUTORIAL EXPERIENCE AND KNOWLEDGE OF CRIMINAL PROCEDURE. DISTRICT ATTORNEY KRASNER REPLACED THIS VAST INSTITUTIONAL KNOWLEDGE IN THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE WITH ATTORNEYS WHO LACKED ANY MEANINGFUL EXPERIENCE IN PROSECUTING CRIMINAL CASES, SOME OF WHOM ONLY RECENTLY GRADUATED FROM LAW SCHOOL.

DISTRICT ATTORNEY KRASNER SUBSEQUENTLY WITHDREW THE OFFICE FROM MEMBERSHIP IN THE PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION (PDAA) BECAUSE, HE ASSERTED, PDAA SUPPORTED REGRESSIVE AND PUNITIVE POLICIES. IN WITHDRAWING FROM PDAA, DISTRICT ATTORNEY KRASNER DENIED THE ATTORNEYS IN HIS OFFICE THE ABILITY TO PARTICIPATE IN THE VARIOUS PROFESSIONAL DEVELOPMENT AND TRAINING PROGRAMS PROVIDED BY PDAA THROUGH ITS EDUCATIONAL INSTITUTE.

RATHER THAN OFFERING TRADITIONAL PROSECUTORIAL TRAINING ON SUCH SUBJECTS AS PROSECUTORIAL ETHICS, HUMAN TRAFFICKING, WITNESS EXAMINATION, TRIAL ADVOCACY, TRIAL MANAGEMENT AND ACHIEVING JUSTICE FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT VICTIMS, DISTRICT ATTORNEY KRASNER OFFERED ATTORNEYS SEMINARS, INCLUDING "A NEW VISION FOR CRIMINAL JUSTICE IN PHILADELPHIA," "DEPORTATION: THE UNFORESEEN CONSEQUENCES OF PROSECUTION IN OUR

IMMIGRANT COMMUNITY," AND "PHILADELPHIA AND SAFE INJECTION: HARM REDUCTION AS PUBLIC POLICY." THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE EVENTUALLY RETURNED TO MORE TRADITIONAL PROSECUTORIAL TRAINING, HOWEVER, THE OFFICE CONTINUED TO FOCUS ON ISSUES THAT PROMOTE DISTRICT ATTORNEY KRASNER'S RADICALLY PROGRESSIVE PHILOSOPHIES RATHER THAN HOW TO EFFECTIVELY PROSECUTE A CRIMINAL CASE.

UPON BEING ELECTED TO OFFICE, DISTRICT ATTORNEY KRASNER ESTABLISHED A SERIES OF OFFICE POLICIES WITH THE PURPORTED PURPOSE TO "END MASS INCARCERATION AND BRING BALANCE BACK TO SENTENCING," AND LATER ADOPTED A SERIES OF POLICIES RELATED TO CERTAIN CRIMES OR CLASSES OF PEOPLE. THESE POLICIES INCLUDE DIRECTIVES NOT TO CHARGE SEX WORKERS OR INDIVIDUALS FOR CERTAIN CLASSES OF CRIMES SUCH AS PROSTITUTION OR POSSESSION OF MARIJUANA AND MARIJUANA-RELATED DRUG PARAPHERNALIA.

THESE NEW POLICIES IDENTIFIED A SERIES OF OFFENSES FOR WHICH THE GRADATION MAY BE REDUCED WITH THE PURPOSE OF "REDUC[ING] PRE-TRIAL INCARCERATION RATES AS NO BAIL IS REQUIRED AND THE SHORTER TIME REQUIRED FOR HEARINGS EXPEDITES MUNICIPAL COURT AND COMMON PLEAS DOCKETS," AND REQUIRING DISPOSITION OF RETAIL THEFT CASES UNLESS THE VALUE OF THE ITEM STOLEN EXCEEDS $500 OR WHERE THE DEFENDANT HAS AN EXTENSIVE HISTORY OF THEFT CONVICTIONS.

DISTRICT ATTORNEY KRASNER INSTITUTED POLICIES TO MAKE PLEA OFFERS BELOW THE BOTTOM END OF THE MITIGATED RANGE UNDER THE SENTENCING GUIDELINES FROM THE PENNSYLVANIA SENTENCING COMMISSION AND SEEK GREATER USE OF HOUSE ARREST, PROBATION AND ALTERNATIVE SENTENCING WHEN THE SENTENCING GUIDELINES INDICATE A RANGE OF INCARCERATION OF LESS THAN 24 MONTHS.

IN FEBRUARY 2018, DISTRICT ATTORNEY KRASNER ESTABLISHED A POLICY THAT HIS OFFICE "WILL ORDINARILY NO LONGER ASK FOR CASH

BAIL FOR...MISDEMEANORS AND FELONIES" LISTED IN THE POLICY, BECAUSE "[T]HE CASH BAIL SYSTEM IS RIFE WITH INJUSTICE AND EXACERBATES SOCIO-ECONOMIC AND RACIAL INEQUALITIES, DISPROPORTIONATELY PENALIZING THE POOR AND PEOPLE OF COLOR."

IN NOVEMBER 2018, DISTRICT ATTORNEY KRASNER ADOPTED A POLICY IN WHICH A CRIMINAL DEFENDANT'S IMMIGRATION STATUS SHOULD BE CONSIDERED IN THE PLEA-BARGAINING PROCESS, EFFECTIVELY PROVIDING THAT IF AN IMMIGRATION CONSEQUENCE IS DETECTED PRE-TRIAL OR WITH RESPECT TO A SENTENCING RECOMMENDATION, COUNSEL WILL ADVISE IF AN OFFER CAN BE MADE TO AVOID THE CONSEQUENCE.

OTHER POLICIES THAT DISTRICT ATTORNEY KRASNER DIRECTED WERE AS FOLLOWS:

(1) ASSISTANT DISTRICT ATTORNEYS MAY NOT PROCEED IN CASES AGAINST DEFENDANTS DRIVING UNDER THE INFLUENCE OF CANNABIS WHEN THE DEFENDANTS' BLOOD "CONTAINS INACTIVE METABOLITE (11-NOR-9-CARBOXY-DELTA-9-THC) OR 4 OR FEWER NG/MLS OF PSYCHO-ACTIVE THC" AND THAT "IF THE DEFENSE PRESENTS EVIDENCE THAT CALLS IMPAIRMENT INTO QUESTION, AN ADA MAY CONSIDER DROPPING THE CHARGES AGAINST THE DEFENDANT."

(2) THE DISTRICT ATTORNEY'S OFFICE "WILL ONLY OPPOSE MOTIONS FOR REDACTIONS OR EXPUNGEMENTS IN LIMITED CIRCUMSTANCES" AND SETS FORTH VARIOUS SCENARIOS IN WHICH THE OFFICE WILL AGREE TO, SEEK OR NOT OPPOSE THE EXPUNGEMENT OF A DEFENDANT'S CRIMINAL HISTORY.

(3) THE DISTRICT ATTORNEY'S OFFICE DIRECTED PLEA OFFERS AND SENTENCING RECOMMENDATIONS:

(I) FOR FELONIES, "AIMED AT AN OFFICE-WIDE AVERAGE PERIOD OF TOTAL SUPERVISION AMONG CASES OF AROUND 18 MONTHS OR LESS OF TOTAL SUPERVISION, WITH A CEILING OF 3 YEARS OF TOTAL SUPERVISION OR LESS ON EACH CASE";

(II) FOR MISDEMEANORS, AIMED AT AN OFFICE-WIDE AVERAGE OF "6 MONTHS OR LESS OF TOTAL SUPERVISION, WITH A CEILING OF 1 YEAR";

(III) FOR ALL MATTERS, FOR "CONCURRENT SENTENCES"; AND

(IV) FOR CASES INVOLVING INCARCERATION, "FOR A PERIOD OF PAROLE THAT IS NO LONGER THAN THE PERIOD OF INCARCERATION."

NEARLY ALL OF DISTRICT ATTORNEY KRASNER'S POLICIES "CREATE A PRESUMPTION" FOR ADAS TO FOLLOW AND REQUIRE APPROVAL FROM DISTRICT ATTORNEY KRASNER HIMSELF OR A FIRST ASSISTANT DISTRICT ATTORNEY FOR DEVIATIONS FROM THE POLICIES.

DISTRICT ATTORNEY KRASNER, IN AN APRIL 2021 REPORT PUBLISHED BY THE DISTRICT ATTORNEY'S OFFICE (DAO) TITLED "ENDING MASS SUPERVISION: EVALUATING REFORMS," WROTE IN HIS OPENING LETTER: "I AM PROUD OF THE WORK THIS OFFICE HAS DONE TO MAKE PHILADELPHIANS, PARTICULARLY PHILADELPHIANS OF COLOR, FREER FROM UNNECESSARY GOVERNMENT INTRUSION, WHILE KEEPING OUR COMMUNITIES SAFE." IN REALITY, THE POLICIES AND PRACTICES OF THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE INSTITUTED UNDER THE DIRECTION OF DISTRICT ATTORNEY KRASNER HAVE LED TO CATASTROPHIC CONSEQUENCES FOR THE PEOPLE OF THE CITY OF PHILADELPHIA.

ACCORDING TO THE CITY CONTROLLER, SPIKES IN GUN VIOLENCE AND HOMICIDES HAVE DRAMATICALLY IMPACTED HISTORICALLY DISADVANTAGED NEIGHBORHOODS, AND THOSE NEIGHBORHOODS ARE "PRIMARILY LOW-INCOME WITH PREDOMINATELY BLACK OR AFRICAN AMERICAN RESIDENTS." THE PHILADELPHIA POLICE DEPARTMENT (PPD) REPORTS THAT THE NUMBER OF HOMICIDE VICTIMS HAS INCREASED EVERY YEAR SINCE 2016, MORE THAN DOUBLING FROM 2016 TO 2021, WITH A YEAR-OVER-YEAR INCREASE OF 40% BETWEEN 2019 AND 2020. AS OF OCTOBER 16, 2022, THERE HAVE

ALREADY BEEN 430 HOMICIDES IN THE CITY OF PHILADELPHIA IN 2022. AS OF OCTOBER 17, 2022, REPORTED TRENDS GATHERED FROM THE PPD'S "INCIDENT" DATA, WHICH TRACKS THE REPORTING OF ALL CRIMES IN ADDITION TO HOMICIDES, SHOWS A 12% INCREASE IN ALL REPORTED OFFENSES, A 6% INCREASE IN VIOLENT OFFENSES AND A 21% INCREASE IN PROPERTY OFFENSES.

WHILE INCIDENTS OF VIOLENT CRIME ARE INCREASING, PROSECUTION OF CRIME BY THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE HAS DECREASED DURING THIS SAME PERIOD. IN 2016, THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE REPORTED THAT ONLY 30% OF "ALL OFFENSES" RESULTED IN A DISMISSAL OR WITHDRAWAL, BUT THAT NUMBER SPIKED TO 50% IN 2019, 54% IN 2020, 67% IN 2021 AND 65% TO DATE IN 2022.

A SIMILAR TREND IS EVIDENT WHEN FILTERING THE DATA FOR VIOLENT CRIMES, WHERE, IN 2016, THE WITHDRAWAL AND DISMISSED VIOLENT CRIME CASES ACCOUNTED FOR 48% OF ALL VIOLENT CRIME CASE OUTCOMES, BUT THAT PERCENTAGE INCREASED TO 60% IN 2019, TO 68% IN 2020, TO 70% IN 2021 AND TO 66% IN 2022 TO DATE. DATA FROM THE PENNSYLVANIA SENTENCING COMMISSION RELATING TO VIOLATIONS OF THE UNIFORM FIREARMS ACT (VUFA) EVIDENCES A SIMILAR JARRING TREND. THE SENTENCING COMMISSION REPORTS THAT GUILTY DISPOSITIONS IN THE CITY OF PHILADELPHIA DECLINED FROM 88% IN 2015 TO 66% IN 2020, COMPARED TO A DECLINE FROM 84% TO 72% IN COUNTIES OF THE SECOND CLASS, WITH THE DRIVER OF THE DECREASE BEING NOLLE PROS DISPOSITIONS. AS COMPARED TO THE STATEWIDE DATA AND OTHER COUNTY CLASSES, IN THE CITY OF PHILADELPHIA THE PERCENT OF GUILTY VERDICTS HAS DECREASED SIGNIFICANTLY, WHILE THE PERCENT OF NOLLE PROSSED CASES HAS INCREASED.

STUDIES BY THE DELAWARE VALLEY INTELLIGENCE CENTER (DVIC) ATTEMPTED TO PROVIDE "AN EXPLANATION FOR THE INCREASE IN

HOMICIDES AND SHOOTINGS IN AN EFFORT TO BEGIN A CONVERSATION TO ADDRESS THE CHALLENGE AT A STRATEGIC LEVEL," AND, SIGNIFICANTLY, THE REPORT NOTES:

"THE RATE OF PROSECUTION DISMISSAL AND WITHDRAWAL HAS BEEN INCREASE [SIC] SUBSTANTIALLY SINCE 2015 UNDER DA [SETH] WILLIAMS, AND HAS CONTINUED TO INCREASE AFTER DA KRASNER TOOK OFFICE. FURTHERMORE, A CLOSER EXAMINATION OF THESE DROPPED CASES INDICATES THAT MORE CASES ARE DISMISSED/WITHDRAWN AT THE PRELIMINARY HEARING STATE [SIC] UNDER DA KRASNER THAN THE ACTUAL TRIAL STATE []. THIS IMPLIES THAT, EVEN WHEN CRIMINALS ARE CAUGHT WITH A GUN, THEY ARE SWIFTLY FINDING OUT THEY MAY NOT RECEIVE AS SIGNIFICANT A CONSEQUENCE AS THEY HAD HISTORICALLY. NOTABLY, THE LIKELIHOOD OF BEING ARRESTED IS LOW TO BEGIN WITH. THIS MEANS THAT, CRIMINALS KNOW THAT THEIR LIKELIHOOD OF GETTING CAUGHT WITH A GUN IS SLIM AND, EVEN IF THEY GET CAUGHT, THEY FEEL THAT THEY CAN LEAVE WITHOUT SEVERE (OR ANY) CONSEQUENCES."

THE DVIC CONDUCTED A "CURSORY EXAMINATION" OF DISMISSED/WITHDRAWN CASES IN 2018/2019 AND "FOUND 6 OFFENDERS WHOSE CASES WERE DISMISSED (VUFA FORMER CONVICT CHARGE) AND GOT LATER INVOLVED IN SHOOTINGS...2 OF THESE SHOOTINGS WERE FATAL AND 4 OUT OF THESE 6 OFFENDERS WERE GANG MEMBERS."

THE DVIC STUDIED THE PROSECUTION DECLINATION FOR NARCOTICS, RETAIL THEFT AND PROSTITUTION ARRESTS FROM 2016 TO 2018, AND CONCLUDED IN ITS KEY FINDINGS THAT THE PERCENTAGE OF ALL DECLINATIONS, NOT JUST NARCOTICS, PROSTITUTION AND RETAIL THEFT, INCREASED "ESPECIALLY IN 2018" TO MORE THAN 7%, WHEN IT HAD BEEN JUST 2% OR LESS BETWEEN 2007 AND 2015.

IN SEPTEMBER 2020, THE PHILADELPHIA CITY COUNCIL AUTHORIZED THE COMMITTEE ON PUBLIC SAFETY AND THE SPECIAL COMMITTEE ON GUN VIOLENCE PREVENTION TO STUDY GUN VIOLENCE IN THE CITY. THIS

STUDY INVOLVED A COLLABORATION BETWEEN THE CONTROLLER'S OFFICE, DEFENDER ASSOCIATION, DEPARTMENT OF PUBLIC HEALTH, DISTRICT ATTORNEY'S OFFICE, FIRST JUDICIAL DISTRICT, MANAGING DIRECTOR'S OFFICE, PENNSYLVANIA ATTORNEY GENERAL AND PPD. THE PUBLISHED RESULTS, CALLED THE "100 SHOOTING REVIEW COMMITTEE REPORT," DISCUSSES TRENDS AND GENERAL FINDINGS REGARDING SHOOTINGS IN THE CITY OF PHILADELPHIA. THE PUBLISHED RESULTS SHOWED THE FOLLOWING:

(1) THE CLEARANCE RATE (*I.E.*, WHEN AN ARREST WAS MADE OR A SUSPECT THAT COULD NOT BE ARRESTED WAS IDENTIFIED) FOR FATAL SHOOTINGS IN 2020 WAS 37% AND THE RATE FOR NONFATAL SHOOTINGS WAS 18%.

(2) THERE HAS BEEN A "MARKED INCREASE" IN THE NUMBER OF PEOPLE ARRESTED FOR ILLEGAL GUN POSSESSION WITHOUT THE ACCUSATION OF AN ADDITIONAL OFFENSE, INCLUDING A DOUBLING IN ARRESTS FOR ILLEGAL POSSESSION OF A FIREARM WITHOUT A LICENSE SINCE 2018.

(3) THE INITIAL AND FINAL BAIL AMOUNTS SET BY COURTS IN ILLEGAL POSSESSION OF FIREARMS CASES DECLINED BETWEEN 2015 AND 2019 AND INCREASED IN 2020 AND 2021.

(4) CONVICTION RATES IN SHOOTING CASES DECLINED BETWEEN 2016 AND 2020 FROM 96% TO 80% IN FATAL SHOOTINGS AND FROM 69% TO 64% IN NONFATAL SHOOTINGS.

(5) THERE IS A LONG-TERM TREND OF A REDUCTION IN CONVICTION RATES FOR ILLEGAL GUN POSSESSION CASES, DROPPING FROM 65% IN 2015 TO 45% IN 2020.

IN AUGUST 2022, THE PHILADELPHIA POLICE COMMISSIONER INDICATED THAT HER DEPARTMENT IS SHORT-STAFFED BY APPROXIMATELY 20%, OR 1,300 OFFICERS, DUE TO LOW MORALE, POLITICS, INCREASED SCRUTINY AND "UNIQUELY STRINGENT HIRING REQUIREMENTS" DURING A

NATIONWIDE SHORTAGE.

POLICE COMMISSIONER DANIELLE OUTLAW STATED, "THE TRUTH IS THE HOMICIDES ARE NOT HAPPENING IN A VACUUM - THERE ARE THOSE WHO ARE DETERMINED TO ATTACK AND KILL THEIR VICTIMS. WHILE WE ARE MAKING CONSTANT ADJUSTMENTS TO MITIGATE THIS SICKENING REALITY, OUR OFFICERS, SIMPLY PUT, JUST CAN'T KEEP UP BY BEING EVERYWHERE AT ALL TIMES." WHILE THE PPD MAY ARREST A SUSPECT FOR THE COMMISSION OF A CRIME, THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE IS ONE OF THE FEW DISTRICT ATTORNEY'S OFFICES IN THIS COMMONWEALTH THAT RESERVES UNTO ITSELF THE AUTHORITY TO CHARGE A PERSON FOR A CRIMINAL ACT.

IN OCTOBER 2022, FOLLOWING YET ANOTHER ACT OF VIOLENCE AGAINST POLICE IN THE CITY OF PHILADELPHIA, POLICE COMMISSIONER DANIELLE OUTLAW ISSUED THE FOLLOWING STATEMENT:

"WE ARE TIRED OF ARRESTING THE SAME SUSPECTS OVER AND OVER AGAIN, ONLY TO SEE THEM RIGHT BACK OUT ON THE STREET TO CONTINUE AND SOMETIMES ESCALATE THEIR CRIMINAL WAYS. WE ARE TIRED OF HAVING TO SEND OUR OFFICERS INTO HARM'S WAY TO SERVE WARRANTS ON SUSPECTS WHO HAVE NO BUSINESS BEING ON THE STREET IN THE FIRST PLACE.

NO - NOT EVERYONE NEEDS TO BE IN JAIL. BUT WHEN WE REPEATEDLY SEE THE EXTENSIVE CRIMINAL HISTORIES OF THOSE WE ARREST FOR VIOLENT CRIME, THE QUESTION NEEDS TO BE ASKED AS TO WHY THEY WERE YET AGAIN BACK ON THE STREET AND TERRORIZING OUR COMMUNITIES.

I AM BEYOND DISGUSTED BY THIS VIOLENCE. OUR ENTIRE DEPARTMENT IS SICKENED BY WHAT IS HAPPENING TO THE PEOPLE THAT LIVE, WORK, AND VISIT OUR CITY. RESIDENTS ARE TIRED OF IT. BUSINESS OWNERS ARE TIRED OF IT. OUR CHILDREN ARE TIRED OF IT.

WE ARE LONG PAST 'ENOUGH IS ENOUGH'."

ACTS OF VIOLENCE, AND PARTICULARLY VIOLENT CRIMES COMMITTED WITH FIREARMS, HAVE EXACTED A HEAVY TOLL ON VICTIMS AND THEIR FAMILIES, WITH COUNTLESS LIVES UNNECESSARILY LOST OR IRRETRIEVABLY BROKEN, DUE TO THE INCREASE OF VIOLENT CRIME IN THE CITY OF PHILADELPHIA. THE FOREGOING ACTS CONSTITUTE "MISBEHAVIOR IN OFFICE" BY DISTRICT ATTORNEY KRASNER IN THAT SUCH ACTS HAVE SUBSTANTIALLY CONTRIBUTED TO THE INCREASE IN CRIME IN THE CITY OF PHILADELPHIA, UNDERMINED CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM, AND BETRAYED THE TRUST OF THE CITIZENS OF PHILADELPHIA AND THE COMMONWEALTH.

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE II:

MISBEHAVIOR IN OFFICE IN THE NATURE OF OBSTRUCTION OF HOUSE SELECT COMMITTEE INVESTIGATION

HOUSE RESOLUTION 216 OF 2022 ESTABLISHED THE HOUSE SELECT COMMITTEE TO RESTORE LAW AND ORDER PURSUANT TO RULE 51 OF THE GENERAL OPERATING RULES OF THE HOUSE. THE SELECT COMMITTEE IS AUTHORIZED AND EMPOWERED "TO INVESTIGATE, REVIEW AND MAKE FINDING AND RECOMMENDATIONS CONCERNING RISKING RATES OF CRIME, LAW ENFORCEMENT AND THE ENFORCEMENT OF CRIME VICTIM RIGHTS," IN THE CITY OF PHILADELPHIA.

HOUSE RESOLUTION 216 FURTHER CHARGES THE SELECT COMMITTEE TO MAKE FINDINGS AND RECOMMENDATIONS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(1) DETERMINATIONS REGARDING THE PERFORMANCE OF PUBLIC OFFICIALS EMPOWERED TO ENFORCE THE LAW IN THE CITY OF PHILADELPHIA, INCLUDING THE DISTRICT ATTORNEY, AND

RECOMMENDATIONS FOR REMOVAL FROM OFFICE OR OTHER APPROPRIATE DISCIPLINE, INCLUDING IMPEACHMENT.

(2) LEGISLATION OR OTHER LEGISLATIVE ACTION RELATING TO POLICING, PROSECUTION, SENTENCING AND ANY OTHER ASPECT OF LAW ENFORCEMENT.

(3) LEGISLATION OR OTHER LEGISLATIVE ACTION RELATING TO ENSURING THE PROTECTION, ENFORCEMENT AND DELIVERY OF APPROPRIATE SERVICES AND COMPENSATION TO CRIME VICTIMS.

(4) LEGISLATION OR OTHER LEGISLATIVE ACTION RELATING TO ENSURING THE APPROPRIATE EXPENDITURE OF PUBLIC FUNDS INTENDED FOR THE PURPOSE OF LAW ENFORCEMENT, PROSECUTIONS OR TO BENEFIT CRIME VICTIMS.

(5) OTHER LEGISLATIVE ACTION AS THE SELECT COMMITTEE FINDS NECESSARY TO ENSURE APPROPRIATE ENFORCEMENT OF LAW AND ORDER IN THE CITY OF PHILADELPHIA.

IN PURSUIT OF THESE OBLIGATIONS, THE RESOLUTION EMPOWERS THE SELECT COMMITTEE CHAIR TO, AMONG OTHER THINGS, "SEND FOR INDIVIDUALS AND PAPERS AND SUBPOENA WITNESSES, DOCUMENTS, INCLUDING ELECTRONICALLY STORED INFORMATION, AND ANY OTHER MATERIALS UNDER THE HAND AND SEAL OF THE CHAIR." THE CHAIR ISSUED SUBPOENAS TO A NUMBER OF PHILADELPHIA MUNICIPAL OFFICES, INCLUDING THE CONTROLLER, THE MAYOR, THE POLICE DEPARTMENT, THE SHERIFF'S OFFICE, THE TREASURER AND THE DISTRICT ATTORNEY'S OFFICE. THE SUBPOENAS SOUGHT NONPRIVILEGED RECORDS NECESSARY TO FULFILL THE SELECT COMMITTEE'S OBLIGATIONS TO THE HOUSE OF REPRESENTATIVES PURSUANT TO HOUSE RESOLUTION 216.

WHILE OTHER MUNICIPAL OFFICES WORKED COOPERATIVELY WITH THE SELECT COMMITTEE TO RESPOND TO THE SUBPOENAS ISSUED TO THEM, DISTRICT ATTORNEY KRASNER AND HIS OFFICE CHOSE INSTEAD TO OBSTRUCT THE SELECT COMMITTEE'S WORK AT EVERY TURN. DISTRICT

ATTORNEY KRASNER AND HIS OFFICE ASSERTED THAT THE SELECT COMMITTEE WAS ILLEGITIMATE AND THAT ITS SUBPOENAS SERVED "NO VALID LEGISLATIVE PURPOSE, VIOLATING THE SEPARATION OF POWERS, INVADING LEGAL PRIVILEGES, AND SEEKING TO DENY THE CONSTITUTIONAL RIGHTS OF PHILADELPHIA'S CITIZENS, ESPECIALLY THEIR DEMOCRATIC RIGHT TO VOTE AND CHOOSE THEIR LOCAL LEADERS."

DISTRICT ATTORNEY KRASNER ASSERTED VARIOUS CLAIMS THAT HELD NO BASIS IN FACT OR LAW, INCLUDING THE FOLLOWING:

(1) DISTRICT ATTORNEYS ARE NOT SUBJECT TO IMPEACHMENT.

(2) IMPEACHING THE DISTRICT ATTORNEY VIOLATES THE CONSTITUTIONAL RIGHTS OF THE PEOPLE WHO VOTED FOR HIM.

(3) THE DISTRICT ATTORNEY COMMITTED NO WRONG, AND THEREFORE WAS NOT REQUIRED TO COMPLY WITH THE COMMITTEE CHAIR'S SUBPOENA.

(4) IMPEACHMENT OF A PUBLIC OFFICIAL REQUIRES A CONVICTION FOR A CRIMINAL ACT; AND

DISTRICT ATTORNEY KRASNER AND HIS OFFICE REFUSED TO SEARCH FOR OR PRODUCE ANY DOCUMENTS IN RESPONSE TO THE SUBPOENA. DESPITE MULTIPLE ATTEMPTS BY COUNSEL TO THE SELECT COMMITTEE CHAIR TO BRING DISTRICT ATTORNEY KRASNER AND HIS OFFICE INTO COMPLIANCE WITH THE SUBPOENAS, EXPLAINING ON MULTIPLE OCCASIONS THAT THE SELECT COMMITTEE WAS SEEKING NONPRIVILEGED RECORDS AND, AS IT RELATED TO ANY RECORD FOR WHICH THE DISTRICT ATTORNEY BELIEVED WERE PRIVILEGED, THE DISTRICT ATTORNEY SHOULD FOLLOW COMMON PRACTICE IN RESPONDING TO A SUBPOENA BY PROVIDING A PRIVILEGE LOG TO IDENTIFY THOSE RECORDS FOR WHICH THE DISTRICT ATTORNEY ASSERTS A PRIVILEGE.

ON SEPTEMBER 12, 2022, AFTER MULTIPLE EXCHANGES BETWEEN COUNSEL AND A REQUEST TO SHOW CAUSE WHY THE DISTRICT ATTORNEY SHOULD NOT BE HELD IN CONTEMPT BY THE HOUSE, THE SELECT

COMMITTEE ISSUED AN INTERIM REPORT PURSUANT TO RULE 51 OF THE GENERAL OPERATING RULES OF THE HOUSE OF REPRESENTATIVES, NOTIFYING THE HOUSE OF DISTRICT ATTORNEY KRASNER'S REFUSAL TO COMPLY WITH THE SUBPOENA AND RECOMMENDING THAT THE HOUSE CONSIDER CONTEMPT PROCEEDINGS.

THE HOUSE OF REPRESENTATIVES ADOPTED HOUSE RESOLUTION 227 ON SEPTEMBER 13, 2022, RESOLVING THAT THE HOUSE HOLD DISTRICT ATTORNEY KRASNER IN CONTEMPT. HOUSE RESOLUTION 227 WAS ADOPTED BY A BIPARTISAN VOTE OF 162 TO 38.

DISTRICT ATTORNEY KRASNER FILED AN ACTION IN COMMONWEALTH COURT ON SEPTEMBER 2, 2022, IN WHICH HE RAISED THE SAME ARGUMENTS THAT FAIL TO HAVE ANY MEANINGFUL BASIS IN LAW OR FACT. DISTRICT ATTORNEY KRASNER AND HIS OFFICE HAVE SINCE FEIGNED PARTIAL COMPLIANCE WITH THE SUBPOENA, PROVIDING SEVERAL PUBLIC-FACING RECORDS OBTAINED WITHOUT THE NEED TO ENGAGE IN ANY LEGITIMATE EFFORT TO SEARCH FOR THE RECORDS.

THE SELECT COMMITTEE CHAIR INVITED DISTRICT ATTORNEY KRASNER TO TESTIFY BEFORE THE SELECT COMMITTEE IN EXECUTIVE SESSION ON OCTOBER 21, 2022. DISTRICT ATTORNEY KRASNER REFUSED TO TESTIFY IN EXECUTIVE SESSION, DEMANDING A PUBLIC HEARING INSTEAD. DISTRICT ATTORNEY KRASNER THEN PUBLISHED A PRESS RELEASE WHICH WAS MISLEADING AT BEST, MISCHARACTERIZING THE INVITATION TO DISTRICT ATTORNEY KRASNER TO TESTIFY IN YET ANOTHER MOMENT OF GRANDSTANDING.

GIVEN THE DISTRICT ATTORNEY'S REJECTION OF THE INVITATION TO TESTIFY IN EXECUTIVE SESSION, THE SELECT COMMITTEE WAS COMPELLED TO CANCEL THE HEARING.

DISTRICT ATTORNEY KRASNER HAS, AT EVERY TURN, OBSTRUCTED THE EFFORTS OF THE HOUSE SELECT COMMITTEE ON RESTORING LAW AND ORDER. HE HAS CONSISTENTLY RAISED SPECIOUS CLAIMS WITHOUT A GOOD

FAITH BASIS IN LAW OR FACT. EVEN AFTER THE HOUSE OF REPRESENTATIVES RESOLVED TO HOLD HIM IN CONTEMPT, DISTRICT ATTORNEY KRASNER'S EFFORTS TO COMPLY WITH SUBPOENAS ISSUED BY THE SELECT COMMITTEE CHAIR FALL FAR SHORT OF WHAT CAN BE CONSIDERED A REASONABLE GOOD FAITH EFFORT.

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE III:

MISBEHAVIOR IN OFFICE IN THE NATURE OF VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT AND CODE OF JUDICIAL CONDUCT; SPECIFICALLY RULE 3.3 CANDOR TOWARD THE TRIBUNAL, RULE 8.4 PROFESSIONAL MISCONDUCT, AND CANON 2 OF THE CODE OF JUDICIAL CONDUCT IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN THE MATTER OF *ROBERT WHARTON V. DONALD T. VAUGHN*

IN THE FEDERAL HABEAS CORPUS PROCEEDING IN *ROBERT WHARTON V. DONALD T. VAUGHN*, FEDERAL DISTRICT COURT JUDGE GOLDBERG ISSUED A MEMORANDUM ORDER ADMONISHING AND SANCTIONING THE DISTRICT ATTORNEY'S OFFICE. ROBERT WHARTON WAS CONVICTED OF MURDERING THE PARENTS OF SURVIVOR LISA HART-NEWMAN, WHO WAS SEVEN MONTHS OLD AT THE TIME AND WAS LEFT TO FREEZE TO DEATH WITH HER DECEASED PARENTS BY MR. WHARTON.

AFTER HIS CONVICTION, WHARTON PURSUED A DEATH PENALTY HABEAS PETITION IN THE FEDERAL DISTRICT COURT. THE DISTRICT ATTORNEY'S OFFICE UNDER PRIOR ADMINISTRATIONS HAD OPPOSED THIS PETITION.

IN 2019, DISTRICT ATTORNEY KRASNER'S ADMINISTRATION FILED A "NOTICE OF CONCESSION OF PENALTY PHASE RELIEF," STATING THAT IT WOULD NOT SEEK A NEW DEATH SENTENCE, AND, BASED ON THAT

SENTENCING RELIEF, THE LITIGATION AND APPEALS COULD END. THE CONCESSION NOTED ONLY THAT THE DECISION TO CONCEDE WAS MADE "[F]OLLOWING REVIEW OF THIS CASE BY THE CAPITAL CASE REVIEW COMMITTEE OF THE PHILADELPHIA [DISTRICT ATTORNEY'S OFFICE], COMMUNICATION WITH THE VICTIMS' FAMILY, AND NOTICE TO [WHARTON'S] COUNSEL."

JUDGE GOLDBERG UNDERTOOK AN INDEPENDENT ANALYSIS OF THE MERITS OF THE CLAIM AND INVITED THE PENNSYLVANIA OFFICE ATTORNEY GENERAL (OAG) TO FILE AN AMICUS BRIEF IN THE CASE. IN ITS AMICUS, THE OAG SUBMITTED ADDITIONAL FACTS THAT THE DISTRICT ATTORNEY'S OFFICE HAD NOT DISCLOSED, INCLUDING EVIDENCE OF PRISON MISCONDUCTS, ATTEMPTED ESCAPES AND DEPARTMENT OF CORRECTIONS CONCERNS REGARDING "ASSAULTIVENESS" AND "ESCAPE" BY MR. WHARTON.

THE OAG CONCLUDED THAT "GIVEN THE FACTS OF THIS INVESTIGATION AND AGGRAVATING SENTENCING FACTORS PRESENT IN THIS CASE, WHARTON COULD NOT ESTABLISH A REASONABLE PROBABILITY THAT THE OUTCOME OF HIS PENALTY PHASE DEATH SENTENCE WOULD HAVE BEEN DIFFERENT IF THE JURY HAD HEARD EVIDENCE OF HIS ALLEGED 'POSITIVE' PRISON ADJUSTMENT."

THE OAG FURTHER DETERMINED THAT MEMBERS OF THE FAMILY, INCLUDING VICTIM MS. HART-NEWMAN, WERE NOT CONTACTED AND THAT THEY OPPOSED THE CONCESSION BY THE DISTRICT ATTORNEY'S OFFICE.

AFTER AN EVIDENTIARY HEARING, JUDGE GOLDBERG HELD AS FOLLOWS:

(1) THE DISTRICT ATTORNEY'S OFFICE FAILED TO ADVISE THE COURT OF SIGNIFICANT ANTI-MITIGATION EVIDENCE, INCLUDING THAT MR. WHARTON HAD MADE AN ESCAPE ATTEMPT AT A COURT APPEARANCE.

(2) TWO OF THE OFFICE'S SUPERVISORS VIOLATED FEDERAL RULE OF CIVIL PROCEDURE 11(B)(3) "BASED UPON THAT OFFICE'S REPRESENTATIONS TO THIS COURT THAT LACKED EVIDENTIARY SUPPORT

AND WERE NOT IN ANY WAY FORMED AFTER 'AN INQUIRY REASONABLE UNDER THE CIRCUMSTANCES.'"

(3) REPRESENTATIONS OF COMMUNICATION WITH THE VICTIMS' FAMILY WERE "MISLEADING," "FALSE," AND "YET ANOTHER REPRESENTATION TO THE COURT MADE AFTER AN INQUIRY THAT WAS NOT REASONABLE UNDER THE CIRCUMSTANCES."

(4) THE LAW DIVISION SUPERVISOR, ASSISTANT SUPERVISOR AND DISTRICT ATTORNEY'S OFFICE VIOLATED RULE 11(B)(1), AND CONCLUDING THAT THE VIOLATION WAS "SUFFICIENTLY 'EGREGIOUS' AND 'EXCEPTIONAL' UNDER THE CIRCUMSTANCES TO WARRANT SANCTIONS."

JUDGE GOLDBERG IMPOSED NONMONETARY SANCTIONS ON THE DISTRICT ATTORNEY'S OFFICE, REQUIRING THAT SEPARATE WRITTEN APOLOGIES BE SENT TO THE VICTIM, LISA HART-NEWMAN, AND THE VICTIM'S FAMILY MEMBERS. GIVEN THE TESTIMONY OF THE TWO LAW DIVISION SUPERVISORS THAT DISTRICT ATTORNEY KRASNER APPROVED AND IMPLEMENTED INTERNAL PROCEDURES THAT CREATED THE NEED FOR THIS SANCTION, AND THAT THE DISTRICT ATTORNEY HAD THE SOLE, ULTIMATE AUTHORITY TO DIRECT THAT THE MISLEADING NOTICE OF CONCESSION BE FILED, THEREFORE "THE APOLOGIES SHALL COME FROM THE DISTRICT ATTORNEY, LAWRENCE KRASNER, PERSONALLY."

DISTRICT ATTORNEY KRASNER HAS THE SOLE AUTHORITY TO APPROVE COURT FILINGS ON BEHALF OF PHILADELPHIA DISTRICT ATTORNEY'S OFFICE. WHILE IN OFFICE, DISTRICT ATTORNEY KRASNER DIRECTED, APPROVED AND OR PERMITTED THE FILING OF A "NOTICE OF CONCESSION" AND PRESENTATION OF OTHER PLEADINGS AND STATEMENTS IN FEDERAL COURT WHICH CONTAINED MATERIALLY FALSE AND OR MISLEADING AFFIRMATIVE STATEMENTS AND PURPOSEFUL OMISSIONS OF FACT IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT, RULE 3.3 (CANDOR TOWARD THE TRIBUNAL) AND RULE 8.4 (PROFESSIONAL

MISCONDUCT), AND CODE OF JUDICIAL CONDUCT, CANON 2 (IMPROPRIETY AND OR APPEARANCE OF IMPROPRIETY).

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE IV:

MISBEHAVIOR IN OFFICE IN THE NATURE OF VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT; SPECIFICALLY RULE 3.3 CANDOR TOWARD THE TRIBUNAL, RULE 8.4 PROFESSIONAL MISCONDUCT, AND CANON 2 OF THE CODE OF JUDICIAL CONDUCT IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN THE MATTER OF *COMMONWEALTH VS. POWNALL*

IN HIS SPECIAL CONCURRENCE IN *COMMONWEALTH V. POWNALL*, SUPREME COURT JUSTICE DOUGHERTY HIGHLIGHTED WHAT HE FEARED TO BE AN EFFORT BY THE DISTRICT ATTORNEY'S OFFICE TO DEPRIVE CERTAIN DEFENDANTS OF A FAIR AND SPEEDY TRIAL. FOLLOWING THE JUNE 2017 INCIDENT IN WHICH FORMER PHILADELPHIA POLICE OFFICER RYAN POWNALL SHOT AND KILLED DAVID JONES, THE DISTRICT ATTORNEY'S OFFICE SUBMITTED THE MATTER TO AN INVESTIGATIVE GRAND JURY. THE INVESTIGATING GRAND JURY ISSUED A PRESENTMENT RECOMMENDING THAT POWNALL BE CHARGED WITH CRIMINAL HOMICIDE, POSSESSION OF AN INSTRUMENT OF CRIME AND RECKLESSLY ENDANGERING ANOTHER PERSON; AND

DURING TRIAL, THE PROSECUTOR FILED A MOTION IN LIMINE TO PRECLUDE THE STANDARD PEACE OFFICER JUSTIFICATION DEFENSE INSTRUCTION, BASED ON THE ASSERTION THAT THE INSTRUCTION, WHICH LARGELY TRACKED LANGUAGE OF STATUTE, VIOLATED FOURTH AMENDMENT PROHIBITION AGAINST UNREASONABLE SEARCH AND SEIZURE. THE MOTION WAS DENIED AND THE PROSECUTION APPEALED TO THE SUPERIOR COURT,

WHICH QUASHED THE APPEAL AS UNAUTHORIZED. THE SUPREME COURT GRANTED THE PROSECUTOR'S REQUEST FOR ALLOWANCE OF APPEAL.

THE SUPREME COURT ULTIMATELY DENIED THE APPEAL, BUT THE SPECIAL CONCURRENCE FILED BY JUSTICE DOUGHERTY ILLUMINATED STARTLING BEHAVIOR BY THE DISTRICT ATTORNEY'S OFFICE. JUSTICE DOUGHERTY HELD THAT THE DISTRICT ATTORNEY'S OFFICE'S ACTIONS DURING GRAND JURY PROCESS "IMPLICATE[S] A POTENTIAL ABUSE" AND STATED THAT "THE PRESENTMENT IN THIS CASE IS PERHAPS BEST CHARACTERIZED AS A 'FOUL BLOW.'" HE REFERRED TO THE GRAND JURY PRESENTMENT, AUTHORED BY THE DISTRICT ATTORNEY'S OFFICE, AS A "GRATUITOUS NARRATIVE."

JUSTICE DOUGHERTY ALSO RECOGNIZED THAT ANY ABUSE OF THE GRAND JURY COULD HAVE BEEN REMEDIED BY "STATUTORY SAFEGUARDS EMBEDDED IN THE PROCESS," SUCH AS A PRELIMINARY HEARING. HE WENT ON TO SAY "WHAT IS TROUBLING IS THE DAO'S EFFORT TO ENSURE THAT WOULD NOT OCCUR," *I.E.*, THEIR FILING OF A MOTION TO BYPASS THE PRELIMINARY HEARING.

JUSTICE DOUGHERTY FOUND IT "INEXPLICABLE" THAT, IN PRESENTING A BYPASS MOTION TO THE COURT OF COMMON PLEAS, THE DISTRICT ATTORNEY'S OFFICE FAILED TO HIGHLIGHT THE INVESTIGATING GRAND JURY ACT SECTION 4551(E), WHICH DIRECTS THAT A DEFENDANT "SHALL" BE ENTITLED TO A PRELIMINARY HEARING. HE EMPHASIZED THAT THE DISTRICT ATTORNEY'S OFFICE "APPEAR[ED] TO HAVE KNOWN [ABOUT THAT REQUIREMENT] AT THE TIME IT FILED ITS MOTION."

AS IT RELATED TO THE PROSECUTOR'S MOTION IN LIMINE AND INTERLOCUTORY APPEAL, JUSTICE DOUGHERTY OBSERVED THAT THE DISTRICT ATTORNEY'S OFFICE'S MOTION "PRESENTED ONLY HALF THE RELEVANT PICTURE." HE WENT ON TO SAY THAT "THIS TYPE OF ADVOCACY WOULD BE WORRISOME COMING FROM ANY LITIGANT," BUT COMING FROM A PROSECUTOR, "IS EVEN MORE CONCERNING, PARTICULARLY IN LIGHT OF

THE MOTION'S TIMING...." HE CITED DIRECTLY TO PENNSYLVANIA RULE OF PROFESSIONAL CONDUCT 3.3 REGARDING CANDOR TO THE TRIBUNAL.

FURTHER REFERENCING ETHICAL CONCERNS, JUSTICE DOUGHERTY FOUND THAT THE TIMING OF THE MOTION IN LIMINE, "[W]HEN COMBINED WITH THE OTHER TACTICS HIGHLIGHTED THROUGHOUT THIS CONCURRENCE," COULD LEAD TO THE CONCLUSION THAT THE DECISION TO TAKE "AN UNAUTHORIZED INTERLOCUTORY APPEAL WAS INTENDED TO DEPRIVE [MR. POWNALL] OF A FAIR AND SPEEDY TRIAL." JUSTICE DOUGHERTY WENT ON TO SAY:

> NOW, FOR THE FIRST TIME BEFORE THIS COURT, THE DAO FINALLY ADMITS ITS TRUE INTENT IN ALL THIS WAS SIMPLY TO USE POWNALL'S CASE AS A VEHICLE TO FORCE JUDICIAL DETERMINATION ON 'WHETHER SECTION 508(A)(1) IS FACIALLY UNCONSTITUTIONAL.' DAO'S REPLY BRIEF AT 1; SEE ID. AT 6 (ASSERTING SECTION 508'S APPLICABILITY TO [POWNALL] IS NOT THE SUBJECT OF THIS APPEAL"). WHAT'S MORE, DESPITE HAVING ASSURED THE TRIAL COURT IT WAS NOT TRYING 'TO BAR [POWNALL] FROM A DEFENSE[.]' N.T. 11/25/2019 AT 8, THE DAO NOW BOLDLY ASSERTS IT WOULD BE APPROPRIATE FOR THIS COURT TO REWRITE THE LAW AND RETROACTIVELY APPLY IT TO POWNALL'S CASE BECAUSE HE SUPPOSEDLY 'HAD FAIR NOTICE OF HIS INABILITY TO RELY ON THIS UNCONSTITUTIONAL DEFENSE[.]' DAO'S BRIEF AT 10.

JUSTICE DOUGHERTY CONCLUDED, "LITTLE THAT HAS HAPPENED IN THIS CASE UP TO THIS POINT REFLECTS PROCEDURAL JUSTICE. ON THE CONTRARY, THE DAO'S PROSECUTION OF POWNALL APPEARS TO BE "DRIVEN BY A WIN-AT-ALL-COST OFFICE CULTURE" THAT TREATS POLICE OFFICERS DIFFERENTLY THAN OTHER CRIMINAL DEFENDANTS. DAO CONVICTION INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2 (JUNE 15, 2021) AVAILABLE AT TINYURL.COM/CIU REPORT (LAST VISITED JULY 19, 2022). THIS IS THE ANTITHESIS OF WHAT THE LAW

EXPECTS OF A PROSECUTOR."

ON REMAND, COMMON PLEAS COURT JUDGE MCDERMOTT SAID THAT THERE WERE "SO MANY THINGS WRONG" WITH THE DISTRICT ATTORNEY'S OFFICE'S INSTRUCTIONS TO THE INVESTIGATING GRAND JURY THAT IT WARRANTED DISMISSING ALL CHARGES AGAINST MR. POWNALL. AFTER HEARING TESTIMONY FROM THE ASSISTANT DISTRICT ATTORNEYS WHO HANDLED THE GRAND JURY AND PREPARATION OF THE PRESENTMENT, JUDGE MCDERMOTT CONCLUDED THAT THE DISTRICT ATTORNEY'S OFFICE FAILED TO PROVIDE THE LEGAL INSTRUCTIONS TO THE GRAND JURORS ON THE DEFINITIONS FOR HOMICIDE AND INFORMATION REGARDING THE USE-OF-FORCE DEFENSE.

IN HER OCTOBER 17, 2022, STATEMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW, JUDGE MCDERMOTT STATED, "THE COMMONWEALTH MADE AN INTENTIONAL, DELIBERATE CHOICE NOT TO INFORM THE GRAND JURORS ABOUT THE JUSTIFICATION DEFENSE UNDER SECTION 508. WHILE [THE ADA] WAS AWARE OF SECTION 508 AND ITS APPLICABILITY TO THE DEFENDANT'S CASE AT THE TIME OF THE GRAND JURY PROCEEDINGS, SHE DECIDED NOT TO ADVISE THE GRAND JURY ABOUT SECTION 508 AFTER CONSULTING WITH OTHER, MORE SENIOR ASSISTANT DISTRICT ATTORNEYS."

AS IT RELATED TO POWNALL'S RIGHT TO A PRELIMINARY HEARING, JUDGE MCDERMOTT WROTE:

> IN ITS MOTION TO BYPASS THE PRELIMINARY HEARING, THE COMMONWEALTH DEMONSTRATED A LACK OF CANDOR TO THE COURT BY MISSTATING THE LAW AND PROVIDING JUDGE COLEMAN WITH INCORRECT CASE LAW.
>
> * * *
>
> THE COMMONWEALTH WAS ALSO DISINGENUOUS WITH THE COURT WHEN IT ASSERTED THAT IT HAD GOOD CAUSE TO BYPASS THE PRELIMINARY HEARING UNDER PA.R.CRIM.P. 565(A) BECAUSE OF THE

COMPLEXITY OF THE CASE, THE LARGE NUMBER OF WITNESSES THE COMMONWEALTH WOULD HAVE TO CALL, THE EXPENSE, AND THE DELAY CAUSED BY A PRELIMINARY HEARING. AS A PRELIMINARY HEARING WAS NOT HELD IN THIS CASE, THE DEFENDANT'S DUE PROCESS RIGHTS WERE VIOLATED AND THE DEFENDANT SUFFERED PREJUDICE.

JUDGE MCDERMOTT TOLD THE DISTRICT ATTORNEY'S OFFICE THAT IF DEFENSE COUNSEL HAD MADE THE DECISIONS THAT THE DISTRICT ATTORNEY'S OFFICE MADE, SHE WOULD "DECLARE THEM INCOMPETENT." THE DISTRICT ATTORNEY'S OFFICE'S OWN EXPERT REPORT FROM GREGORY A. WARREN, ED.D., OF AMERICAN LAW ENFORCEMENT TRAINING AND CONSULTING CONCLUDED THAT, GIVEN ALL THE FACTS PRESENTED TO HIM, OFFICER POWNALL'S "USE OF DEADLY FORCE IN THIS CASE WAS JUSTIFIED." THIS EXPERT REPORT WAS WITHHELD FROM POWNALL BY THE DISTRICT ATTORNEY'S OFFICE.

DISTRICT ATTORNEY KRASNER HAS THE SOLE AUTHORITY TO APPROVE COURT FILINGS ON BEHALF OF PHILADELPHIA DISTRICT ATTORNEY'S OFFICE. WHILE IN OFFICE DISTRICT ATTORNEY KRASNER DIRECTED, APPROVED AND OR PERMITTED THE FILING OF MOTIONS, PRESENTATIONS OF OTHER PLEADINGS AND STATEMENTS TO THE GRAND JURY AND THE COURT WHICH INTENTIONALLY OMITTED, CONCEALED AND OR WITHHELD MATERIAL FACTS AND LEGAL AUTHORITY RELEVANT TO THE JUDICIAL PROCEEDINGS IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT, RULE 3.3 (CANDOR TOWARD THE TRIBUNAL), RULE 8.4 (PROFESSIONAL MISCONDUCT) AND CODE OF JUDICIAL CONDUCT, CANON 2 (IMPROPRIETY AND OR APPEARANCE OF IMPROPRIETY).

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE V:

MISBEHAVIOR IN OFFICE IN THE NATURE OF VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT AND CODE OF JUDICIAL CONDUCT; SPECIFICALLY RULE 3.3 CANDOR TO TRIBUNAL, RULE 8.4 PROFESSIONAL MISCONDUCT, AND CANON 2 OF THE CODE OF JUDICIAL CONDUCT IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN THE MATTER IN RE: CONFLICTS OF INTEREST OF PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

DURING SWORN TESTIMONY, DISTRICT ATTORNEY KRASNER WITHHELD MATERIAL FACTS FROM THE SUPREME COURT WHEN HE TESTIFIED UNDER OATH BEFORE THE SUPREME COURT'S SPECIAL MASTER. THE SPECIAL MASTER WAS APPOINTED BY THE SUPREME COURT PURSUANT TO ITS KING'S BENCH JURISDICTION TO INVESTIGATE WHETHER DISTRICT ATTORNEY KRASNER HAD A CONFLICT OF INTEREST FAVORING THE DEFENDANT AND APPELLANT, MUMIA ABU-JAMAL, WHO HAD BEEN CONVICTED OF FIRST-DEGREE MURDER OF OFFICER DANIEL FAULKNER. DISTRICT ATTORNEY KRASNER TESTIFIED THAT HE "NEVER REPRESENTED ANY ADVOCACY ORGANIZATION FOR MUMIA ABU-JAMAL."

WHILE AFFIRMATIVELY STATING HE NEVER REPRESENTED AN "ORGANIZATION" WHICH ADVOCATED FOR MUMIA ABU-JAMAL, DISTRICT ATTORNEY KRASNER OMITTED THE FACT THAT HE HAD, IN FACT, REPRESENTED AT LEAST ONE PRO-MUMIA ACTIVIST WHO WAS ARRESTED FOR SEEKING TO INTIMIDATE THE JUDGE DECIDING ABU-JAMAL'S POST CONVICTION RELIEF ACT ("PCRA") PETITION. THAT ACTIVIST, WHO AT THE TIME WAS THE "DIRECTOR" OF THE "YOUTH ACTION COALITION," WAS ARRESTED ALONG-SIDE LOCAL LEADERS OF THE INTERNATIONAL CONCERNED FAMILY AND FRIENDS OF MUMIA ABU-JAMAL, ALL OF WHOM WERE PROTESTING OUTSIDE THE HOME OF ABU-JAMAL'S PCRA JUDGE IN AN EFFORT TO ILLEGALLY INFLUENCE THE VERY PROCEEDINGS AT ISSUE IN MUMIA ABU-JAMAL'S NUNC PRO TUNC APPEAL.

DISTRICT ATTORNEY KRASNER REPRESENTED THIS "DIRECTOR," AND POTENTIALLY OTHER PRO-MUMIA ACTIVISTS, AGAINST CHARGES FOR VIOLATING A CRIMINAL STATUTE THAT PROHIBITS PROTESTING OUTSIDE THE HOMES OF JUDICIAL OFFICERS TO INFLUENCE THE OUTCOME OF CASES PENDING BEFORE THE JUDICIAL OFFICERS. YET, IN TESTIFYING THAT HE "NEVER REPRESENTED ANY ADVOCACY ORGANIZATION FOR MUMIA ABU-JAMAL," DISTRICT ATTORNEY KRASNER OMITTED THESE MATERIAL FACTS, PROVIDING A PARTIAL AND MISLEADING DISCLOSURE REGARDING HIS CONNECTION TO THE EFFORT TO EXONERATE AND FREE MUMIA ABU-JAMAL. DISTRICT ATTORNEY KRASNER'S MISLEADING DISCLOSURE WAS DIRECTLY RELEVANT TO THE SUBJECT MATTER UNDER INVESTIGATION BY THE SUPREME COURT IN THAT HE WAS CONCEALING MATERIAL FACTS CONCERNING HIS CONFLICTS OF INTEREST IN THE MUMIA ABU-JAMAL MATTER, AN ISSUE AT THE VERY HEART OF THE SUPREME COURT'S REVIEW OF THE KING'S BENCH PETITION FILED BY THE WIDOW OF OFFICER FAULKNER. DISTRICT ATTORNEY KRASNER THEREFORE VIOLATED RULES OF PROFESSIONAL CONDUCT, RULE 3.3 (CANDOR TOWARD THE TRIBUNAL), RULE 8.4 (PROFESSIONAL MISCONDUCT) AND CODE OF JUDICIAL CONDUCT, CANON 2 (IMPROPRIETY AND OR APPEARANCE OF IMPROPRIETY).

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE VI:

MISBEHAVIOR IN OFFICE IN NATURE OF

VIOLATION OF VICTIMS RIGHTS

FEDERAL AND STATE LAW PROVIDES FOR CERTAIN RIGHTS FOR VICTIMS RELATED TO THE PROSECUTION AND SENTENCING OF THE DEFENDANTS WHO VICTIMIZED THEM OR THEIR FAMILY MEMBERS (18 U.S.C. § 3771 (B)(2) (A) AND SECTION 201 OF THE ACT OF NOVEMBER 24, 1998 (P.L.882,

NO.111), KNOWN AS THE CRIME VICTIMS ACT). CHIEF AMONG THE RIGHTS PROVIDED TO VICTIMS IS THE RIGHT TO BE KEPT INFORMED AT ALL STAGES OF THE PROSECUTION THROUGH CLEAR, RESPECTFUL AND HONEST COMMUNICATION AND TO BE CONSULTED WITH REGARD TO SENTENCING. DISTRICT ATTORNEY KRASNER REPEATEDLY VIOLATED, AND ALLOWED ASSISTANT DISTRICT ATTORNEYS UNDER HIS SUPERVISION TO VIOLATE, THE FEDERAL AND STATE VICTIMS' RIGHTS ACTS ON MULTIPLE OCCASIONS BY SPECIFICALLY FAILING TO TIMELY CONTACT VICTIMS, DELIBERATELY MISLEADING VICTIMS AND OR DISREGARDING VICTIM INPUT AND TREATING VICTIMS WITH CONTEMPT AND DISRESPECT.

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

ARTICLE VII:

MISBEHAVIOR IN OFFICE IN THE NATURE OF VIOLATION OF THE CONSTITUTION OF PENNSYLVANIA BY USURPATION OF THE LEGISLATIVE FUNCTION

PURSUANT TO ARTICLE II OF THE CONSTITUTION OF PENNSYLVANIA, THE LEGISLATIVE POWER IS VESTED IN THE GENERAL ASSEMBLY. DISTRICT ATTORNEY KRASNER AS AN ELECTED EXECUTIVE IN THE CITY OF PHILADELPHIA HAS NO AUTHORITY TO CREATE, REPEAL OR AMEND ANY STATE LAW. DESPITE THIS CLEAR SEPARATION OF POWERS, DISTRICT ATTORNEY KRASNER HAS CONTRAVENED THE AUTHORITY OF THE LEGISLATURE BY REFUSING TO PROSECUTE SPECIFICALLY PROHIBITED CONDUCT UNDER STATE LAW. RATHER THAN EXERCISING HIS INHERENT DISCRETIONARY POWERS TO REVIEW AND DETERMINE CHARGES ON A CASE-BY-CASE BASIS, DISTRICT ATTORNEY KRASNER, IN HIS CAPACITY AS THE COMMONWEALTH'S ATTORNEY IN THE CITY OF PHILADELPHIA, UNILATERALLY DETERMINED, DIRECTED AND ENSURED THAT CERTAIN

CRIMES WOULD NO LONGER BE PROSECUTED AND WERE THEREFORE DE FACTO LEGAL.

THESE CRIMES INCLUDE PROSTITUTION, THEFT AND DRUG-RELATED OFFENSES, AMONG OTHERS. IN PARTICULAR, THE *DE FACTO* LEGALIZATION OF PROSTITUTION BY DISTRICT ATTORNEY KRASNER HAS HAD A DEVASTATING IMPACT ON WOMEN WHO ARE VICTIMS OF SEX TRAFFICKING AND THE COMMUNITIES WHERE THEY ARE TRAFFICKED. REFUSING TO PROSECUTE RETAIL THEFT OF PROPERTY WITH LESS THAN A VALUE OF $500, DISTRICT ATTORNEY KRASNER HAS CREATED AN ATMOSPHERE OF LAWLESSNESS IN PHILADELPHIA, WITH THE DIRECT EFFECT OF CAUSING BUSINESSES TO CURTAIL ACTIVITY OR CEASE DOING BUSINESS ALTOGETHER IN PHILADELPHIA. DISTRICT ATTORNEY KRASNER'S REFUSAL TO PROSECUTE THOSE CAUGHT DRIVING UNDER THE INFLUENCE OF MARIJUANA, ASIDE FROM CONTRIBUTING TO THE LAWLESSNESS IN THE CITY, HAS CREATED DANGEROUS SITUATIONS FOR THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE IN PHILADELPHIA. DISTRICT ATTORNEY KRASNER *DE FACTO* LEGALIZING SUCH ACTS THAT THE GENERAL ASSEMBLY HAS DETERMINED TO BE ILLEGAL IS A CLEAR USURPATION OF LEGISLATIVE POWERS IN VIOLATION OF THE CONSTITUTION OF PENNSYLVANIA, AND THUS CONSTITUTES MISBEHAVIOR IN OFFICE.

WHEREFORE, DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER IS GUILTY OF AN IMPEACHABLE OFFENSE WARRANTING REMOVAL FROM OFFICE AND DISQUALIFICATION TO HOLD ANY OFFICE OF TRUST OR PROFIT UNDER THIS COMMONWEALTH.

THE HOUSE OF REPRESENTATIVES HEREBY RESERVES TO ITSELF THE RIGHT AND ABILITY TO EXHIBIT AT ANY TIME AFTER ADOPTION OF THIS RESOLUTION FURTHER OR MORE DETAILED ARTICLES OF IMPEACHMENT AGAINST DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER, TO REPLY TO ANY ANSWERS THAT DISTRICT ATTORNEY LAWRENCE SAMUEL KRASNER MAY MAKE TO ANY ARTICLES OF IMPEACHMENT WHICH ARE EXHIBITED AND TO

OFFER PROOF AT TRIAL IN THE SENATE IN SUPPORT OF EACH AND EVERY ARTICLE OF IMPEACHMENT WHICH SHALL BE EXHIBITED BY THEM.

UPON THE ARTICLES OF IMPEACHMENT AGAINST LAWRENCE SAMUEL KRASNER, PHILADELPHIA DISTRICT ATTORNEY, BEING SIGNED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE SPEAKER SHALL APPOINT A COMMITTEE OF THREE MEMBERS, TWO FROM THE MAJORITY PARTY AND ONE FROM THE MINORITY PARTY, TO EXHIBIT THE SAME TO THE SENATE, AND ON BEHALF OF THE HOUSE OF REPRESENTATIVES TO MANAGE THE TRIAL THEREOF.

THE EXPENSES OF THE COMMITTEE SHALL BE PAID BY THE CHIEF CLERK FROM APPROPRIATION ACCOUNTS UNDER THE CHIEF CLERK'S EXCLUSIVE CONTROL AND JURISDICTION UPON A WRITTEN REQUEST APPROVED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

EXHIBIT D

PRINTER'S NO. 2020

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 386 Session of 2022

INTRODUCED BY PITTMAN AND BAKER, NOVEMBER 29, 2022

INTRODUCED, NOVEMBER 29, 2022

A RESOLUTION

Proposing special rules of practice and procedure in the Senate when sitting on impeachment trials.

RESOLVED, That the Senate of Pennsylvania adopt special rules as follows:

Rules of Practice and Procedure
in the Senate When Sitting On
Impeachment Trials

Section 1. Reception of managers.

(a) Subject to subsection (b), when the Senate receives notice from the House of Representatives that it has appointed managers to conduct and prosecute an impeachment against an individual and has directed the managers to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

(b) If notice under subsection (a) is received when the Senate has adjourned for at least ten days, the President pro

tempore shall immediately appoint a committee under section 10.

Section 2. Exhibition of articles of impeachment.

(a) When the managers are introduced at the bar of the Senate and signify that they are ready to exhibit articles of impeachment against an individual, the presiding officer shall direct the Sergeant at Arms to make a proclamation.

(b) The Sergeant at Arms shall, after making the proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of Pennsylvania articles of impeachment against ."

(c) The articles of impeachment shall be exhibited.

(d) The presiding officer shall inform the managers that the Senate will take proper order on the subject of the impeachment and will give notice to the House of Representatives.

Section 3. Consideration.

(a) Upon presentation of articles of impeachment to the Senate, the Senate shall proceed to consider the articles.

(b) Consideration shall begin:

(1) 1 p.m. on the day following presentation;

(2) if presentation is on a Sunday, at 1 p.m. on the Tuesday following presentation; or

(3) the time and day ordered by the Senate.

(c) After consideration begins, unless the Senate orders otherwise, the Senate shall continue in session every day except Sunday until final judgment is rendered and no further consideration is needed.

(d) Before consideration, the oath or affirmation shall be administered to the presiding officer and by the presiding officer to each Senator then present and to other Senators as

they shall appear on the floor. A Senator has the duty to take the oath or make the affirmation. The oath or affirmation must be in the form set forth in section 25(c).

Section 4. Issuance of orders, etc.

The presiding officer may issue orders, writs and precepts authorized by these rules or by the Senate, and may make and enforce other rules and orders in the Senate Chamber as the Senate authorizes.

Section 5. Enforcement.

(a) The Senate has the following powers:

(1) To compel the attendance of witnesses.

(2) To enforce obedience to its orders, mandates, writs, precepts and judgments.

(3) To preserve order and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts or judgments.

(4) To issue lawful orders and rules which it deems essential or conducive to the ends of justice.

(b) The Sergeant at Arms, under the directions of the Senate, may employ aid and assistance necessary to execute and enforce the lawful orders, mandates, writs and precepts of the Senate.

Section 6. Preparation and form of proceedings.

(a) The President pro tempore shall direct:

(1) necessary preparations in the Senate Chamber; and

(2) the form of proceedings.

(b) The presiding officer shall rule on all questions of evidence, including relevance, materiality and redundancy of evidence and incidental questions. Except as set forth in subsection (c), a ruling under this subsection shall stand as

the judgment of the Senate.

(c) On a ruling under subsection (b), a vote may be taken as follows:

(1) A Senator may request a formal vote on the ruling.

(2) The presiding officer may submit the ruling for a vote.

(3) Upon request under paragraph (1) or submission under paragraph (2), the vote shall be taken under the Rules of the Senate immediately. Debate is not permitted.

(4) The result of the vote shall stand as the judgment of the Senate.

Section 7. Writ of summons.

(a) Upon presentation of articles of impeachment and the organization for consideration under these rules, a writ of summons shall issue to the individual impeached.

(b) The writ must contain all of the following:

(1) A recitation of the articles.

(2) Notice to the individual to:

(i) appear, personally or by counsel, before the Senate at a specified time, on a specified date and at a specified location;

(ii) file an answer to the articles; and

(iii) stand to and abide the orders and judgments of the Senate on the articles.

(c) All of the following apply to service of the writ:

(1) The officer or individual named in the precept of the writ shall execute service.

(2) Service must be executed within the advance notice specified in the precept.

(3) Service must be executed in one of the following

manners:

(i) By delivery of an attested copy of the writ to the individual impeached.

(ii) If delivery under subparagraph (i) cannot conveniently be done, by leaving an attested copy of the writ in a conspicuous place at the last known place of residence or the usual place of business of the individual impeached.

(iii) If the Senate determines that compliance with subparagraphs (i) or (ii) is impracticable, in a manner the Senate deems just.

(d) Upon compliance with subsection (b)(2), the individual impeached may:

(1) Plead guilty. Upon entry of the plea, judgment shall be rendered.

(2) Plead not guilty. Upon entry of the plea, trial shall commence.

(e) Upon noncompliance with subsection (b)(2)(i) or (ii), a plea of not guilty shall be entered. Upon entry of the plea, trial shall commence.

Section 8. Return of summons.

At 12:30 p.m. on the day appointed for the return of the summons against the individual impeached:

(1) The legislative and executive business of the Senate shall be suspended.

(2) The Secretary of the Senate shall administer an oath or affirmation to the returning officer in the following form:

I, , do solemnly swear or affirm that the return made by me upon the process issued on the day

of , by the Senate of Pennsylvania, against ,
is truly made, and that I have performed such
service as therein described: (So help me God).

(3) The oath or affirmation shall be entered on the record.

Section 9. Appearances.

The appearance or nonappearance of the individual impeached, either personally or by counsel shall be recorded on the record.

Section 10. Committee.

(a) In an impeachment trial, unless otherwise ordered by the Senate, the President pro tempore may appoint a committee of Senators, no more than half of whom must be members of the same political party. The President pro tempore shall be an ex officio member and may vote in case of a tie on any question before the committee.

(b) The functions of the committee are to receive evidence and take testimony at times and places determined by the committee. To discharge these functions, unless otherwise ordered by the Senate, the committee and its chairperson have the powers and duties conferred upon the Senate and the President pro tempore or the President of the Senate, respectively, under these rules.

(c) Upon appointment, the President pro tempore shall be responsible for setting the first meeting of the committee. Thereafter, the committee shall meet on such days as the committee chair may decide until the committee has determined that all relevant testimony and evidence has been presented.

(d) A ruling regarding the admissibility of evidence shall be made by the committee chair subject to a right of appeal to the committee. In an appeal, the committee shall vote on the

admissibility of the contested evidence.

(e) Unless otherwise ordered by the Senate, these rules shall govern the procedure and practice of the committee so appointed.

(f) The committee shall report to the Senate in writing that it has completed receiving evidence and taking testimony, and the committee shall provide a summary of the evidence and testimony and a certified copy of the transcript of the proceedings and testimony had and given before such committee.

(g) The report under subsection (f) shall be received by the Senate and the evidence received and the testimony taken shall be considered, subject to the right of the Senate to determine competency, relevancy and materiality, as having been received and taken before the Senate.

(h) Nothing in this section shall prevent the Senate from sending for a witness and hearing the witness's testimony in open Senate. The Senate may receive additional evidence and testimony before making its final judgment on the articles of impeachment.

Section 11. Commencement of trial.

Unless otherwise ordered by the Senate, at 12:30 p.m. on the day appointed for the trial of an impeachment:

(1) the legislative and executive business of the Senate shall be suspended; and

(2) the Secretary of the Senate shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment in the Senate Chamber.

Section 12. Time of trial.

Unless the Senate orders otherwise, trial of an impeachment shall begin each day at 12 noon. At that time, a proclamation

shall be made; and the trial shall proceed. Adjournment of the trial does not operate as an adjournment of the Senate.

Section 13. Record.

The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the proceedings shall be reported in the same manner as the legislative proceedings of the Senate.

Section 14. Counsel.

Counsel for the parties shall be admitted to appear and be heard on impeachment. Counsel must be admitted to practice law by a court of record of this Commonwealth.

Section 15. Presentation of questions, etc.

A motion, objection, request or application, whether relating to the procedure of the Senate or relating immediately to the trial, including questions with respect to admission of evidence or other questions arising during the trial, made by the parties or their counsel shall be addressed to the presiding officer only. The presiding officer or a Senator may require a written submission and reading by the Secretary of the Senate.

Section 16. Witnesses.

Witnesses shall be examined by one individual on behalf of the party producing them, and then cross-examined by one individual on the opposing side.

Section 17. Senator as witness.

If a Senator is called as a witness before the full Senate, the Senator shall testify at the Senator's desk on the floor of the Senate.

Section 18. Actions by individual Senators.

(a) If a Senator wishes a question to be put to a witness, to a manager or to counsel of the individual impeached, or to

offer a motion or order, except a motion to adjourn, it must be reduced to writing and shall be put by the presiding officer.

(b) The parties or their counsel may interpose objections to a witness answering a question propounded at the request of a Senator. The merits of the objection may be argued by the parties or their counsel. Ruling on the objection shall be made under section 6(b) and (c).

(c) It is not in order for a Senator to engage in colloquy under this section.

Section 19. Session to be open.

(a) Subject to subsection (b), when the Senate is sitting upon the trial of an impeachment, the doors of the Senate shall be kept open.

(b) The Senate may direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection. If an objection is raised to the motion, the motion shall be voted on without debate by roll call vote, entered on the record.

Section 20. Argument time limits.

Unless the Senate otherwise orders, preliminary or interlocutory questions or a motion, or both, shall be argued for not exceeding one hour on each side.

Section 21. Presentation of case.

(a) The case for impeachment shall be opened by a statement of one manager or counsel for the managers.

(b) The case against impeachment shall be opened by a statement of the individual impeached or one counsel representing the individual.

(c) Unless otherwise ordered by the Senate upon application:

(1) The case against impeachment shall be closed by

argument on the merits made by no more than two of the following:

(i) The individual impeached.

(ii) Counsel for the individual impeached.

(2) The case for impeachment shall be closed by argument on the merits made by no more than two individuals in the following categories:

(i) The managers.

(ii) Counsel for the managers.

Section 22. Voting on articles of impeachment.

(a) An article of impeachment is not divisible for the purpose of voting on the article during the trial.

(b) Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die.

(c) On the final question whether the impeachment is sustained, the vote shall be taken on each article of impeachment separately.

(d) If impeachment upon an article is not sustained by the votes of two-thirds of the Senators present, a judgment of acquittal on that article shall be entered on the record.

(e) If impeachment upon an article is sustained by the votes of two-thirds of the Senators present, the Senate shall proceed to the consideration of other matters determined to be appropriate; and a judgment of conviction on that article shall be entered on the record. A certified copy of the judgment shall be transmitted to the Secretary of the Commonwealth.

(f) A motion to reconsider the vote by which an article of impeachment is sustained or not sustained is not in order.

(g) To put the question on each article of impeachment:

(1) the presiding officer shall state the question; and

(2) by roll call vote entered on the record, each Senator shall rise in place and answer guilty or not guilty.

Section 23. Votes on orders or decisions.

(a) An order or decision may be acted upon without objection.

(b) If an objection is raised to an order or decision, subject to subsection (c) and section 6(b) and (c), all of the following apply:

(1) Except as set forth in paragraph (2), the motion or decision shall be voted on without debate by roll call vote.

(2) A motion to adjourn may be decided without a roll call vote unless a roll call vote is demanded by one-fifth of the Senators present.

(3) The vote shall be entered on the record.

(c) When the doors of the Senate are closed for deliberation, all of the following apply to an objection to an order or decision:

(1) Subject to paragraph (2), all of the following apply:

(i) No Senator may speak more than once on one question.

(ii) No Senator may speak for more than ten minutes on a question.

(iii) No Senator may speak for more than 15 minutes on the final question. The 15 minutes allowed under this subparagraph is on the whole deliberation of the final question, and not on the final question on each individual article of impeachment.

(2) A time period under paragraph (1) may be altered if, upon motion and without debate, the Senate consents.

Section 24. Oath or affirmation of witnesses.

(a) A witness must be sworn in the following form:

I, , do swear (or affirm, as the case may be) that the evidence I shall give in the case now pending between the Commonwealth of Pennsylvania and , shall be the truth, the whole truth, and nothing but the truth: (So help me God).

(b) The oath shall be administered by the Secretary of the Senate or another authorized person.

Section 25. Forms.

(a) The following is the form of a subpoena to be issued on the application of a manager or of the individual impeached or the individual's counsel:

To , greeting:

You and each of you are hereby commanded to appear before the Senate of the Commonwealth of Pennsylvania, on the day of , at the Senate Chamber in the city of Harrisburg, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached.....

Fail not.

Witness , and (President or President pro tempore) of the Senate, at the city of Harrisburg, this day of , in the year of our Lord .

(President or President pro tempore of the Senate).

(b) The following is the form of direction for the service of a subpoena under subsection (a):

The Senate of the Commonwealth of Pennsylvania to , greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Harrisburg, this day of , in the year of our Lord .

Secretary of the Senate.

(c) The following is the form of oath to be administered to the Senators and the President of the Senate sitting in the trial of impeachments:

I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of , now pending, I will do impartial justice according to the Constitution and laws: (So help me God).

(d) The following is the form of summons to be issued and served upon the person impeached:

The Commonwealth of Pennsylvania, ss:

The Senate of Pennsylvania to , greeting:

Whereas the House of Representatives of the Commonwealth of Pennsylvania, did, on the day of , exhibit to the Senate articles of impeachment against you, the said , in the words following:

(insert articles here)

And demand that you, the said , should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said , are therefore hereby

summoned to be and appear before the Senate of Pennsylvania, at their Chamber in the city of Harrisburg, on the day of , at o'clock , then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions and judgments as the Senate of Pennsylvania shall make in the premises according to the Constitution and laws of Pennsylvania. Hereof you are not to fail.

Witness , and (President or President pro tempore of the said Senate), at the city of Harrisburg, this day of , in the year of our Lord .

(President or President pro tempore of the Senate).

(e) The following is the form of precept to be indorsed on a writ of summons under subsection (d):

The Commonwealth of Pennsylvania, ss:

The Senate of Pennsylvania to , greeting:

You are hereby commanded to deliver to and leave with , if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least days before the appearance day mentioned in the said writ of summons.

Fail not, and made return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness , and (President or President pro tempore of the Senate), at the city of Harrisburg, this day of , in the year of our Lord .

(President or President pro tempore of the Senate).

(f) Unless otherwise ordered by the Senate, process shall be served by the Sergeant at Arms of the Senate.

Section 26. Other time periods.

If the Senate fails to sit for the consideration of articles of impeachment on the day or hour fixed, the Senate may, by an order adopted without debate, fix a day and hour for resuming consideration.

EXHIBIT E

PRINTER'S NO. 2021

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 387 Session of 2022

INTRODUCED BY PITTMAN AND BAKER, NOVEMBER 29, 2022

INTRODUCED, NOVEMBER 29, 2022

A RESOLUTION

Directing the House of Representatives to Exhibit the Articles of Impeachment.

WHEREAS, The House of Representatives has presented to the Senate an extract from the Journal of the House which reflects that the House has adopted Articles of Impeachment against Lawrence Samuel Krasner, District Attorney of Philadelphia, has duly appointed managers to conduct and prosecute said impeachment and has directed the managers to exhibit the Articles of Impeachment to the Senate; therefore be it

RESOLVED, That the Secretary of the Senate inform the House of Representatives that the Senate will be ready to receive, at 10:30 a.m., the 30th day of November, 2022, the managers appointed by the House for the purpose of exhibiting Articles of Impeachment, agreeably to the notice communicated to the Senate.

EXHIBIT F

PRINTER'S NO. 2023

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 388 Session of 2022

INTRODUCED BY PITTMAN AND BAKER, NOVEMBER 30, 2022

INTRODUCED, NOVEMBER 30, 2022

A RESOLUTION

Directing a Writ of Impeachment Summons to be issued to the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia.

WHEREAS, On November 30, 2022, the House of Representatives exhibited Articles of Impeachment against the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia, to the Senate; therefore be it

RESOLVED, That a Writ of Impeachment Summons, including a copy of the Articles of Impeachment as exhibited to the Senate on November 30, 2022, be issued immediately from the Senate to the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia; and be it further

RESOLVED, That the Writ of Impeachment Summons order and command Lawrence Samuel Krasner to file one and only one Answer and any related pleading, personally or by counsel, to the Articles of Impeachment with Michael C. Gerdes, Interim Secretary and Parliamentarian of the Senate, by 12 noon on December 21, 2022, at his office located at 462 Main Capitol Building, 501 North Third Street, Harrisburg, Pennsylvania

17120; and be it further

RESOLVED, That the Writ of Impeachment Summons order and command Lawrence Samuel Krasner to be and appear before the Senate of Pennsylvania, at their Chamber in the city of Harrisburg, on January 18, 2023, at 11:30 a.m., unless otherwise directed by the Chair of the Impeachment Committee established by section 10 of the Rules of Practice and Procedure in the Senate When Sitting on Impeachment Trials, if any, to answer to the said Articles of Impeachment, and then and there to abide by, obey and perform such other orders, directions and judgments as the Senate of Pennsylvania or the Impeachment Committee shall make according to the Constitution, laws of Pennsylvania or Rules of the Senate; and be it further

RESOLVED, That Daniel Billings, Sergeant-at-Arms of the Senate, be ordered and commanded to deliver and leave with Lawrence Samuel Krasner, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the Writ of Impeachment Summons; and be it further

RESOLVED, That delivery and service of the Writ of Impeachment Summons occur and be done by December 7, 2022, if possible; and be it further

RESOLVED, That the Return of Impeachment Summons by Daniel Billings occur at the beginning of the next actual session day of the Senate after service and delivery of said Summons; and be it further

RESOLVED, That the Interim Secretary of the Senate notify the House of Representatives of the filing of any Answer and provide a copy of the Answer to the House; and be it further

RESOLVED, That the Interim Secretary of the Senate provide

the Answer to the Presiding Officer of the Senate on the first day the Senate is in session after the Interim Secretary receives it and the Presiding Officer cause the Answer to be printed in the Legislative Journal; and be it further

RESOLVED, That, if a timely Answer has not been filed, the Presiding Officer cause a plea of not guilty to be entered; and be it further

RESOLVED, That during proceedings of the Impeachment Committee, if one is established, the Chairman of the Impeachment Committee be authorized to waive the requirement, under section 18(a) of the special Rules of Practice and Procedure in the Senate When Sitting on Impeachment Trials, that questions by a Senator to a witness, a manager or counsel be reduced to writing and put by the Presiding Officer; and be it further

RESOLVED, That the Senate or Impeachment Committee be authorized to provide for the service of any process under sections 7(c) and 25(b) of the special Rules of Practice and Procedure in the Senate When Sitting on Impeachment Trials in any manner which the Committee deems appropriate, including the use of the Senate Sergeant-at-Arms; and be it further

RESOLVED, That the Senate or the Impeachment Committee proceed with consideration of the Articles of Impeachment at dates and times the Senate or the Impeachment Committee shall decide; and be it further

RESOLVED, That the Interim Secretary of the Senate notify the House of Representatives and Lawrence Samuel Krasner of this resolution.

EXHIBIT G

Senate of Pennsylvania

HARRISBURG, PA

PRECEPT TO THE SERGEANT-AT-ARMS

The Commonwealth of Pennsylvania,) SS:

The Senate of Pennsylvania
To Daniel Billings, greeting:

You are hereby commanded to deliver and leave with Mr. Lawrence Samuel Krasner, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicuous place, a true and attested copy of the within Writ of Summons, together with a like copy of this Precept; and in whichsoever way you perform the service, let it be done by Wednesday, December 7, 2022 at the latest, if possible.

Fail not, and make return of this Writ of Summons and Precept, with your proceedings thereon endorsed.

Witness Jacob D. Corman, III, and President Pro Tempore of the said Senate, at the City of Harrisburg, this thirtieth day of November, in the year of our Lord 2022.

JACOB D. CORMAN, III
President Pro Tempore of the Senate

Attest:

MEGAN L MARTIN
Secretary of the Senate

Senate of Pennsylvania

HARRISBURG, PA

WRIT OF IMPEACHMENT SUMMONS

The Commonwealth of Pennsylvania,) ss:

The Senate of Pennsylvania
To Mr. Lawrence Samuel Krasner, greeting:

Whereas, the House of Representatives of the Commonwealth of Pennsylvania, did, on the 30th day of November, 2022, exhibit to the Senate Articles of Impeachment against you, the said Lawrence Samuel Krasner, in the words following:

ARTICLE I:

Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law

Upon assuming office, District Attorney Krasner terminated more than 30 assistant district attorneys (ADA) from employment with the Philadelphia District Attorney's Office. Many of these terminated assistant district attorneys were senior-level staffers in supervisory roles who possessed significant prosecutorial experience and knowledge of criminal procedure. District Attorney Krasner replaced this vast institutional knowledge in the Philadelphia District Attorney's Office with attorneys who lacked any meaningful experience in prosecuting criminal cases, some of whom only recently graduated from law school.

District Attorney Krasner subsequently withdrew the office from membership in the Pennsylvania District Attorneys Association (PDAA) because, he asserted, PDAA supported regressive and punitive policies. In withdrawing from PDAA, District Attorney Krasner denied the attorneys in his office the ability to participate in the various professional development and training programs provided by PDAA through its educational institute.

Rather than offering traditional prosecutorial training on such subjects as prosecutorial ethics, human trafficking, witness examination, trial advocacy, trial management and achieving justice for domestic violence and sexual assault victims, District Attorney Krasner offered attorneys seminars, including "A New Vision for Criminal Justice in Philadelphia," "Deportation: The Unforeseen Consequences of Prosecution in our Immigrant Community," and "Philadelphia and Safe Injection: Harm Reduction as Public Policy." The Philadelphia District Attorney's Office eventually returned to more traditional prosecutorial training, however, the office continued to focus on issues that promote District Attorney Krasner's radically progressive philosophies rather than how to effectively prosecute a criminal case.

Upon being elected to office, District Attorney Krasner established a series of office policies with the purported purpose to "end mass incarceration and bring balance back to

sentencing," and later adopted a series of policies related to certain crimes or classes of people. These policies include directives not to charge sex workers or individuals for certain classes of crimes such as prostitution or possession of marijuana and marijuana-related drug paraphernalia.

These new policies identified a series of offenses for which the gradation may be reduced with the purpose of "reduc[ing] pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedites Municipal Court and Common Pleas dockets," and requiring disposition of retail theft cases unless the value of the item stolen exceeds $500 or where the defendant has an extensive history of theft convictions.

District Attorney Krasner instituted policies to make plea offers below the bottom end of the mitigated range under the Sentencing Guidelines from the Pennsylvania Sentencing Commission and seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicate a range of incarceration of less than 24 months.

In February 2018, District Attorney Krasner established a policy that his office "will ordinarily no longer ask for cash bail for...misdemeanors and felonies" listed in the policy, because "[T]he cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color."

In November 2018, District Attorney Krasner adopted a policy in which a criminal defendant's immigration status should be considered in the plea-bargaining process, effectively providing that if an immigration consequence is detected pre-trial or with respect to a sentencing recommendation, counsel will advise if an offer can be made to avoid the consequence.

Other policies that District Attorney Krasner directed were as follows:

(1) Assistant district attorneys may not proceed in cases against defendants driving under the influence of cannabis when the defendants blood "contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC" and that "if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant."

(2) The District Attorney's Office "will only oppose motions for redactions or expungements in limited circumstances" and sets forth various scenarios in which the office will agree to, seek or not oppose the expungement of a defendant's criminal history.

(3) The District Attorney's Office directed plea offers and sentencing recommendations:

(i) for felonies, "aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case";

(ii) for misdemeanors, aimed at an office-wide average of "6 months or less of total supervision, with a ceiling of 1 year";

(iii) for all matters, for "concurrent sentences"; and

(iv) for cases involving incarceration, "for a period of parole that is no longer than the period of incarceration."

Nearly all of District Attorney Krasner's policies "create a presumption" for ADAs to follow and require approval from District Attorney Krasner himself or a first assistant district attorney for deviations from the policies.

District Attorney Krasner, in an April 2021 report published by the District Attorney's Office (DAO) titled "Ending Mass Supervision: Evaluating Reforms," wrote in his opening letter: "I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe." In reality, the policies and practices of the Philadelphia District Attorney's Office instituted under the direction of District Attorney Krasner have led to catastrophic consequences for the people of the City of Philadelphia.

According to the City Controller, spikes in gun violence and homicides have dramatically impacted historically disadvantaged neighborhoods, and those neighborhoods are "primarily low-income with predominately black or African American residents." The Philadelphia Police Department (PPD) reports that the number of homicide victims has increased every year since 2016, more than doubling from 2016 to 2021, with a year-over-year increase of 40% between 2019 and 2020. As of October 16, 2022, there have already been 430 homicides in the City of Philadelphia in 2022. As of October 17, 2022, reported trends gathered from the PPD's "incident" data, which tracks the reporting of all crimes in addition to homicides, shows a 12% increase in all reported offenses, a 6% increase in violent offenses and a 21% increase in property offenses.

While incidents of violent crime are increasing, prosecution of crime by the Philadelphia District Attorney's Office has decreased during this same period. In 2016, the Philadelphia District Attorney's Office reported that only 30% of "all offenses" resulted in a dismissal or withdrawal, but that number spiked to 50% in 2019, 54% in 2020, 67% in 2021 and 65% to date in 2022.

A similar trend is evident when filtering the data for violent crimes, where, in 2016, the withdrawal and dismissed violent crime cases accounted for 48% of all violent crime case outcomes, but that percentage increased to 60% in 2019, to 68% in 2020, to 70% in 2021 and to 66% in 2022 to date. Data from the Pennsylvania Sentencing Commission relating to violations of the Uniform Firearms Act (VUFA) evidences a similar jarring trend. The Sentencing Commission reports that guilty dispositions in the City of Philadelphia declined from 88% in 2015 to 66% in 2020, compared to a decline from 84% to 72% in counties of the second class, with the driver of the decrease being nolle pros dispositions. As compared to the Statewide data and other county classes, in the City of Philadelphia the percent of guilty verdicts has decreased significantly, while the percent of nolle prossed cases has increased.

Studies by the Delaware Valley Intelligence Center (DVIC) attempted to provide "an explanation for the increase in homicides and shootings in an effort to begin a conversation to address the challenge at a strategic level," and, significantly, the report notes:

"The rate of prosecution dismissal and withdrawal has been increase [sic] substantially since 2015 under DA [Seth] Williams, and has continued to increase after DA Krasner took office. Furthermore, a closer examination of these dropped cases indicates that more cases are dismissed/withdrawn at the preliminary hearing state [sic] under DA Krasner than the actual trial state []. This implies that, even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had historically. Notably, the likelihood of being arrested is low to begin with. This means that, criminals know that their likelihood of getting caught with a gun is slim and, even if they get caught, they feel that they can leave without severe (or any) consequences."

The DVIC conducted a "cursory examination" of dismissed/withdrawn cases in 2018/2019 and "found 6 offenders whose cases were dismissed (VUFA former convict charge) and got later involved in shootings...2 of these shootings were fatal and 4 out of these 6 offenders were gang members."

The DVIC studied the prosecution declination for narcotics, retail theft and prostitution arrests from 2016 to 2018, and concluded in its key findings that the percentage of all declinations, not just narcotics, prostitution and retail theft, increased "especially in 2018" to

more than 7%, when it had been just 2% or less between 2007 and 2015.

In September 2020, the Philadelphia City Council authorized the Committee on Public Safety and the Special Committee on Gun Violence Prevention to study gun violence in the city. This study involved a collaboration between the Controller's Office, Defender Association, Department of Public Health, District Attorney's Office, First Judicial District, Managing Director's Office, Pennsylvania Attorney General and PPD. The published results, called the "100 Shooting Review Committee Report," discusses trends and general findings regarding shootings in the City of Philadelphia. The published results showed the following:

(1) The clearance rate (*i.e.*, when an arrest was made or a suspect that could not be arrested was identified) for fatal shootings in 2020 was 37% and the rate for nonfatal shootings was 18%.

(2) There has been a "marked increase" in the number of people arrested for illegal gun possession without the accusation of an additional offense, including a doubling in arrests for illegal possession of a firearm without a license since 2018.

(3) The initial and final bail amounts set by courts in illegal possession of firearms cases declined between 2015 and 2019 and increased in 2020 and 2021.

(4) Conviction rates in shooting cases declined between 2016 and 2020 from 96% to 80% in fatal shootings and from 69% to 64% in nonfatal shootings.

(5) There is a long-term trend of a reduction in conviction rates for illegal gun possession cases, dropping from 65% in 2015 to 45% in 2020.

In August 2022, the Philadelphia Police Commissioner indicated that her department is short-staffed by approximately 20%, or 1,300 officers, due to low morale, politics, increased scrutiny and "uniquely stringent hiring requirements" during a nationwide shortage.

Police Commissioner Danielle Outlaw stated, "The truth is the homicides are not happening in a vacuum - there are those who are determined to attack and kill their victims. While we are making constant adjustments to mitigate this sickening reality, our officers, simply put, just can't keep up by being everywhere at all times." While the PPD may arrest a suspect for the commission of a crime, the Philadelphia District Attorney's Office is one of the few district attorney's offices in this Commonwealth that reserves unto itself the authority to charge a person for a criminal act.

In October 2022, following yet another act of violence against police in the City of Philadelphia, Police Commissioner Danielle Outlaw issued the following statement:

"We are tired of arresting the same suspects over and over again, only to see them right back out on the street to continue and sometimes escalate their criminal ways. We are tired of having to send our officers into harm's way to serve warrants on suspects who have no business being on the street in the first place.

No - not everyone needs to be in jail. But when we repeatedly see the extensive criminal histories of those we arrest for violent crime, the question needs to be asked as to why they were yet again back on the street and terrorizing our communities.

I am beyond disgusted by this violence. Our entire department is sickened by what is happening to the people that live, work, and visit our city. Residents are tired of it. Business owners are tired of it. Our children are tired of it. We are long past 'enough is enough'."

Acts of violence, and particularly violent crimes committed with firearms, have exacted a heavy toll on victims and their families, with countless lives unnecessarily lost or irretrievably broken, due to the increase of violent crime in the City of Philadelphia. The foregoing acts

constitute "misbehavior in office" by District Attorney Krasner in that such acts have substantially contributed to the increase in crime in the City of Philadelphia, undermined confidence in the criminal justice system, and betrayed the trust of the citizens of Philadelphia and the Commonwealth.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

ARTICLE II:

Misbehavior In Office In the Nature of Obstruction of House Select Committee Investigation

House Resolution 216 of 2022 established the House Select Committee to Restore Law and Order pursuant to Rule 51 of the General Operating Rules of the House. The select committee is authorized and empowered "to investigate, review and make finding and recommendations concerning risking rates of crime, law enforcement and the enforcement of crime victim rights," in the City of Philadelphia.

House Resolution 216 further charges the select committee to make findings and recommendations, including, but not limited to, the following:

(1) Determinations regarding the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment.

(2) Legislation or other legislative action relating to policing, prosecution, sentencing and any other aspect of law enforcement.

(3) Legislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims.

(4) Legislation or other legislative action relating to ensuring the appropriate expenditure of public funds intended for the purpose of law enforcement, prosecutions or to benefit crime victims.

(5) Other legislative action as the select committee finds necessary to ensure appropriate enforcement of law and order in the City of Philadelphia.

In pursuit of these obligations, the resolution empowers the select committee chair to, among other things, "send for individuals and papers and subpoena witnesses, documents, including electronically stored information, and any other materials under the hand and seal of the chair." The chair issued subpoenas to a number of Philadelphia municipal offices, including the Controller, the Mayor, the Police Department, the Sheriff's Office, the Treasurer and the District Attorney's Office. The subpoenas sought nonprivileged records necessary to fulfill the select committee's obligations to the House of Representatives pursuant to House Resolution 216.

While other municipal offices worked cooperatively with the select committee to respond to the subpoenas issued to them, District Attorney Krasner and his office chose instead to obstruct the select committee's work at every turn. District Attorney Krasner and his office asserted that the select committee was illegitimate and that its subpoenas served "no valid legislative purpose, violating the separation of powers, invading legal privileges, and seeking to deny the constitutional rights of Philadelphia's citizens, especially their democratic right to vote and choose their local leaders."

District Attorney Krasner asserted various claims that held no basis in fact or law, *including the following:*

(1) District Attorneys are not subject to impeachment.

(2) Impeaching the District Attorney violates the constitutional rights of the people who voted for him.

(3) The District Attorney committed no wrong, and therefore was not required to comply with the committee chair's subpoena.

(4) Impeachment of a public official requires a conviction for a criminal act; and

District Attorney Krasner and his office refused to search for or produce any documents in response to the subpoena. Despite multiple attempts by counsel to the select committee chair to bring District Attorney Krasner and his office into compliance with the subpoenas, explaining on multiple occasions that the select committee was seeking nonprivileged records and, as it related to any record for which the District Attorney believed were privileged, the District Attorney should follow common practice in responding to a subpoena by providing a privilege log to identify those records for which the District Attorney asserts a privilege.

On September 12, 2022, after multiple exchanges between counsel and a Request to Show Cause why the District Attorney should not be held in contempt by the House, the select committee issued an interim report pursuant to Rule 51 of the General Operating Rules of the House of Representatives, notifying the House of District Attorney Krasner's refusal to comply with the subpoena and recommending that the House consider contempt proceedings.

The House of Representatives adopted House Resolution 227 on September 13, 2022, resolving that the House hold District Attorney Krasner in contempt. House Resolution 227 was adopted by a bipartisan vote of 162 to 38.

District Attorney Krasner filed an action in Commonwealth Court on September 2, 2022, in which he raised the same arguments that fail to have any meaningful basis in law or fact. District Attorney Krasner and his office have since feigned partial compliance with the subpoena, providing several public-facing records obtained without the need to engage in any legitimate effort to search for the records.

The select committee chair invited District Attorney Krasner to testify before the select committee in executive session on October 21, 2022. District Attorney Krasner refused to testify in executive session, demanding a public hearing instead. District Attorney Krasner then published a press release which was misleading at best, mischaracterizing the invitation to District Attorney Krasner to testify in yet another moment of grandstanding.

Given the District Attorney's rejection of the invitation to testify in executive session, the select committee was compelled to cancel the hearing.

District Attorney Krasner has, at every turn, obstructed the efforts of the House Select Committee on Restoring Law and Order. He has consistently raised specious claims without a good faith basis in law or fact. Even after the House of Representatives resolved to hold him in contempt, District Attorney Krasner's efforts to comply with subpoenas issued by the select committee chair fall far short of what can be considered a reasonable good faith effort.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article III:

Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

In the Federal habeas corpus proceeding in *Robert Wharton v. Donald T. Vaughn*, Federal District Court Judge Goldberg issued a memorandum order admonishing and sanctioning the District Attorney's Office. Robert Wharton was convicted of murdering the parents of survivor Lisa Hart-Newman, who was seven months old at the time and was left to freeze to death with her deceased parents by Mr. Wharton.

After his conviction, Wharton pursued a death penalty habeas petition in the Federal district court. The District Attorney's Office under prior administrations had opposed this petition.

In 2019, District Attorney Krasner's administration filed a "Notice of Concession of Penalty Phase Relief," stating that it would not seek a new death sentence, and, based on that sentencing relief, the litigation and appeals could end. The concession noted only that the decision to concede was made "[f]ollowing review of this case by the Capital Case Review Committee of the Philadelphia [District Attorney's Office], communication with the victims' family, and notice to [Wharton's] counsel."

Judge Goldberg undertook an independent analysis of the merits of the claim and invited the Pennsylvania Office Attorney General (OAG) to file an amicus brief in the case. In its amicus, the OAG submitted additional facts that the District Attorney's Office had not disclosed, including evidence of prison misconducts, attempted escapes and Department of Corrections concerns regarding "assaultiveness" and "escape" by Mr. Wharton.

The OAG concluded that "given the facts of this investigation and aggravating sentencing factors present in this case, Wharton could not establish a reasonable probability that the outcome of his penalty phase death sentence would have been different if the jury had heard evidence of his alleged 'positive' prison adjustment."

The OAG further determined that members of the family, including victim Ms. Hart-Newman, were not contacted and that they opposed the concession by the District Attorney's Office.

After an evidentiary hearing, Judge Goldberg held as follows:

(1) The District Attorney's Office failed to advise the court of significant anti-mitigation evidence, including that Mr. Wharton had made an escape attempt at a court appearance.

(2) Two of the office's supervisors violated Federal Rule of Civil Procedure 11(b)(3) "based upon that Office's representations to this Court that lacked evidentiary support and were not in any way formed after 'an inquiry reasonable under the circumstances.'"

(3) Representations of communication with the victims' family were "misleading," "false," and "yet another representation to the Court made after an inquiry that was not reasonable under the circumstances."

(4) The Law Division Supervisor, Assistant Supervisor and District Attorney's Office violated Rule 11(b)(1), and concluding that the violation was "sufficiently 'egregious' and

'exceptional' under the circumstances to warrant sanctions."

Judge Goldberg imposed nonmonetary sanctions on the District Attorney's Office, requiring that separate written apologies be sent to the victim, Lisa Hart-Newman, and the victim's family members. Given the testimony of the two Law Division supervisors that District Attorney Krasner approved and implemented internal procedures that created the need for this sanction, and that the District Attorney had the sole, ultimate authority to direct that the misleading Notice of Concession be filed, therefore "the apologies shall come from the District Attorney, Lawrence Krasner, personally."

District Attorney Krasner has the sole authority to approve court filings on behalf of Philadelphia District Attorney's office. While in office, District Attorney Krasner directed, approved and or permitted the filing of a "Notice of Concession" and presentation of other pleadings and statements in Federal court which contained materially false and or misleading affirmative statements and purposeful omissions of fact in violation of the Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal) and Rule 8.4 (Professional Misconduct), and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article IV:

Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter of *Commonwealth vs. Pownall*

In his special concurrence in *Commonwealth v. Pownall*, Supreme Court Justice Dougherty highlighted what he feared to be an effort by the District Attorney's Office to deprive certain defendants of a fair and speedy trial. Following the June 2017 incident in which former Philadelphia police officer Ryan Pownall shot and killed David Jones, the District Attorney's Office submitted the matter to an investigative grand jury. The investigating grand jury issued a presentment recommending that Pownall be charged with criminal homicide, possession of an instrument of crime and recklessly endangering another person; and

During trial, the prosecutor filed a motion in limine to preclude the standard peace officer justification defense instruction, based on the assertion that the instruction, which largely tracked language of statute, violated Fourth Amendment prohibition against unreasonable search and seizure. The motion was denied and the prosecution appealed to the Superior Court, which quashed the appeal as unauthorized. The Supreme Court granted the prosecutor's request for allowance of appeal.

The Supreme Court ultimately denied the appeal, but the special concurrence filed by Justice Dougherty illuminated startling behavior by the District Attorney's Office. Justice Dougherty held that the District Attorney's Office's actions during grand jury process "implicate[s] a potential abuse" and stated that "the presentment in this case is perhaps best characterized as a 'foul blow.'" He referred to the grand jury presentment, authored by the District Attorney's Office, as a "gratuitous narrative."

Justice Dougherty also recognized that any abuse of the grand jury could have been remedied by "Statutory safeguards embedded in the process," such as a preliminary hearing. He went on to say, "What is troubling is the DAO's effort to ensure that would not occur,"

i.e., their filing of a motion to bypass the preliminary hearing.

Justice Dougherty found it "inexplicable" that, in presenting a bypass motion to the Court of Common Pleas, the District Attorney's Office failed to highlight the Investigating Grand Jury Act section 4551(e), which directs that a defendant "shall" be entitled to a preliminary hearing. He emphasized that the District Attorney's Office "appear[ed] to have known [about that requirement] at the time it filed its motion."

As it related to the prosecutor's motion in limine and interlocutory appeal, Justice Dougherty observed that the District Attorney's Office's motion "presented only half the relevant picture." He went on to say that "this type of advocacy would be worrisome coming from any litigant," but coming from a prosecutor, "is even more concerning, particularly in light of the motion's timing...." He cited directly to Pennsylvania Rule of Professional Conduct 3.3 regarding candor to the tribunal.

Further referencing ethical concerns, Justice Dougherty found that the timing of the motion in limine, "[w]hen combined with the other tactics highlighted throughout this concurrence," could lead to the conclusion that the decision to take "an unauthorized interlocutory appeal was intended to deprive [Mr. Pownall] of a fair and speedy trial." Justice Dougherty went on to say:

> Now, for the first time before this Court, the DAO finally admits its true intent in all this was simply to use Pownall's case as a vehicle to force judicial determination on 'whether Section 508(a)(1) is facially unconstitutional.' DAO's Reply Brief at 1; see id. at 6 (asserting Section 508's applicability to [Pownall] is not the subject of this appeal"). What's more, despite having assured the trial court it was not trying 'to bar [Pownall] from a defense[.]' N.T. 11/25/2019 at 8, the DAO now boldly asserts it would be appropriate for this Court to rewrite the law and retroactively apply it to Pownall's case because he supposedly 'had fair notice of his inability to rely on this unconstitutional defense[.]' DAO's Brief at 10.

Justice Dougherty concluded, "Little that has happened in this case up to this point reflects procedural justice. On the contrary, the DAO's prosecution of Pownall appears to be "driven by a win-at-all-cost office culture" that treats police officers differently than other criminal defendants. DAO CONVICTION INTEGRITY UNIT REPORT, OVERTURNING CONVICTIONS - AND AN ERA 2 (June 15, 2021) available at tinyurl.com/CIU report (last visited July 19, 2022). This is the antithesis of what the law expects of a prosecutor."

On remand, Common Pleas Court Judge McDermott said that there were "so many things wrong" with the District Attorney's Office's instructions to the investigating grand jury that it warranted dismissing all charges against Mr. Pownall. After hearing testimony from the assistant district attorneys who handled the grand jury and preparation of the presentment, Judge McDermott concluded that the District Attorney's Office failed to provide the legal instructions to the grand jurors on the definitions for homicide and information regarding the use-of-force defense.

In her October 17, 2022, Statement of Findings of Fact and Conclusions of Law, Judge McDermott stated, "The Commonwealth made an intentional, deliberate choice not to inform the grand jurors about the justification defense under Section 508. While [the ADA] was aware of Section 508 and its applicability to the Defendant's case at the time of the Grand Jury proceedings, she decided not to advise the Grand Jury about Section 508 after consulting with other, more senior Assistant District Attorneys."

As it related to Pownall's right to a preliminary hearing, Judge McDermott wrote:

> In its Motion to bypass the preliminary hearing, the Commonwealth demonstrated a lack of candor to the Court by misstating the law and providing Judge Coleman with incorrect case law.

* * *

The Commonwealth was also disingenuous with the Court when it asserted that it had good cause to bypass the preliminary hearing under Pa.R.Crim.P. 565(a) because of the complexity of the case, the large number of witnesses the Commonwealth would have to call, the expense, and the delay caused by a preliminary hearing. As a preliminary hearing was not held in this case, the Defendant's due process rights were violated and the Defendant suffered prejudice.

Judge McDermott told the District Attorney's Office that if defense counsel had made the decisions that the District Attorney's Office made, she would "declare them incompetent." The District Attorney's Office's own expert report from Gregory A. Warren, Ed.D., of American Law Enforcement Training and Consulting concluded that, given all the facts presented to him, Officer Pownall's "use of deadly force in this case was justified." This expert report was withheld from Pownall by the District Attorney's Office.

District Attorney Krasner has the sole authority to approve court filings on behalf of Philadelphia District Attorney's office. While in office District Attorney Krasner directed, approved and or permitted the filing of motions, presentations of other pleadings and statements to the Grand Jury and the Court which intentionally omitted, concealed and or withheld material facts and legal authority relevant to the judicial proceedings in violation of the Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article V:

Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter In re: Conflicts of Interest of Philadelphia District Attorney's Office

During sworn testimony, District Attorney Krasner withheld material facts from the Supreme Court when he testified under oath before the Supreme Court's Special Master. The Special Master was appointed by the Supreme Court pursuant to its King's Bench jurisdiction to investigate whether District Attorney Krasner had a conflict of interest favoring the defendant and appellant, Mumia Abu-Jamal, who had been convicted of first-degree murder of Officer Daniel Faulkner. District Attorney Krasner testified that he "never represented any advocacy organization for Mumia Abu-Jamal."

While affirmatively stating he never represented an "organization" which advocated for Mumia Abu-Jamal, District Attorney Krasner omitted the fact that he had, in fact, represented at least one pro-Mumia activist who was arrested for seeking to intimidate the judge deciding Abu-Jamal's Post Conviction Relief Act ("PCRA") Petition. That activist, who at the time was the "Director" of the "Youth Action Coalition," was arrested along-side local leaders of The International Concerned Family and Friends of Mumia Abu-Jamal, all of whom were protesting outside the home of Abu-Jamal's PCRA judge in an effort to illegally influence the very proceedings at issue in Mumia Abu-Jamal's nunc pro tunc appeal.

District Attorney Krasner represented this "Director," and potentially other pro-Mumia activists, against charges for violating a criminal statute that prohibits protesting outside the homes of judicial officers to influence the outcome of cases pending before the judicial officers. Yet, in testifying that he "never represented any advocacy organization for Mumia Abu-Jamal," District Attorney Krasner omitted these material facts, providing a partial and misleading disclosure regarding his connection to the effort to exonerate and free Mumia Abu-Jamal. District Attorney Krasner's misleading disclosure was directly relevant to the subject matter under investigation by the Supreme Court in that he was concealing material facts concerning his conflicts of interest in the Mumia Abu-Jamal matter, an issue at the very heart of the Supreme Court's review of the King's Bench Petition filed by the widow of Officer Faulkner. District Attorney Krasner therefore violated Rules of Professional Conduct, Rule 3.3 (Candor Toward the Tribunal), Rule 8.4 (Professional Misconduct) and Code of Judicial Conduct, Canon 2 (Impropriety and or Appearance of Impropriety).

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article VI:

Misbehavior in Office in Nature of
Violation of Victims Rights

Federal and State law provides for certain rights for victims related to the prosecution and sentencing of the defendants who victimized them or their family members (18 U.S.C. § 3771 (b)(2)(A) and section 201 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act). Chief among the rights provided to victims is the right to be kept informed at all stages of the prosecution through clear, respectful and honest communication and to be consulted with regard to sentencing. District Attorney Krasner repeatedly violated, and allowed Assistant District Attorneys under his supervision to violate, the Federal and state victims' rights acts on multiple occasions by specifically failing to timely contact victims, deliberately misleading victims and or disregarding victim input and treating victims with contempt and disrespect.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

Article VII:

Misbehavior In Office In the Nature of Violation
of the Constitution of Pennsylvania By Usurpation
of the Legislative Function

Pursuant to Article II of the Constitution of Pennsylvania, the legislative power is vested in the General Assembly. District Attorney Krasner as an elected executive in the City of Philadelphia has no authority to create, repeal or amend any state law. Despite this clear separation of powers, District Attorney Krasner has contravened the authority of the legislature by refusing to prosecute specifically prohibited conduct under state law. Rather than exercising his inherent discretionary powers to review and determine charges on a case-by-case basis, District Attorney Krasner, in his capacity as the Commonwealth's Attorney in the City of Philadelphia, unilaterally determined, directed and ensured that certain crimes would no longer be prosecuted and were therefore de facto legal.

These crimes include prostitution, theft and drug-related offenses, among others. In particular, the *de facto* legalization of prostitution by District Attorney Krasner has had a devastating impact on women who are victims of sex trafficking and the communities where they are trafficked. Refusing to prosecute retail theft of property with less than a value of

$500, District Attorney Krasner has created an atmosphere of lawlessness in Philadelphia, with the direct effect of causing businesses to curtail activity or cease doing business altogether in Philadelphia. District Attorney Krasner's refusal to prosecute those caught driving under the influence of marijuana, aside from contributing to the lawlessness in the city, has created dangerous situations for the health, safety and welfare of the people in Philadelphia. District Attorney Krasner *de facto* legalizing such acts that the General Assembly has determined to be illegal is a clear usurpation of legislative powers in violation of the Constitution of Pennsylvania, and thus constitutes misbehavior in office.

WHEREFORE, District Attorney Lawrence Samuel Krasner is guilty of an impeachable offense warranting removal from office and disqualification to hold any office of trust or profit under this Commonwealth.

The House of Representatives hereby reserves to itself the right and ability to exhibit at any time after adoption of this resolution further or more detailed Articles of Impeachment against District Attorney Lawrence Samuel Krasner, to reply to any answers that District Attorney Lawrence Samuel Krasner may make to any Articles of Impeachment which are exhibited and to offer proof at trial in the Senate in support of each and every Article of Impeachment which shall be exhibited by them.

And demand that you, the said Lawrence Samuel Krasner, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

Therefore, the Senate of Pennsylvania directs that you, the said Lawrence Samuel Krasner, be ordered and commanded to file one and only one written Answer and any related Pleading, if any, personally or by counsel, to said Articles of Impeachment, with Michael C. Gerdes, Interim Secretary and Parliamentarian of the Senate on or before 12:00 o'clock Noon the twenty-first (21st) day of December, 2022, at his office located at 462 Main Capitol Building, 501 North Third Street, Harrisburg, Pennsylvania 17120.

You, the said Lawrence Samuel Krasner, are therefore further hereby summoned to be and appear before the Senate of Pennsylvania, at their Chamber in the city of Harrisburg, on the eighteenth (18th) day of January, 2023, at 11:30 o'clock a.m., unless otherwise directed by the Chair of the Impeachment Committee established by Section 10 of the Rules of Practice and Procedure in the Senate When Sitting On Impeachment Trials, if any, to answer to the said articles of impeachment, and then and there to abide by, obey and perform such other orders, directions and judgments as the Senate of Pennsylvania or the Impeachment Committee shall make according to the Constitution, laws of Pennsylvania or Rules of the Senate.

Hereof you are not to fail.

Witness Jacob D. Corman, III, and President Pro Tempore of the said Senate, at the City of Harrisburg, this thirtieth day of November, in the year of our Lord 2022.

JACOB D. CORMAN, III
President Pro Tempore of the Senate

Attest:

MEGAN L MARTIN
Secretary of the Senate

Received 12/2/2022 4:03:25 PM Commonwealth Court of Pennsylvania

Filed 12/2/2022 4:03:00 PM Commonwealth Court of Pennsylvania
563 MD 2022

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

[PROPOSED] ORDER #1

Upon consideration of Petitioners' Application for Summary Relief and for Expedited Briefing ("Application"), it is hereby **ORDERED** that the Application for an expedited briefing schedule is **GRANTED**. It is **FURTHER ORDERED**:

1. Respondents 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; and Representative Jared

Solomon, in his official capacity as an impeachment manager shall have 7 days after filing and service of Petitioner's Application and accompanying Memorandum of Law to file a response brief.

2. Petitioner's Reply brief, if any, shall be filed no more than 5 days thereafter.

3. The Prothonotary shall place this matter on the first available argument list following the deadline for Petitioner's Reply brief.

4. No extension of this briefing schedule will be granted absent extraordinary circumstances.

Dated _____, 2022

IT IS SO ORDERED.

_____

, J.

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

[PROPOSED] ORDER #2

Upon consideration of Petitioners' Application for Summary Relief and for Expedited Briefing ("Application"), and any response thereto, it is hereby **ORDERED** that the Application is **GRANTED**. It is **FURTHER ORDERED**:

1. A declaration is entered in favor of Petitioner Lawrence Krasner, in his official capacity as the District Attorney of Philadelphia, and against Respondents Senator Kim Ward, in her official capacity as 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; and Representative Jared Solomon, in his official capacity as an impeachment manager (collectively, "Respondents"), as follows:

(A) The Amended Articles of Impeachment against District Attorney Krasner, House Resolution No. 240, Printer's No. 3634 (Nov. 16, 2022) ("Amended Articles") and related legislative business, including Senate Resolutions 386, 387, and 388, became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th General Assembly legislative session.

(B) Article VI, Section 6 of the Pennsylvania Constitution does not authorize impeachment of District Attorney Krasner by the General Assembly.

(C) The Amended Articles against District Attorney Krasner do not allege conduct that constitutes "any misbehavior in office" within the meaning of Article VI, Section 6 of the Pennsylvania Constitution.

(D) Respondents have no authority to take up the Amended Articles and any such efforts would be unlawful.

(E) Any effort by the Respondents, House of Representatives or Senate to take up the Amended Articles or related legislation, including Senate Resolutions 386, 387, or 388, is unlawful.

Dated _____, 2022

IT IS SO ORDERED.

_____

, J.

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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

APPLICATION FOR SUMMARY RELIEF AND EXPEDITED BRIEFING

Pursuant to Pa. R.A.P. 1532(b), Petitioner Larry Krasner, in his official capacity as the District Attorney of Philadelphia, respectfully requests an order granting summary relief in the nature of declaratory relief, declaring as a matter of law that: (1) the Amended Articles of Impeachment against District Attorney Krasner became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th General Assembly's legislative session; (2) the Pennsylvania Constitution does not authorize the General Assembly to impeach District Attorney Krasner; and (3) the Amended Articles of Impeachment against District Attorney Krasner do not allege any conduct that constitutes "any misbehavior in office" within the meaning of the Pennsylvania Constitution.

Petitioner further requests expedited briefing on this Application.

In support of this Application, Petitioner relies on its accompanying Memorandum of Law, which is incorporated herein. Two proposed orders are attached, one relating to expedited briefing and another related to the declaratory relief sought by this Application.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 2, 2022

By: 

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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

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S APPLICATION FOR SUMMARY RELIEF AND EXPEDITED BRIEFING

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INTRODUCTION

This application for summary relief seeks a declaration that the impeachment proceedings against District Attorney Larry Krasner, which commenced during the Two Hundred Sixth Pennsylvania General Assembly with the adoption of Amended Articles of Impeachment by the then-Republican controlled House on November 16, 2022, and the exhibition of those Articles to the Senate on November 30, 2022, are unlawful and may not proceed during the Two Hundred Seventh Pennsylvania General Assembly.

The impeachment proceedings against District Attorney Krasner are unlawful and may not proceed for three independent and compelling reasons.

First, the Amended Articles of Impeachment that were adopted during the Two Hundred *Sixth* General Assembly do not carry over to the (current) Two Hundred *Seventh* General Assembly. This ground is simple, straightforward and clear: the Pennsylvania Constitution, statutory law and precedent mandate this conclusion.

Second, District Attorney Krasner is not subject to impeachment by the General Assembly because the Pennsylvania Constitution does not authorize impeachment of the Philadelphia district attorney by the General Assembly. He is not a "civil officer" as the Pennsylvania Constitution uses that term but is instead a local officer.

Third, the Amended Articles of Impeachment do not allege any conduct that constitutes "any misbehavior in office," which is the prerequisite for impeachment under the Pennsylvania Constitution.

Expedited briefing is requested because the Senate has already adopted a resolution, Senate Resolution No. 388 (SR 388), titled "A Resolution Directing a Writ of Impeachment Summons to be issued to the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia," that requires a Writ of Impeachment Summons to be issued "immediately" from the Senate to District Attorney Krasner, that commands District Attorney Krasner "to file one and only one Answer and any related pleading . . . to the Articles of Impeachment . . . by 12 noon on December 21, 2022," and that commands District Attorney Krasner to "appear before the Senate of Pennsylvania . . . on January 18, 2023, at 11:30 a.m., unless otherwise directed by the Chair of the Impeachment Committee." Senate Resolution No. 388, Printer's No. 2023 (Nov. 30, 2022). On December 1, 2022, the Writ of Impeachment Summons was served on The Philadelphia District Attorney's Office. In short, the Senate has already commenced (unlawful) impeachment proceedings against District Attorney Krasner.

STATEMENT OF UNDISPUTED FACTS

1. On October 26, 2022 Rep. Martina White introduced House Resolution 240, a resolution "Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia, for misbehavior in office; and providing for the appointment of trial managers." *See* Exhibit A, House Resolution 240, Printer's No. 3607, ("HR 240") (Oct. 26, 2022).

2. HR 240 alleges two Articles of Impeachment against District Attorney Krasner.

3. The House did not vote on the two Articles of Impeachment in HR 240.

4. On November 16, 2022, Representative Torren Ecker sponsored Amendments to HR 240. The Amendments amend HR 240 by striking all of the lines on all of the pages in HR 240 with the exception of lines 1-3 on page 1 and inserting all of the lines on the pages in the Amended Articles. *See* Exhibit B, Amendments to HR 240 (Nov. 16, 2022).

5. On November 16, 2022, HR 240, As Amended, was introduced. *See* Exhibit C, House Resolution 240, Printer's No. 3634, As Amended ("Amended Articles" or "Amended Articles of Impeachment") (Nov. 16, 2022).

6. The Amended Articles of Impeachment contain seven articles of impeachment. *Id.* None of the seven articles alleges that District Attorney Krasner committed a criminal offense.

7. The seven Articles of Impeachment include:

- Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law

- Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation

- Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; Specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of Robert Wharton v. Donald T. Vaughn

- Article IV: Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; Specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of Commonwealth v. Pownall

- Article V: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; Specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety In The matter In re: Conflicts of Interest of Philadelphia District Attorney's Office

- Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights

- Article VII: Misbehavior In Office In the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

8. On November 16, 2022, HR 240, as amended, passed the full House of Representatives by a vote of 107-85. All but one Republican voted in favor of HR 240. All Democrats voted against HR 240.

9. On November 18, 2022, in a press release, the Speaker of the House of Representatives, Representative Bryan D. Cutler, announced that the House committee to "exhibit the articles of impeachment to the Senate, and manage the trial on behalf of the House" would consist of Respondents Rep. Craig Williams, Rep. Tim Bonner, and Rep. Jared Solomon.[1]

10. On November 29, 2022, the Senate adopted Senate Resolution 387, a resolution "Directing the House of Representatives to Exhibit the Articles of Impeachment." *See* Exhibit D, Sen. Res. 387, Printer's No. 2021 ("SR 387"), (Nov. 29, 2022). Under SR 387, the Senate "[r]esolved" that "the Secretary of the Senate inform the House of Representatives that the Senate will be ready to receive, at 10:30 a.m., the 30th day of November, 2022, the managers appointed by the House of the purpose of exhibited Articles of Impeachment, agreeably to the notice communicated to the Senate." *Id.*

[1] Press Release, *Speaker Names Impeachment Managers for Krasner Trial*, (Nov. 18, 2022), located at: https://www.repcutler.com/News/31561/Latest-News/Speaker-Names-Impeachment-Managers-for-Krasner-Trial.

11. Also on November 29, 2022, the Senate adopted Senate Resolution 386, a resolution "Proposing special rules of practice and procedure in the Senate when sitting on impeachment trials." *See* Exhibit E, Sen. Res. 386, Printer's No. 2020 ("SR 386"), (Nov. 29, 2022). SR 386 provides, *inter alia*, that "the President pro tempore may appoint a committee of Senators . . . The functions of the committee are to receive evidence and take testimony at times and places determined by the committee . . . The committee shall report to the Senate in writing that it has completed receiving evidence and taking testimony, and the committee shall provide a summary of the evidence and testimony . . . [which] shall be received by the Senate . . ." *Id.* § 10. The "committee" referenced in Section 10 is Respondent Senate Impeachment Committee.

12. On November 30, 2022, the House Managers exhibited HR 240, as amended, to the Senate.

13. Also, on November 30, 2022, the Senate adopted Senate Resolution 388, a resolution "Directing a Writ of Impeachment Summons to be issued to the Honorable Lawrence Samuel Krasner, District Attorney of Philadelphia." *See* Exhibit F, Sen. Res. 388, Printer's No. 2023 ("SR 388"), (Nov. 30, 2022). SR 388 provides that a Writ of Impeachment Summons be issued to District Attorney Krasner "immediately", and served by December 7, 2022. *Id.* It further provides that the Writ of Impeachment Summons shall "order and command" that District

Attorney Krasner: (a) answer the Amended Articles by December 21, 2022; and (b) appear before the Senate on January 18, 2023, at 11:30 a.m., "to answer to the said Articles of Impeachment . . ." *Id.* at 1-2.

14. On November 30, 2022, at 11:59 p.m. the 206th General Assembly ended.

15. On December 1, 2022, a copy of a Precept to the Sergeant-at-Arms of the Senate and Writ of Impeachment Summons were delivered to The Philadelphia District Attorney's Office. Both documents are dated November 30, 2022, and bear the signatures of Jacob D. Corman, III, the President Pro Tempore of the 206th General Assembly Senate. *See* Exhibit G, Precept to the Sergeant-At-Arms and Writ of Impeachment Summons, Nov. 30, 2022.

LEGAL STANDARD

Rule 1532(b), Pennsylvania Rules of Appellate Procedure, states that "[a]t any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear." Pa. R.A.P. 1532(b). Accordingly, "[a]n application for summary relief may be granted if a party's right to judgment is clear and no material issues of fact are in dispute." *Jubelirer v. Rendell*, 953 A.2d 514, 521 (Pa. 2008) (citations omitted). "For purposes of an application for summary relief, the record is the same as that for a summary judgment motion. The record includes

the pleadings and other documents of record, such as exhibits." *Allen v. Pennsylvania Bd. of Prob. & Parole*, 207 A.3d 981, 984 (Pa. Commw. Ct. 2019) (citations omitted).

ARGUMENT

I. THE IMPEACHMENT PROCEEDINGS AGAINST DISTRICT ATTORNEY LARRY KRASNER DO NOT CARRY OVER TO THE TWO HUNDRED SEVENTH PENNSYLVANIA GENERAL ASSEMBLY.

The Pennsylvania Constitution, state statutory law, case law in this jurisdiction, and Senate rules all mandate that the Senate is prohibited from proceeding with the Amended Articles of Impeachment after November 30, 2022, because they do not survive the adjournment of the legislative session. The law is clear: the business of the Two Hundred *Sixth* General Assembly (the 2021-2022 term), including the Amended Articles that were adopted by the House on November 16, 2022, and exhibited to the Senate on November 30, 2022, expired at the end of November 30, 2022. The next General Assembly – the Two Hundred *Seventh* – cannot pick up and continue where the prior General Assembly stopped. Rather, under settled law, the Amended Articles died with the end of the Two Hundred Sixth General Assembly on November 30, 2022.

A. The Pennsylvania Constitution and the Pennsylvania Code Provide that the Business of the General Assembly Terminates at the End of the General Assembly's Second Regular Session.

The starting point is the text of the Pennsylvania Constitution. It states, "Members of the General Assembly shall be chosen at the general election *every second year*," that "Senators shall be elected for the term of four years and *Representatives for the term of two years*," and that "[t]he General Assembly shall be a continuing body during the term for which its *Representatives* are elected." Pa. Const. art. II, §§ 2, 3, 4 (emphasis added). Thus, under the Constitution, the General Assembly is a "continuing body" for only two years.

The Pennsylvania Code confirms that the General Assembly is a "continuing body" for only two years and that the two year period ends on November 30 of even-numbered years. It states: "The General Assembly is a continuing body during the term for which its Representatives are elected which begins on December 1 of each even-numbered year and ends at the expiration of November 30 of the next even-numbered year." 101 Pa. Code § 7.21(a); *see also* Pa. Const. art. II, §§ 2, 4. It further explains that the two-year General Assembly consists of two one year sessions, with the one held in odd-numbered years "referred to as the first regular session" and the one held in even-numbered years "referred to as the second regular session." 101 Pa. Code § 7.21(a). Importantly, it authorizes the General Assembly to carry over business only from the first regular session to the

second regular session. *See* 101 Pa. Code § 7.21(b) ("All matters pending before the General Assembly upon the adjournment sine die or expiration of a first regular session maintain their status and are pending before the second regular session.").[2] It does not authorize the General Assembly to carry over business from the second session of one General Assembly to the first session of an entirely different General Assembly. *See id*.

Notably, no statute provides that matters pending at the end of the General Assembly's second regular session maintain their status or remain pending at the start of the next General Assembly. *See* 101 Pa. Code § 7.21(b) (no provision regarding pending matters for new General Assembly.) And no statute could because it would conflict with the Constitutional mandate that the General Assembly is a "continuing body" only "during the term for which its Representatives are elected," *i.e.*, from December 1 of one year until November 30 two years later. Pa. Const. art. II, §§ 2, 4.

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[2] The term 'sine die' means 'without day,' and a legislative body adjourns sine die when it adjourns 'without appointing a day on which to appear or assemble again.'" *Creamer v. Twelve Common Pleas Judges*, 281 A.2d 57, 65 (Pa. 1971). An adjournment *sine die* "end[s] a deliberative assembly's or court's session without setting a time to reconvene." *Scarnati v. Wolf*, 173 A.3d 1110, 1114 n.4 (Pa. 2017) (citing, e.g., BLACK'S LAW DICTIONARY 44 (8th ed. 2004)); *see also* P. Mason, MANUAL OF LEGISLATIVE PROCEDURES § 445(3), at 301 (1970) ("A motion to adjourn sine die has the effect of closing the session and terminating all unfinished business before the House, and all legislation pending upon adjournment sine die expires with the session").

Accordingly, it is clear from both the Constitution and Section 7.21 that pending matters do not "carry over" from one General Assembly to the next. *See also* Robert E. Woodside, PENNSYLVANIA CONSTITUTIONAL LAW 274-75 (1985) ("If the legislature adjourns *sine die* during the second annual session that terminates *all* business pending before it.") (emphasis added).

Importantly, there is no impeachment exception to the mandate that pending matters do not carry over from one General Assembly to the next. There is no statute that establishes an impeachment exception. And the Constitution does not create one. The Constitution provides only that the House of Representatives has the sole *power* of impeachment and the Senate has the sole *power* to try impeachments. Pa. Const. article VI, §§ 4, 5. It does not say that the General Assembly's exercise of its impeachment power creates an exception to the Constitutional provision that the General Assembly is a "continuing body" only "during the term for which its Representatives are elected," *i.e.*, from December 1 of one year until November 30 two years later. Pa. Const. art. II, §§ 2, 4.

Here, the Two Hundred Sixth General Assembly's business ended on November 30, 2022. That business included the adoption of the Amended Articles. Critically, now that November 30, 2022, has passed, the Amended

Articles have died.[3] The next General Assembly's Senate – which formed on December 1, 2022 in the Two Hundred Seventh General Assembly – cannot take them up and conduct an impeachment trial. Put another way, the second regular session of the Two Hundred Sixth General Assembly expired on November 30, 2022. Because matters pending before the General Assembly do not "remain pending" after the expiration of the second regular session, the impeachment proceedings against District Attorney Krasner have ended and do not carry over to the Two Hundred Seventh General Assembly (the 2023-2024 term). 101 Pa. Code § 7.21(b).

B. The Rules of the General Assembly and Pennsylvania Precedent Also Provide that the Business of the General Assembly Terminates at the End of the General Assembly's Second Regular Session.

Pennsylvania Senate Rule 12(j) states:

> All bills, joint resolutions, *resolutions*, concurrent resolutions or *other matters* pending before the Senate upon the recess of a first regular session convening in an odd-numbered year shall maintain their status and be pending before a second regular session convening in an even-numbered year but not beyond adjournment sine die or November 30th of such year, whichever first occurs.

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[3] Resolution No. 240 was introduced and referred to the House Judiciary Committee on October 26, 2022. The resolution was reported as committed by the Judiciary Committee on November 15, 2022. The House of Representatives amended and adopted Resolution No. 240 on November 16, 2022. *See* H.R. No. 240, Pa. Two Hundred Sixth General Assembly - 2021-2022, available at https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2021&sind=0&body=H&type=R&bn=240.

Id. (emphasis added). Senate Rule 12(j) thus explicitly directs that all matters pending before the Senate upon the expiration of the second regular session, including any impeachment "resolution," are no longer "pending" in the new session. In the same vein, Pennsylvania House of Representatives Rule 45(A) provides that the Government Oversight Committee:

> [S]hall not continue to exist after sine die adjournment of the General Assembly. Investigation of any referred matter before the committee that has not been concluded or disposed of by sine die adjournment of the General Assembly shall cease on such date . . . [w]ithin 30 days following the reconstitution of the committee in the next succeeding legislative term, the committee shall review such materials and determine whether or not to proceed with a referred matter investigated by the former committee.

Id. Thus, the rules of both the Pennsylvania House and Senate align with 101 Pa. Code § 7.21(b): any matter—whether legislation, a committee, or, in this case, a resolution on impeachment—cannot carry over from one General Assembly to the next.

Pennsylvania case law also confirms that the impeachment proceedings against District Attorney Krasner do not carry from one General Assembly to the next. In *Brown v. Brancato*, the Supreme Court of Pennsylvania ruled that a select committee established by the Pennsylvania House of Representatives and any powers granted to that committee ended with adjournment. 184 A. 89, 93 (Pa.

1936) ("legislative action of the General Assembly, in virtue of the session which convened, as required by article II, section 3, ended with its adjournment"). Similarly, in *Commonwealth v. Costello*, the court held that a committee established by the Pennsylvania Senate could not continue past adjournment. *Commonwealth v. Costello*, No. 315, 1912 WL 3913 (Pa. Quar. Sess. Mar. 15, 1912) at **6 ("When, however, the session of the legislature has finally adjourned and ended, as did the general assembly of Pennsylvania on May 25, 1911, this is equivalent to the prorogation of parliament. The functions of the legislature are then terminated. The conclusion of the session puts an end to all pending proceedings of a legislative character") (citing Jefferson's Manual at 183 (1812); Cushing's Law and Practice of Legislative Assemblies, § 516).

The Supreme Court of Pennsylvania has specifically addressed the situation presented here where the House has completed its portion of a legislative business before adjournment, but the Senate has not completed its portion of that business. In *Frame v. Sutherland*, the Court stated the general principle that, upon adjournment, "unenacted bills pending at the end of a session expired, requiring reintroduction and repassage of the bill in the originating house in order to obtain consideration by the other house." 327 A.2d 623, 627 (Pa. 1974).[4] Just as *Frame*

[4] That particular statement is no longer applicable to the adjournment of *any* session because the Constitution now provides that the General Assembly is a "continuing body" for two

observed that the legislative process would have to begin anew after adjournment, with the House repassing the bill that it had already passed, so too here the expiration of the General Assembly requires that the House begin the impeachment process anew. [5]

In sum, Pennsylvania's "General Assembly," including both Senators and Representatives, is a "continuing body" only "during the term for which its Representatives are elected," that is, "from December 1 of each even-numbered year" until "November 30 of the next even-numbered year." 101 Pa. Code § 7.21; *see also* Pa. Const. art. II, §§ 2, 4; *Scarnati v. Wolf*, 135 A.3d 200, 213 (Pa. Commw. Ct. 2015), *rev'd on other grounds*, 173 A.3d 1110 (Pa. 2017) ("The General Assembly is a continuing body during the term for which its

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years until a new election, but the principle remains fully applicable here where it is the *second* regular session, and thus the General Assembly itself, that expired on November 30, 2022.

[5] Respondents may argue that the issues raised in this action are non-justiciable and that the Court cannot stray into the prerogatives of the legislative branch. That would be incorrect. This Court and the Pennsylvania Supreme Court are fully authorized to interpret the Pennsylvania Constitution and the Pennsylvania Code to rule on the kinds of declaratory judgments that this application seeks. By way of example, the Pennsylvania Supreme Court addressed similar *sine die* issues. *See, e.g.*, *Brown*, 184 A. 89; *Frame v. Sutherland*, 327 A.2d 623 (Pa. 1974). If these issues were not justiciable, the Supreme Court could not rule the way that it did in *Brown*, *Frame*, and other decisions cited in this Application. Moreover, District Attorney Krasner is not asking the Court to dictate or otherwise interfere with the terms or procedures of the impeachment proceedings, if they are permitted to go forward. *Cf. Larsen v. State of Pennsylvania*, 646 A.2d 694 (Pa. Commw. 1994) (rejecting Larsen's request that the court "direct[] who shall try and how the [impeachment] trial shall be conducted . . . mandate[e] rulings on pre-trial motions and otherwise, and . . . prohibit[] any action by the Senate on the subject, pending final resolution of this case"). Rather, District Attorney Krasner is asking this Court to declare, based on settled Pennsylvania law, that the impeachment proceedings are unlawful.

representatives are elected. The term begins on December 1 of each even-numbered year and ends at the expiration of November 30 of the next even-numbered year.") (internal quotation marks omitted). Just as the Two Hundred Sixth General Assembly ended on November 30, 2022, so did the Amended Articles of Impeachment. The law is that simple and that clear.[6]

II. DISTRICT ATTORNEY KRASNER IS NOT SUBJECT TO IMPEACHMENT BECAUSE THE PENNSYLVANIA CONSTITUTION DOES NOT AUTHORIZE THE GENERAL ASSEMBLY TO IMPEACH LOCALLY ELECTED OFFICIALS SUCH AS THE PHILADELPHIA DISTRICT ATTORNEY.

The General Assembly's impeachment power comes from Article VI, Section 6 of the Pennsylvania Constitution, titled "Officers liable to impeachment," which states that "[t]he Governor and all other civil officers shall be liable to impeachment for any misbehavior in office…" That provision does not apply to the Philadelphia District Attorney, a local official.

[6] The fact that the U.S. Congress has allowed impeachment proceedings to carry over from one Congress to the next does not alter the analysis under Pennsylvania law. There are significant differences between federal and Pennsylvania law that make this occasional Congressional practice irrelevant to the impeachment of District Attorney Krasner. Fundamentally, federal law, unlike Pennsylvania law, does not address when matters carry over to a new session or to a new Congress. Moreover, unlike the Pennsylvania Senate, the U.S. Senate is a "continuing body" because two-thirds of U.S. Senators (more than a quorum) do not change at any election. *See* S. Rept. No. 100-542, Carrying the Impeachment Proceedings Against Judge Alcee L. Hastings Over to the 101st Congress (Sept. 22, 1988) at 10. ("The Senate has been viewed as a 'continuing body' in that at least two thirds of its members (more than a quorum) always held over from one Congress to another").

A. As a Local Official, District Attorney Krasner Is Not A "Civil Officer" Within The Meaning Of Article VI.

The Philadelphia District Attorney is unquestionably a local official, not a state official. *See, e.g., Carter v. City of Philadelphia*, 181 F.3d 339, 350 (3d Cir. 1999) ("Consistent with its constitutional and statutory law, Pennsylvania's case law defines district attorneys—Philadelphia District Attorneys in particular—as local, and expressly not state, officials."). The text of the Pennsylvania Constitution makes clear that "civil officer" does not include local officials like Philadelphia District Attorney Larry Krasner.

First, the only "civil officer" specifically referenced in Section 6 is the Governor, a statewide officeholder. Basic principles of statutory construction teach that the ensuing "catch-all" phrase of "other civil officers" is limited to similarly situated officeholders. *See Northway Vill. No. 3, Inc. v. Northway Props., Inc.*, 244 A.2d 47, 50 (Pa. 1968) ("The ancient maxim 'noscitur a sociis' summarizes the rule that the meaning of words may be indicated or controlled by those words with which they are associated. Words are known by the company they keep."); *see also Burns v. Coyne*, 144 A. 667, 668 (Pa. 1928) ("What the words 'or other creditors,' following the word 'judgment,' really mean, is, other creditors of like rank; that is, lien creditors. This accords with the familiar rule of statutory construction that, where specific expressions are followed by those which

are general, the latter will be confined to things of the same class as the former.") (ejusdem generis canon).

Second, Article VI, Section 6 specifies a remedy that is meaningful only for the holders of statewide office, not for local officials. It states that judgment in impeachment cases "shall not extend further than to removal from office and disqualification to hold any office of trust or profit *under this Commonwealth*." Pa. Const. art. VI, § 6 (emphasis added). Local officials do not hold an office "under this Commonwealth." *See Emhardt v. Wilson*, 20 Pa. D. & C. 608, 609 (Ct. Com. Pl. 1934) (Philadelphia officer not an officer "under this Commonwealth" under Art. II, section 6) (citing *Commonwealth ex rel. Woodruff v. Joyce*, 139 A. 742, 742-43 (Pa. 1927) (a local office is not an office "under this Commonwealth")). That is, the effect of a judgment of impeachment is to preclude a person from holding *statewide* office only. If local officers were meant to be encompassed within Article VI, section 6, then the Constitution surely would have provided for the remedy of disqualification from local office. Any argument that the Constitution authorizes impeachment of local officials for misbehavior in local office and then limits the disqualification remedy to holding statewide office is illogical.[7]

[7] The impeachment provision of the Constitution of 1838 explicitly limited impeachment to statewide officers, reciting that "[t]he governor and all other civil officers *under this commonwealth* shall be liable to impeachment for any misdemeanor in office; but judgment, in

Finally, the Constitution explicitly refers to local officers when it means to include them. For example, Article IX references "County officers" (Pa. Const. art. IX, § 4), and "officers of the City of Philadelphia." (Pa. Const. art. IX, § 13(f)). Similarly, Article VII, Section 3 references "county, city, ward, borough, and township officers." The Constitution's omission of "local" or "city" officials in Article VI, Section 6, is further evidence that such officials are not subject to impeachment.

That local officials like Philadelphia District Attorney Krasner are not "civil officers" subject to impeachment under Article VI, Section 6 also finds support in both case law and legislative history. In *Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155 (Pa. 2007), Chief Justice Saylor noted that "*state-level* officials were almost exclusively in view when then-Section 4 of Article VI was framed."

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such cases, shall not extend further than to remove from office and disqualification to hold any office . . . under this commonwealth . . ." *See* Pa. Const. of 1838, art. IV, § 3 (emphasis added). Because impeachment was limited to officers "under this commonwealth," as a textual matter, it encompassed only statewide officers, not the District Attorney. *See Joyce*, 139 A. at 742-43.

Following the 1874 constitutional convention, without any debate, explanation, or vote of the delegates to explain the change, Article VI, Section 3 was modified and the italicized reference to "under this commonwealth" in the 1838 constitution was eliminated, although the identical reference in the disqualification clause remained. Because there was no debate and the Journals accompanying the constitution noted that the "old Constitution" was "retained" in this provision, it appears that the 1874 impeachment provision (which, in material part, exists today), preserved the meaning of the 1838 version and the changes were non-substantive. *See* 2 Journal of the Convention to Amend the Constitution of Pennsylvania, 1872, at 1303, 1320. That is, if the 1873 change was intended to substantively modify the 1837 provision, there would have been a similar change in the remedy clause and an explanation of why the change was made. There is no such explanation.

923 A.2d at 1167 (Saylor, J., concurring) (emphasis added). The four-Justice majority in *Burger* called Justice Saylor's theory "cogent," *id.* at 1161 n.6, but declined to otherwise address it because it was not raised by the parties.[8]

The debates and legislative history of Pennsylvania constitutional conventions confirm that the framers were concerned about officers holding statewide office, specifically judges, when devising the impeachment process. Consider the following authorities:

- *Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second Day of May, 1837* (Harrisburg: Packer, Barrett and Parke, 1837) [hereinafter, "*1837 Debates*"]; vol. 1, p. 459 (emphasis added): "The article of impeachment, now properly under consideration, applies to 'the Governor, and all other civil officers under this Commonwealth' – persons holding offices during good behavior, as well as those holding for a term of years. **The question, so far as it has been argued at all, has been argued as respects judicial officers only; and perhaps properly. There has been no attempt to impeach any other officer under the present Constitution**: as to such it has been a useless provision: their short terms of office has kept them entirely under the control of the people. As to the judiciary, I confess I think it might be dispensed with altogether, as another part of the Constitution provides for the removal of 'Judges and Justices.' This is unnecessary as a remedy, or means for removal."

- *1837 Debates*; vol. 1, p. 275: "It is said, the Governor, and all other civil officers under this Commonwealth, shall be liable to impeachment; but, sir, we do not say who those civil officers are. Are they to be understood as judges alone, or are they other officers than those of a judicial character? Is

[8] Chief Justice Saylor distinguished prior decisions applying the removal provisions to municipal officers because those decisions did not address this distinction. *See id.* Because the parties did not raise the issue, the majority exercised judicial restraint and did not consider or decide it.

the Lieutenant Governor, an officer intended by some gentlemen, and very properly, to be created under the new Constitution, to be liable to impeachment? These questions cannot be answered, for the plain reason, that they relate to subjects not yet acted on by the Convention."

- *Debates of the Convention to Amend the Constitution of Pennsylvania Convened at Harrisburg, November 12, 1872* (Harrisburg: Benjamin Singerly, 1873); vol. 2, p. 575: "By the constitution of the Senate and House, which I have not heard any one propose to change, the House has the sole power of impeachment, and the Senate to try and adjudge, not only the Governor, but all judicial officers[.]"

These statements during constitutional deliberations demonstrate what Justice Saylor found so compelling, and the majority "cogent," in *Burger*: the framers' focus was on *statewide* officials and judges. They were not concerned with local officers like the District Attorney of Philadelphia, and they evinced no intent to subject them to impeachment by the state legislature. Accordingly, the history of these provisions confirm the meaning of the text: the Philadelphia District Attorney is not a "civil officer" within the meaning of Article VI, Section 6.

B. Impeachment Of Philadelphia Local Officials Is Constitutionally Delegated to Statutory Law Governing First Class Cities.

The Pennsylvania Constitution specifically gives the power to impeach the Philadelphia District Attorney to Philadelphia officials. Article VI, Section 1, in conjunction with Article IX, Section 13, which was originally enacted as a 1951 amendment, delegate the power to impeach Philadelphia officials to a local process established under then-existing statutory law, namely, the First Class Cities

Government Law, 53 P.S. § 12199, *et seq.* That specific constitutional allocation makes clear that there is no authority to impeach Philadelphia officials under the general provisions of Article VI, Section 6.

First, Article VI, Section 1 states, "[a]ll officers, whose selection is not provided for in this Constitution, *shall* be elected or appointed *as may be directed by law*." (emphases added.) As the Pennsylvania Supreme Court has concluded time and again, this provision commits the regulation of local officers to statute and confers on the legislature the power to establish the "conditions of tenure," including impeachment and removal. *See Weiss v. Ziegler*, 193 A. 642, 644 (Pa. 1937); *Watson v. Pennsylvania Tpk. Comm'n,* 125 A.2d 354, 356 (Pa. 1956) ("It is therefore established in this State beyond respectable controversy that, where the legislature creates a public office, it may impose such terms and limitations with reference to the tenure or removal of an incumbent as it sees fit."); *Marshall Impeachment Case*, 62 A.2d 30, 32 (Pa. 1948); *Marshall Impeachment Case*, 69 A.2d 619, 625 (Pa. 1949) ("*The* method of removing the Receiver of Taxes of Philadelphia from office *is provided for by statute*, and this method was not abrogated by the Constitution of Pennsylvania of 1873.") (impeachment of Philadelphia officer) (emphasis added); *Burger*, 923 A.2d at 1163-64 (noting that "the constitutional power of removal must be read in conjunction with other constitutional provisions, a reading which makes clear that the General Assembly

may enact limitations on the constitutionally conferred power to remove a civil officer at least where the office at issue was created by the General Assembly . . . . . [T]his Court has consistently recognized that, when the General Assembly creates a public office, it may impose terms and limitations on the removal of the public officer so created.").[9]

Second, district attorneys are referenced in the Constitution, but only once, in the enumeration in Article IX, Section 4, of "[c]ounty officers." Section 4 states that home rule jurisdictions like Philadelphia are excepted from its provisions that govern county government. Instead, the Constitution specifically authorizes home rule jurisdictions like Philadelphia to adopt their own rules regulating public officers, which include the Philadelphia district attorney. Namely, Article IX, Section 13 provides that "[i]n Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected *in such manner as may be provided by law*." Pa. Const. art. IX, § 13(a) (emphasis added).

Relatedly, Article IX, Section 13(f) provides:

> Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia, and until the

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[9] The Office of the Philadelphia District Attorney was created by the General Assembly. That statute, P.L. 654, No. 385 (May 3, 1850), An Act Providing for the Election of District Attorneys, provided a statutory mechanism for removing the Philadelphia District Attorney, at Section 4. Section 4 was later repealed and is supplanted by the impeachment and removal provisions of the First Class Cities Government Law, 53 P.S. §§ 12199-12205.

> General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and **the laws of the Commonwealth in effect at the time this amendment becomes effective**, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Id. § 13(f) (emphasis added).

Among the "laws of the Commonwealth in effect at the time this amendment becomes effective [1951]" was the First Class Cities Government Law, enacted in 1919. *See* Act of June 25, 1919, P.L. 581, No. 274 (June 25, 1919). ("For the better government of cities of the first class of this Commonwealth"). That law establishes the prerequisites for impeachment of municipal officers like the District Attorney. It provides:

> Municipal officers shall be liable to impeachment, suspension, and removal from office, for any corrupt act or practice, malfeasance, mismanagement, mental incapacity, or incompetency for the proper performance of official duties, extortion, receiving any gift or present from any contractor or from any person seeking or engaged in any work for, or furnishing material to, the city, or from any incumbent or occupant of, or candidate or applicant for, any municipal office, and for willfully concealing any fraud committed against the city.

53 P.S. § 12199. Critically, the First Class Cities Government Law establishes a *local* procedure for impeachment proceedings, not impeachment by the House and trial by the Senate. It includes petitions by local electors, appointment of an investigating committee, and a trial over which the Court of Common Pleas

presides. *Id.* §§ 12200-12205. And that local procedure was blessed by the Constitution in 1951. *See* Pa. Const., art. IX, § 13(f).

These provisions mandate that the City of Philadelphia has the oversight over any impeachment and removal of a Philadelphia District Attorney, who is unquestionably a City officer within the meaning of Article IX. *See Chalfin v. Specter*, 233 A.2d 562, 565 (Pa. 1967) ("[T]he majority of this 7-Judge Court agree with me on this point and are convinced that under the Constitution of Pennsylvania and the Philadelphia Home Rule Charter, the District Attorney of Philadelphia is a City officer and is subject to the Home Rule Charter.") (Bell, C.J., concurring); *McMenamin v. Tartaglione*, No. 3713, 1991 WL 1011018 at *142 (Pa. Com. Pl. Mar. 26, 1991) ("[T]his court definitively finds that the District Attorney of the City of Philadelphia is a 'city officer' for purposes of §10-107(5) of the Charter.") (citing authorities), *aff'd*, 590 A.2d 802 (Pa. Commw. 1991), *aff'd without opinion*, 590 A.2d 753 (mem.) (Pa. 1991); *accord Carter*, 181 F.3d at 350 ("Consistent with its constitutional and statutory law, Pennsylvania's case law defines district attorneys—Philadelphia District Attorneys in particular—as local, and expressly not state, officials.").

As part of the Constitution's express authorization of Philadelphia home rule, it committed the impeachment of Philadelphia's local officers to the General Assembly's statutes regulating Philadelphia officials. And that constitutional

action leaves no room for the operation of a completely separate impeachment process initiated by the House. Almost certainly, the framers of the 1951 Amendment understood that the Article VI, section 6, procedure did not apply to "local officers" to begin with (see section A, *supra*) and therefore they did not see any potential conflict. But even if one assumes that the more general provisions extend to "local officers," and thus extended to Philadelphia officials prior to 1951, the 1951 Amendment must be understood as limiting that power going forward with respect to Philadelphia officials. *See Burger*, 923 A.2d at 1163-64 ("the General Assembly may enact limitations on the constitutionally conferred power to remove a civil officer at least where the office at issue was created by the General Assembly"). The General Assembly has spoken, enacting a statutory impeachment process applicable to Philadelphia's officers. *See Marshall*, 62 A.2d at 33; *id.*, 69 A.2d at 625. These statutory procedures control any effort at impeaching the Philadelphia District Attorney.

III. DISTRICT ATTORNEY KRASNER IS NOT SUBJECT TO IMPEACHMENT BECAUSE THE AMENDED ARTICLES OF IMPEACHMENT DO NOT ALLEGE CONDUCT THAT CONSTITUTES "ANY MISBEHAVIOR IN OFFICE."

The Amended Articles of Impeachment fail for yet a third independent reason: the Amended Articles do not allege conduct that constitutes "any misbehavior in office." A "civil officer" may be impeached only for "any

misbehavior in office." Pa. Const. art. VI, § 6. The Amended Articles, however, do not allege anything close to "misbehavior in office."

A. "Misbehavior In Office" Means Criminal Conduct, Including a Failure to Perform a Positive Ministerial Duty or the Performance of a Discretionary Duty with an Improper Motive.

The Pennsylvania Supreme Court has interpreted "misbehavior in office" to mean conduct that would amount to the common law criminal offense of "misbehavior in office." *In re Braig*, 590 A.2d 284, 286 (Pa. 1991) ("In the several cases where interpretation of these provisions came before the appellate courts, it was uniformly understood that the reference to 'misbehavior in office' was to the criminal offense as defined at common law."); *see also Commonwealth v. Davis*, 149 A. 176, 178 (Pa. 1930) (constitutional provision requiring removal "on conviction of misbehavior in office" to be interpreted "exactly the same way" as the criminal statute); *Commonwealth v. Shaver*, 3 Watts & Serg. 338 (Pa. 1842) (finding no basis to remove officer for "misbehavior in office" where "it is perfectly manifest that he has not even been charged with, much less convicted of it").

Misbehavior in office requires a very high showing: a public official has engaged in "misbehavior in office" only if he "fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." *Braig*, 590 A.2d at 286; *see also Commonwealth v.*

Peoples, 28 A.2d 792, 794 (Pa. 1942) ("The law is clear that misfeasance in office means either the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."); *Commonwealth v. Green*, 211 A.2d 5, 9 (Pa. Super. 1965) ("The common law crime of misconduct in office, variously called misbehavior, misfeasance or misdemeanor in office, means either the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive.").

Where, as here, "the nature of the duty is such as to permit the exercise of discretion, there must be present the additional element of an evil or corrupt design to warrant conviction [for misbehavior in office]." *Commonwealth v. Hubbs*, 8 A.2d 618, 620 (Pa. Super. 1939) (public officer that "negligently omitted and refused to cause [certain] laws . . . to be enforced" did not commit misbehavior in office due to "discretionary power and latitude in the performance of their duties"); *accord Braig*, 590 A.2d at 286 ("misbehavior in office" includes "the performance of a discretionary duty with an improper or corrupt motive"); *Commonwealth v. Steinberg*, 362 A.2d 379, 386 (Pa. Super. 1976) ("The element which distinguishes the negligent mishandling of the public's business from unlawful conduct by a public officer in handling a discretionary matter is the existence of a corrupt motive.") (corrupt motives include "obtain[ing] gain for himself or his political

party, or to bestow a gratuity upon a relative or a friend or a political ally at the expense of the Commonwealth").[10]

The bar is especially high when it is applied to the actions of a district attorney because, as the Pennsylvania Supreme Court has held, the District Attorney is vested with "tremendous" "discretion" to make and implement his or her own policies and priorities. *See Commonwealth v. Clancy*, 192 A.3d 44, 53 (Pa. 2018) (a district attorney's "discretion is tremendous," and he or she "is "afforded such great deference that this Court and the Supreme Court of the United States seldom interfere with a prosecutor's charging decision"); *Commonwealth ex rel. Specter v. Martin*, 232 A.2d 729, 736 (Pa. 1967) ("[I]n the performance of his duties, the law grants to the district attorney wide discretion in the exercise of which he acts in a judicial capacity."). And, as a matter of law, the legislature may not interfere with District Attorney Krasner's lawful exercise of those discretionary duties: a district attorney "must be allowed to carry out [his or her discretionary powers] without hind[]rance from any source." *See Mummau v. Ranck*, 531 F. Supp. 402, 405 (E.D. Pa.), *aff'd*, 687 F.2d 9 (3d Cir. 1982) (citing *Commonwealth*

[10] Following the Supreme Court's decision in *Braig*, Pennsylvania courts regularly hold that "misbehavior in office" under the Pennsylvania Constitution means the common law crime of that name. *See, e.g.*, *In re Dalessandro*, 596 A.2d 798, 798 (Pa. 1991) ("Based on the analysis set out in [*Braig*], we hold that Dalessandro was not "convicted of misbehavior in office so as to require automatic forfeiture of office") (internal quotations omitted); *In re Ballentine*, 86 A.3d 958, 971 (Pa. Ct. Jud. Disc. 2013) (quoting and adopting the *Braig* analysis of "misbehavior in office"); *In re Berkhimer*, 877 A.2d 579, 591 (Pa. Ct. Jud. Disc. 2005).

ex rel. Spector v. Bauer, 261 A.2d 573 (Pa. 1970)). Importantly, this discretion covers a very wide range of matters, including decisions about "the allocation of scarce resources and the decision to prosecute a particular individual and specific classes of crime," *id.* at 405 (citing *United States v. Berrigan*, 482 F.2d 171 (3d Cir. 1973)).

The situations in which courts have found that a public officer engaged in "misbehavior in office" are those where the officer abused his or her station for personal gain. *See, e.g.*, *In re Cain*, 590 A.2d 291, 292 (Pa. 1991) (judge who "accept[ed] money from an attorney in two separate cases in exchange for action in criminal cases in which the attorney represented the defendants" had committed misbehavior); *Commonwealth v. Davis*, 149 A. 176 (Pa. 1930) (mayor who unlawfully took fees and rewards by color of his office and failed to report money he received for election expenses committed misbehavior). *Cf. Dalessandro*, 596 A.2d at 798 (judge convicted of "two counts of attempted income tax evasion" under federal law did not commit misbehavior in office).

B. The Amended Articles of Impeachment Do Not Allege Conduct that Constitutes "Any Misbehavior in Office"

None of the Amended Articles of Impeachment alleges anything close to "misbehavior in office," as courts have interpreted that phrase to mean. It is undisputed that the Amended Articles do not accuse District Attorney Krasner of

committing any criminal offense or of using the power of his office for pecuniary or personal gain.

Three of the Articles (Articles I, VII, and VI) simply attack District Attorney Krasner's prosecution policies, approach to criminal justice, and management of the DAO. Specifically, Article I criticizes District Attorney Krasner for implementing "progressive" trainings and prosecutorial policies as they relate to cash bail, immigration, cannabis, plea offers, and prostitution. Article VII similarly criticizes District Attorney Krasner policies as they relate to the DAO's prosecution of minor offenses, including prostitution, theft, and minor drug offenses. Article VI criticizes District Attorney Krasner for allegedly "failing to timely contact victims, deliberately misleading victims and or [sic] disregarding victim input and treating victims with contempt and disrespect." Exhibit B, Amended Articles at 16.

Each of these Articles consists of criticism of how District Attorney Krasner exercised his prosecutorial discretion, advanced his priorities, and managed the office. But, as discussed above, that *criticism* is no ground for impeachment because District Attorney Krasner's exercise of prosecutorial discretion and advancement of his priorities cannot, as a matter of law, amount to "any misbehavior in office." *See Clancy*, 192 A.3d at 53; *Martin*, 232 A.2d at 736; *Mummau*, 531 F. Supp. at 405 (citing *Bauer*, 261 A.2d 573).

Article II is also legally deficient. It accuses District Attorney Krasner of "Obstruction" of a House Select Committee Investigation due to his alleged non-compliance with a subpoena duces tecum. That plainly fails because a district attorney's compliance or noncompliance with a subpoena arising out of a House investigation is not part of a district attorney's positive duties or discretionary authority.[11]

Also, as Article II acknowledges, District Attorney Krasner responded to the subpoena by first communicating his objections to the subpoena to the Select Committee's counsel and then by filing an action in Commonwealth Court on September 2, 2022, to quash the subpoena. This is no obstruction; it is what the Pennsylvania Supreme Court has advised. The Supreme Court has squarely held that a recipient of a legislative subpoena may seek relief in court. *See Commonwealth ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 5 n.4 (Pa. 1974) ("Had [the plaintiff] wished to challenge the constitutionality of the committee's investigation without risking a contempt citation before the bar of the House, judicial recourse would have been available to him. Injunctive relief from the activities of the committee could have been sought in a court of equity.").

[11] Similarly, testifying before a special master is not a positive duty of the district attorney, and therefore the Amended Articles' allegations that District Attorney Krasner omitted facts while giving testimony is not actionable. *See* Exhibit B, Am. Articles at Art. V.

Articles III and IV fail as a matter of law because they hinge on the alleged misconduct of other lawyers in the DAO, not on the conduct of District Attorney Krasner. A public official may be found guilty of the common law crime of misbehavior in office only if the officer personally engaged in the wrongful conduct. *See Commonwealth v. Bready*, 286 A.2d 654, 657 n.4 (Pa. Super. 1971). It is not enough to allege that an official's subordinates committed misbehavior in office. As the court in *Bready* explained, there is no liability for misconduct that "was the product of mistake or inadvertence" by the officer, even for "*intentional* or inadvertent acts of his employees." *See id.* (emphasis added).

Articles III, IV, and V also fail as a matter of law because (legislative) impeachment may not be used to regulate or punish the conduct of lawyers alleged to have violated the rules of professional responsibility. *See* Am. Articles at 11, 14, 15. The Pennsylvania Supreme Court has "exclusive and inherent authority" to "govern the conduct of attorneys practicing law within the Commonwealth." *Beyers v. Richmond*, 937 A.2d 1082, 1089 (Pa. 2007) (citing *Lloyd v. Fishinger*, 605 A.2d 1193, 1196 (Pa. 1992)) ("Any legislative enactment encroaching upon this Court's exclusive power to regulate attorney conduct would be unconstitutional."). The Supreme Court has observed that such an "encroachment upon the judicial power by the legislature is offensive to the fundamental scheme of our government." *Beyers*, 937 A.2d at 1090-91 (citing *Commonwealth v. Sutley*,

378 A.2d 780, 783 (Pa. 1977)). As the Court has explained, its "exclusive authority in this area is founded on the separation of powers of our Commonwealth's government," and "[t]he General Assembly has no authority under the Pennsylvania Constitution to regulate the conduct of lawyers in the practice of law." *Id*.

Additionally, the Canon of Judicial Conduct is not applicable to the conduct alleged in Articles III, IV, and V. First, 16 P.S. § 1401(o) – the statute cited in the Amended Articles – does not apply to district attorneys in counties of the first class like the county of Philadelphia. Section 1401 is contained in Pennsylvania Statutes Title 16, "Counties," at Chapter 1, which is titled "The County Code." The County Code states that "Except incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12, Article XII-B and Article XXX, this act does not apply to counties of the first or second classes." 16 P.S. § 102(a). Thus, only where the County Code "incidentally" applies to counties of the first class would it apply to the Philadelphia District Attorney. Critically, Section 1401(o) does not "incidentally" apply to the District Attorney of Philadelphia.

Second, although the Code of Judicial Conduct applies to a district attorney's conduct "insofar as such canons apply to salaries, full-time duties and conflicts of interest" (16 P.S. § 1401(o)), Articles III and IV do not concern "salaries, full-time duties and conflicts of interest." Instead, they involve the duty

of candor (R.P.C. 3.3), unsubstantiated and generalized professional misconduct allegations (R.P.C. 8.4), and vague allegations of impropriety or the appearance of impropriety (Pa. Code Judicial Conduct, Canon 2) (stating, "A judge shall perform the duties of judicial office impartially, competently, and diligently").

Third, the exclusive remedy for a violation of the Canon of Judicial Conduct is discipline by the Disciplinary Board of the Supreme Court, not impeachment. Section 1401(o) states: "[a]ny 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." *Id.* Only upon a determination by the Supreme Court, which has not occurred, could the matter be referred to the House. *See id.*[12]

Finally, Article VI of the Amended Articles also fails as a matter of law because it is hopelessly conclusory and vague. It alleges, without identifying any supporting facts, that District Attorney Krasner violated federal and state victims' rights statutes by "failing to timely contact victims, deliberately misleading victims and or disregarding victims input and treating victims with contempt and disrespect." Exhibit B, Am. Articles at 15-16. Such vague and conclusory

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12 The Supreme Court's holding in *Commonwealth v. Robinson*, 204 A.3d 326, 347-49 (Pa. 2018), limits the application of judicial canons to cases of "actual impropriety [of representation] of sufficient severity to have tainted the proceedings" or "a personal interest in the outcome of the case," neither of which is alleged in the Articles.

assertions are plainly inadequate. To satisfy Due Process, the Articles must allege a sufficient basis for impeachment. *See In re Scott*, 596 A.2d 150, 151 (Pa. 1991) ("The sparse record presented to this Court [*i.e.*, an information] is inadequate to sustain a determination that the Respondent has been convicted of 'misbehavior in office by a court.'"); *see also Hubbs*, 8 A.2d 618, 620 (Pa. Super. 1939) (indictment for misbehavior in office properly quashed because it failed to sufficiently allege the basis for the crime).

In sum, the Amended Articles fail because they do not allege that District Attorney Krasner committed "any misbehavior in office."

C. The Amended Articles' Reliance on Dicta from *Larsen v. Senate of Pennsylvania* Is Misplaced.

Implicitly conceding that the Amended Articles do not meet the high threshold for "misbehavior in office" established by the Supreme Court in *Braig*, the Amended Articles cite the Commonwealth Court's opinion in *Larsen*, 646 A.2d 694 (Pa. Commw. 1994), in support of the position that "misbehavior in office" does not mean "the breach of a positive statutory duty or the performance by the public official of a discretionary act with an improper or corrupt motive." *See* Exhibit B, Amended Articles at 1. (The Amended Articles do not define "misbehavior in office," instead treating this fundamental constitutional limitation as imposing no constraint at all on the House's power.) The Amended Articles are

dead wrong in arguing that *Larsen* establishes that the allegations of the Amended Articles state a basis for "misbehavior in office."

To start, *Larsen* involved a former Supreme Court justice who was impeached *after* he was removed from office by the Pennsylvania Supreme Court for a violation of the Code of Judicial Discipline and *after* he was convicted by a court of two felony counts of criminal conspiracy under the Controlled Substances Act. 646 A.2d at 697. Justice Larsen had petitioned the court to prevent his impeachment on the principal grounds that he had already been removed from office. *Id*. at 698. Thus, he had endeavored to use his criminal conviction and removal from office as a sword against impeachment. Here, the District Attorney of Philadelphia has been impeached by a lame-duck House based primarily on policy disagreements, which could not be more different than the criminal conduct at issue in *Larsen*.

Moreover, the court in *Larsen* determined that Larsen's alleged misconduct in the Articles of Impeachment *did* "involve breaches of 'positive statutory duty' and also 'performance of discretionary act with improper or corrupt motive.'" *See id*. at 702. That is not surprising given the very serious charges against him. Specifically, Larsen was accused of: (1) "track[ing] petitions for allowance of appeal to the Supreme Court, for special handling, because friends and political contributors were involved as attorneys"; (2) "engag[ing] in ex parte

communications and exchanges with a friend and political supporter who was the attorney in two cases . . . pending before the Supreme Court"; (3) "ma[king] false statements to the grand jury"; (4) "communicat[ing] ex parte with a trial judge to influence the outcome of a trial court proceeding"; and (5) "ma[king] false statements under oath" in litigation. *Id*. Indeed, as the court recognized, the allegations against Larsen (unlike the allegations against District Attorney Krasner) would meet any definition of "misbehavior in office," including one that required a "corrupt motive" or even criminal conduct.

The Amended Articles latch onto the *Larsen* court's dicta that Larsen's "strict definition of impeachable offense . . . finds no support in judicial precedents." *Id*. But that dicta is incorrect because the Pennsylvania Supreme Court in *Braig* expressly held three years earlier that "misbehavior in office" refers to the "common law crime consisting of the failure to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." 590 A.2d at 286. Also, *Larsen* does not state some more expansive definition of "misbehavior in office" that the Amended Articles can meet. Indeed, as noted, the Larsen articles of impeachment assert conduct far, far worse than that in the Amended Articles here – and conduct plainly in violation of the common law crime of misbehavior in office.

The final reason *Larsen* does not support the Amended Articles here is that *Braig* is controlling. Although it involved removal of a judge under Article V, Section 18(l) of the Pennsylvania Constitution rather than impeachment under Article VI, Section 6, both provisions expressly refer to "misbehavior in office." *Braig*'s definition therefore applies to both provisions. *See Cavanaugh v. Davis*, 440 A.2d 1380, 1381 (Pa. 1982) ("Because the language of the two constitutional provisions at issue relates to the same subject matter . . . the two provisions must be construed together."); *In re Humane Soc'y of the Harrisburg Area, Inc.*, 92 A.3d 1264, 1271 (Pa. Commw. Ct. 2014) (holding that decisions "defining an infamous crime in Article II, Section 7 of the Pennsylvania Constitution equally applies to the same term in Article VI, Section 7"); *see also Braig*, 590 A.2d at 287 ("Based on our reading of all the cases, we must conclude that the language of Article V, Section 18(l), *like the identical language* of present Article VI, Section 7, refers to the offense of "misbehavior in office" as it was defined at common law.") (emphasis added).

Thus, *Braig*'s definition of "misbehavior in office" is controlling.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Court grant the application for summary relief and enter a declaration in the form accompanying this Application.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 2, 2022

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, 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 that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 2, 2022

/s/ John S. Summers
John S. Summers

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563 MD 2022

NOTICE TO PLEAD
TO: Petitioner Larry Krasner
You are hereby notified to file a written response to the enclosed New Matter within thirty (30) days from service hereof or a judgment may be entered against you.

/s/ Matthew H. Haverstick

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*.	:	No. 563 MD 2022

ANSWER AND NEW MATTER OF SENATOR KIM WARD TO PETITIONER'S PETITION FOR REVIEW

Respondent Senator Kim Ward, by and through the undersigned counsel, does hereby answer the Petition for Review in the above matter as follows:

INTRODUCTION

1. Admitted in part; denied in part. It is admitted that the Petition for Review concerns the subject matter described in this

paragraph. The substance of the Petition for Review constitutes a conclusion of law to which no responsive pleading is required, accordingly, it is denied. To the extent a response is required, it is specifically denied that the impeachment proceedings are unlawful and it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

2. Admitted in part; denied in part. It is admitted that the Petition for Review seeks the declaration described in this paragraph. The substance of the declaration regarding the lawfulness of the pending impeachment proceedings constitutes a conclusion of law to which no responsive pleading is required, accordingly, it is denied. To the extent a response is required, it is specifically denied that the impeachment proceedings are unlawful and it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

3. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that

Petitioner has averred legally sufficient claims that entitle him to any relief.

4. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

5. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

6. Admitted in part; denied in part. Sentences one and two constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. The third sentence is specifically denied as more than two impeachment proceedings have occurred in the General Assembly. The allegation regarding the impeachment of a judge in the early 1800s is admitted. After reasonable investigation, Respondent is without knowledge or information sufficient to form a

belief about truth of the averment regarding the basis for the impeachment (sedition) as alleged. The final sentence of this paragraph is admitted.

7. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. To the extent a response is required, it is specifically denied that the impeachment proceedings are unlawful and it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

8. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

9. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

10. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

JURISDICTION

11. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, Respondent specifically denies this Court has subject matter jurisdiction because Petitioner has failed to join one or more indispensable parties.

PARTIES

12. Admitted.

13. Admitted in part; denied in part. Sentences one and two are admitted. It is further admitted that the Interim President Pro Tempore of the Senate presides over the Senate until the next legislative session begins on January 3, 2023. The balance of sentence three is specifically denied.

14. Admitted.

15. Admitted.

16. Admitted.

17. Denied. It is specifically denied that any members of the Senate Impeachment Committee yet exist, accordingly, there are no actual names to list or members to be named as "John Does" or otherwise. The balance of the allegations in this paragraph concern Senate Resolution 386, which, being in writing, speaks for itself, and all characterizations thereof are denied.

STATEMENT OF FACTS

18. Admitted in part; denied in part. The first two sentences are admitted. After reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth of the averment in the third sentence.

19. After reasonable investigation, Respondent is without knowledge or information sufficient to form a belief about the truth of the averment in sentence one.. Further, sentences two and three rely on writings (which are not attached), such writings speak for themselves, and all characterizations thereof are denied.

20. Admitted.

21. HR 240, being in writing speaks for itself, and all characterizations thereof are denied.

22. Denied as stated. It is admitted that the House did not vote on HR 240, Printer's Number 3607; it is denied that the House did not vote on HR 240 at all, as Printer's Number 3634 of the same received a vote on November 16, 2022.

23. Admitted.

24. Admitted.

25. Admitted.

26. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, HR 240, being in writing speaks for itself, and all characterizations thereof are denied.

27. HR 240, being in writing speaks for itself, and all characterizations thereof are denied.

28. Admitted.

29. Denied as stated. Nine Representatives did not vote on HR 240, including both Republican and Democrat Representatives.

30. The press release (which is not attached), being in writing, speaks for itself, and all characterizations thereof are denied.

31. Admitted in part; denied in part. The first sentence of this paragraph is admitted. As to the remaining paragraphs regarding SR 240, it being in writing speaks for itself, and all characterizations thereof are denied.

32. Admitted in part; denied in part. The first sentence of this paragraph is admitted. As to the remaining paragraphs regarding SR 387, it being in writing speaks for itself, and all characterizations thereof are denied.

33. Admitted in part; denied in part. The first sentence of this paragraph is admitted. As to the remaining paragraphs regarding SR 388, it being in writing speaks for itself, and all characterizations thereof are denied.

34. Admitted.

35. Admitted.

36. Admitted.

CLAIMS FOR DECLARATORY JUDGMENT

37. Admitted in part; denied in part. It is admitted that the Petition for Review concerns the subject matter described in this paragraph. By way of further response, it is specifically denied that

Petitioner has averred legally sufficient claims that entitle him to any relief, including declaratory relief.

38. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief, including declaratory relief.

39. After reasonable investigation, Respondent is without knowledge or information sufficient to form a belief about the truth of the averment as to what rights or filings Petitioner may pursue in this matter. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

CLAIM I

40. Senator Ward incorporates the foregoing paragraphs as if set forth herein at length.

41. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

42. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

43. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

44. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

45. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

46. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

47. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

48. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

49. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

50. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

WHEREFORE, Senator Ward requests that the Court dismiss the Petition for Review with prejudice and enter judgment in her favor.

CLAIM II

51. Senator Ward incorporates the foregoing paragraphs as if set forth herein at length.

52. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

53. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

54. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

55. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

56. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

57. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

58. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied

59. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

60. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

61. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

WHEREFORE, Senator Ward requests that the Court dismiss the Petition for Review with prejudice and enter judgment in her favor.

CLAIM III

62. Senator Ward incorporates the foregoing paragraphs as if set forth herein at length.

63. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

64. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

65. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

66. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

67. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

68. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

69. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

70. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

71. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

72. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

73. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

74. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

75. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

76. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

77. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

78. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied.

79. The allegations in this paragraph constitute conclusions of law to which no responsive pleading is required, accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

WHEREFORE, Senator Ward requests that the Court dismiss the Petition for Review with prejudice and enter judgment in her favor.

PRAYER FOR RELIEF

The allegations in this paragraph, including parts A-E, constitute conclusions of law to which no responsive pleading is required,

accordingly, they are denied. By way of further response, it is specifically denied that Petitioner has averred legally sufficient claims that entitle him to any relief.

NEW MATTER

80. The claims in the Petition for Review should be dismissed for lack of subject matter jurisdiction due to Petitioner's failure to join indispensable parties.

81. The claims in the Petition for Review should be dismissed because they are legally insufficient.

82. The claims in the Petition for Review should be dismissed because they are not ripe, in whole or in part.

83. The claims in the Petition for Review should be dismissed because they present non-justiciable political questions.

WHEREFORE, Senator Ward requests that the Court dismiss the Petition for Review with prejudice and enter judgment in her favor.

Respectfully submitted,

Dated: December 12, 2022

/s/ Matthew H. Haverstick

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Attorneys for Senator Kim Ward Committee

VERIFICATION

I hereby verify that the statements made in the foregoing Answer and New Matter are true and correct based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: 12/12/2022

Senator Kim Ward

Received 12/12/2022 2:47:33 PM Commonwealth Court of Pennsylvania

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563 MD 2022

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

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Preliminary Objections within thirty (30) days of service or within such other Period of time as the Court may direct, whichever is shorter, or a judgment may be entered against you.

Respectfully submitted,

SAXTON & STUMP, LLC

Dated: December 12, 2022 By: */s/ Lawrence F. Stengel*

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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

[PROPOSED] ORDER

AND NOW, this_____ day of _____, 2022, upon consideration of the Preliminary Objections of Respondents Representative Timothy R. Bonner and Representative Craig Williams to the Petition for Review in the Nature of a Complaint for Declaratory Judgment, the Answer of Petitioner thereto, and all briefs in support thereof or opposition thereto, it is hereby ORDERED that the Preliminary Objections are **SUSTAINED**. The Petition for Review is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED:

_____

, J.

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

PRELIMINARY OBJECTIONS OF RESPONDENTS REPRESENTATIVE TIMOTHY R. BONNER AND REPRESENTATIVE CRAIG WILLIAMS TO PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT

Respondents Representative Timothy R. Bonner and Representative Craig Williams, by their counsel, Saxton & Stump, LLC, file these Preliminary Objections to the December 2, 2022 Petition for Review in the Nature of a Complaint for Declaratory Judgment and, in support thereof, state as follows:

INTRODUCTION

On December 2, 2022, Philadelphia District Attorney Larry Krasner ("Petitioner") filed a Petition asking this Court to grant him declaratory relief stopping the impeachment proceedings pending against him in the Pennsylvania General Assembly. Those impeachment proceedings were lawfully initiated when a majority of the members of the Pennsylvania House of Representatives voted to pursue seven Articles of Impeachment against Petitioner Krasner, determining that he had committed misbehavior in office, which is the Constitutional standard for impeachment, in the course of carrying out his duties as the District Attorney of Philadelphia. Rather than answering the Articles of Impeachment on the merits and in the proper forum, Petitioner Krasner now asks this Court to assist him in making an end run around the impeachment proceedings, which are the legitimate business of the legislative, not judicial, branch; are expressly authorized by our Constitution; and, importantly, have yet *to even be conducted*.

This Court should decline Petitioner Krasner's request to enter into this process, as the only issues he raises are nonjusticiable, involving political questions or matters that are neither ripe nor the basis of any case or controversy that presently could be adjudicated by this Court. Petitioner Krasner's request for declaratory relief should be seen for what it is: a misguided effort to circumvent

his impeachment trial and avoid answering the Articles of Impeachment pending against him.

To be sure, Petitioner Krasner will have every opportunity to answer for and defend his conduct in the impeachment trial, but he must do so in *that* forum, and not through this tribunal.

The Court should dismiss Mr. Krasner's Petition in its entirety.[1]

FACTUAL BACKGROUND

1. On November 16, 2022, the Pennsylvania House of Representatives passed House Resolution 240, as amended, which contains the following seven Articles of Impeachment ("Articles") against Petitioner Krasner:

> Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
>
> Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation
>
> Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*

[1] Although it is Respondents' position that there are ample grounds for dismissing the Petition as nonjusticiable, Respondents also intend, in accordance with the schedule set forth in this Court's Order of December 6, 2022, to address the merits of Petitioner Krasner's arguments, which he also raises in his related Application for Summary Relief. It is respectfully submitted, however, that the Court need not reach the merits and, indeed, should refrain from doing so for the reasons set forth herein.

> Article IV: Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Commonwealth v. Pownall*
>
> Article V: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety In the Matter In re: Conflicts of Interest of Philadelphia District Attorney's Office
>
> Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights
>
> Article VII: Misbehavior In Office In the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

See Petition ¶¶ 24-26, 28, including Exhibit C, House Resolution No. 240, as amended (Nov. 16, 2022) ("HR 240").[2]

2. On November 18, 2022, consistent with the requirements of HR 240, Speaker of the House of Representatives Bryan D. Cutler appointed House 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.

[2] The Constitution of the Commonwealth of Pennsylvania confers on the House of Representatives "the sole power of impeachment." Pa. Const. art. VI, § 4.

3. 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).

4. 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 appear before the Senate 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).

5. 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).

6. In accordance with the Writ of Impeachment Summons, Petitioner Krasner's Answer to the Articles is not due until December 21, 2022, and the start of trial in the Senate[3] is more than a month away.

7. Instead of proceeding in accordance with the lawfully issued Writ of Impeachment Summons, Petitioner Krasner now asks this Court to intervene to stop the impeachment proceedings on his behalf.

8. Petitioner Krasner advances three main arguments: (1) the impeachment trial cannot proceed because impeachment proceedings do not carry over from the 206th General Assembly in which the Articles were passed and exhibited to the Senate (and which ended on November 30, 2022) to the current 207th General Assembly; (2) Article VI, § 6 of the Pennsylvania Constitution, which provides for impeachment of "civil officers," does not authorize the impeachment of a district attorney, and (3) the Articles do not allege impeachable conduct constituting "misbehavior in office" under Article VI, § 6.

9. Respondents herein, Representatives Bonner and Williams, submit that the Petition is not properly before this Court because: (1) Petitioner Krasner challenges matters or actions that are within the exclusive jurisdiction and province of the General Assembly, such that the Court's intervention would violate the

[3] Pennsylvania's Constitution provides that "[a]ll impeachments shall be tried by the Senate." Pa. Const. art. VI, § 5.

separation of powers doctrine; (2) Petitioner Krasner lacks standing, as he has suffered no harm to date (and, indeed, has not even alleged any redressable harm); and/or (3) Petitioner's claims are not (and may never be) ripe for judicial review.

PRELIMINARY OBJECTION I
(CLAIMS I AND III)
NONJUSTICIABLE POLITICAL QUESTIONS

10. Respondents herein incorporate by reference the foregoing paragraphs as if set forth fully herein.

11. Challenges raising the foundational matters of political questions, standing, and ripeness arise under the body of caselaw governing "the general notions of case or controversy and justiciability." *Rendell v. Pennsylvania State Ethics Comm'n*, 983 A.2d 708, 717 (Pa. 2009).[4]

12. Because they call into question the Court's jurisdiction and authority to act, "[i]ssues of justiciability are a threshold matter" to be "resolved before addressing the merits" of any dispute. *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013) (citing *Council 13, Am. Fed. of State, Cnty. & Mun. Emps., AFL-CIO v. Com.*, 986 A.2d 63, 74 n.10 (Pa. 2009)).

13. Justiciability questions are properly raised in preliminary objections "to a petition for review filed in the original jurisdiction of the Commonwealth Court." *Robinson Twp.*, 83 A.3d at 917.

[4] Unless otherwise indicated, all additional citations are omitted.

14. "The political question doctrine derives from the principle of separation of powers which . . . is implied by the specific constitutional grants of power to, and limitations upon, each co-equal branch of the Commonwealth's government." *Id.* at 926-27.

15. The separation of powers "is essential to our triparte governmental framework"—consisting of the legislative, executive, and judicial branches—as it "prevents one branch of government from exercising, infringing upon, or usurping the powers of the other two branches." *Renner v. Ct. of Common Pleas of Lehigh Cnty.*, 234 A.3d 411, 419 (Pa. 2020); *see also Zemprelli v. Daniels,* 436 A.2d 1165, 1168 (Pa. 1981) (quoting *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977) for the principle that "no branch should exercise the functions exclusively committed to another branch").

16. Although, as this Court has observed, "nonjusticiable cases do not come already labeled with a 'Keep Off' sign to keep the courts at a distance," *Larsen v. Senate of Pennsylvania,* 646 A.2d 694, 700 (Pa. Commw. 1994), the political question doctrine is implicated when, among other triggers, there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards

for resolving it[.]"[5] *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)); *see also Robinson Twp.*, 83 A.3d at 928 (citing and relying on *Baker*, 369 U.S. at 217).

17. "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." *Blackwell*, 684 A.2d at 1071.

---

[5] In *Baker v. Carr*, the Court set forth the following factors to guide the political question analysis:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. 186, 217 (1962). The presence of any one *Baker* factor has warranted abstention under the political question doctrine. *Id.*; *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996); *Zemprelli*, 436 A.2d at 1169. Our Supreme Court has recognized, however, that "prudential" concerns inform Pennsylvania law on the political question doctrine and that each case must be considered anew. *See William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 463 (Pa. 2017) ("[T]he political question doctrine in Pennsylvania is of wholly prudential cloth, and hence must be considered anew each time it is invoked.").

18. Accordingly, 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.*

19. Petitioner Krasner raises political questions in his pleas for declaratory relief challenging both the continuation of the impeachment proceedings against him from one General Assembly to the next (Claim I) and whether he has committed impeachable conduct constituting "misbehavior in office" (Claim III).

I. It is exclusively for the General Assembly to decide, as a procedural matter, whether impeachment proceedings are continuing in nature.

20. 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." *Id.* § 11.

21. The General Assembly's legislative power is both exclusive and, unless limited by the Constitution, plenary. *See Killam v. Killam*, 39 Pa. 120, 123 (Pa. 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.").

22. Especially relevant here, the Constitution confers on the House of Representatives "the **sole** power of impeachment," Pa. Const. art. VI, § 4 (emphasis added), and provides that "[a]ll impeachments shall be **tried** by the Senate." *Id.* § 5 (emphasis added).

23. 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. *See id.* art. II, § 11.

24. Accordingly, it is not for this Court to offer or substitute its own judgment. *See Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939) ("There is no appeal to the courts from the judgment of the legislature as to the wisdom or policy which the Commonwealth shall adopt.").

25. While the foregoing, without more, is sufficient to end the inquiry on Petitioner's first claim, it is worth noting that a rule in fact exists that permits impeachment proceedings to carry over from one General Assembly to the next.

Jefferson's Manual[6]— which the House Rules explicitly endorse as authoritative[7]—unequivocally provides that "**impeachment proceedings are not discontinued by a recess**" (*i.e.,* adjournment). Jefferson's Manual, § 620 (emphasis added) (attached hereto as Exhibit 1).[8]

26. While Petitioner Krasner cites other provisions of Article II and Pennsylvania regulations on the length of General Assembly sessions, *see* Petition ¶¶ 42-44, he merely cobbles them together, providing a strained reading designed to support his own narrative. On review, nothing in those provisions 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.

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[6] 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.

[7] 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/DisplayRules.cfm?Rules=2013HouRules.htm (last visited December 12, 2022).

[8] Section 620 cites five examples of impeachment proceedings that have carried over from one United States Congress to the next. Although they involve federal impeachments, Jefferson's Manual is relevant to state impeachment proceedings by operation of House Rule 78.

27. Further, the *absence* of statutory authority permitting impeachment proceedings from carrying over from one General Assembly to the next, *see* Petition ¶ 45, likewise fails to advance Petitioner's position. There is ample affirmative authority—first in the Constitution's bestowal of impeachment power on the General Assembly, and second in Jefferson's Manual—to support the conclusion that the continuation of impeachment proceedings is a matter to be taken up (if at all) within the legislative branch.

28. Simply put, impeachment is a political process constitutionally committed to the General Assembly, which the courts should not review. *See Nixon v. U.S.*, 506 U.S. 224, 228-38 (1993) (holding that challenge to federal impeachment trial received by Senate committee rather than full Senate was a nonjusticiable question); *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d 802, 803 (Pa. 1938) ("[T]he courts have no jurisdiction in impeachment proceedings, and no control over their conduct, so long as actions taken are within constitutional lines. . . . The courts cannot stay the legislature[.]"); *Larsen*, 646 A.2d at 703-04 (noting that state and federal constitutional provisions are nearly identical and concluding that it is "within the exclusive power of the Senate to conduct impeachment trial proceedings" and that impeachment procedures employed by the Senate "cannot be invaded by the courts").

29. Consistent with the United States Supreme Court's opinion in *Nixon*, which turned on a detailed and thorough analysis of the federal Constitution's analogous and unquestionable assignment of impeachment powers to the legislature, this Court should decline to intervene in this matter. *See Nixon,* 506 U.S. at 228-38.

30. For these reasons, Petitioner Krasner's challenge to the continuing nature of the impeachment proceedings against him should be dismissed.

II. It is likewise exclusively for the General Assembly to determine whether Petitioner has committed impeachable conduct constituting "any misbehavior in office."

31. As set forth above, the plain text of Article VI confers the power of impeachment exclusively to the General Assembly. *See* Pa. Const. art. VI, § 4 (bestowing the "sole" power of impeachment on the House), § 5 (committing all impeachments to trial by the Senate).

32. Implicit in this grant of authority is the political question of whether a civil officer's conduct rises to the level of "any misbehavior in office" warranting impeachment. *See id.* § 6 ("The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office[.]").

33. That question, as to what constitutes "misbehavior in office," is for the General Assembly, and it alone; whether a civil officer has committed impeachable conduct constituting "any misbehavior in office" is a political

question that this Court also should decline to review. *See Nixon*, 506 U.S. at 228-38; *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d at 803; *Larsen*, 646 A.2d at 703-04.

34. Determining what conduct rises to the level of "any misbehavior in office" warranting impeachment is a policy question that courts are ill-equipped to define. *See Baker*, 369 U.S. at 217 (noting political question factors, including lack of judicially discoverable and manageable standards for resolving it, the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion, and the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government).[9]

[9] Indeed, what conduct rises to the level of an impeachable offense is widely regarded as a political question reserved for the legislature. *See* 2 Joseph Story, *Commentaries on the Constitution of the United States* § 795 (1833) ("Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."); *see also* Michael J. Gerhardt, *Rediscovering Nonjusticiability: Judicial Review of Impeachments After Nixon*, 44 Duke L.J. 231, 263-64 (1994) ("The question in . . . [an impeachment] proceeding is whether an impeachable officer is fit to preserve the public trust and therefore to remain in office. In other words, impeachment is a special disciplinary mechanism for special officials. The specific procedural protections given to the subjects of an impeachment are spelled out in the Constitution, including the division of impeachment authority between the House and the Senate and the requirements that senators act under oath, … and that at least two-thirds of the senators present agree in order to convict. Treating

35. For these reasons, Petitioner Krasner's challenge to whether he has been accused of impeachable conduct constituting "any misbehavior in office" is a political question not appropriately before this Court.

WHEREFORE, Respondents herein respectfully request that this Honorable Court dismiss with prejudice as nonjusticiable the first and third claims in the Petition.

PRELIMINARY OBJECTION II
(ALL CLAIMS)
LACK OF CASE OR CONTROVERSY: LACK OF STANDING FOR FAILURE TO ALLEGE LEGALLY COGNIZABLE HARM

36. Respondents herein incorporate by reference the foregoing paragraphs as if set forth fully herein.

37. "In seeking judicial resolution of a controversy, a party must establish as a threshold matter that he has standing to maintain the action." *Stilp v. Com., Gen. Assembly*, 940 A.2d 1227, 1233 (Pa. 2007).

38. "A challenge to the standing of a party to maintain the action raises a question of law." *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009).

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impeachments as sui generis is consistent with the absence of any evidence that the Fifth [or Fourteenth] Amendment, including the Due Process Clause, was ever intended to apply to the impeachment process.") (footnotes omitted).

39. 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." *Id.*

40. 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).

41. Stated differently, "[t]he keystone to standing . . . is that the person must be negatively impacted in some real and direct fashion." *Id.*

42. 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).

43. While Petitioner Krasner generally alleges that the impeachment proceedings against him are "unlawful," nowhere does he actually assert that he has been aggrieved, let alone describe how. Indeed—while speculation about future harm would be insufficient to confer standing, *see Kauffman v. Osser*, 271 A.2d 236, 239 (Pa. 1970)—he does not even allege how he *might* suffer any possible harm.[10]

[10] In fact, it is difficult to imagine how Petitioner Krasner *could* suffer legally cognizable harm with regard to some of the points that he challenges. On the matter of the continuation of impeachment proceedings from one General

44. All that has happened to date is that Petitioner Krasner has been timely served with Articles of Impeachment and given the opportunity to answer to those Articles (first in writing, later this month, and then again during his impeachment trial scheduled to begin January 18, 2023)—nothing more.

45. To the extent that Petitioner Krasner believes that the proceedings against him are "unlawful," he will have the opportunity to make his case, defend himself, and avail himself of the various protections offered in the context of the trial before the Senate.[11]

46. As the Constitution requires, it is in the Senate, and not in this Court, that Petitioner Krasner must seek redress. *See Larsen,* 646 A.2d at 703-04 (it is "within the exclusive power of the Senate to conduct impeachment trial proceedings" and "courts cannot intervene with respect to procedure internal to the

---

Assembly to the next, for example, it is hard to conceive any possible harm. If the perceived "harm" (and, again, Petitioner Krasner has articulated none) is that Petitioner Krasner must defend himself in the impeachment trial (should he so choose), that is no harm at all; it is simply the operation of a legitimate process that is enshrined in our Constitution to serve as a check against abuses by government officials. To the extent conviction and removal is the harm he might suffer, that outcome is neither direct or imminent; it is speculative, and inadequate to confer standing.

[11] For example, Petitioner Krasner will have the opportunities, *inter alia*, to appear and be heard; to be represented by counsel of his choosing; to seek and obtain rulings on procedural and trial-related matters; to make opening and closing statements; and to examine and cross-examine witnesses. *See* SR 386, Petition at Exhibit D.

legislative body"); *cf. GGNSC Clarion LP v. Kane*, 131 A.3d 1062, 1069 (Pa. Commw. 2016), *aff'd*, 152 A.3d 983 (Pa. 2016) (where issues complained of in a declaratory judgment action could be raised and addressed in the context of a pending enforcement action by the Office of Attorney General, the declaratory judgment action was moot).[12]

WHEREFORE, Respondents herein respectfully request that this Honorable Court dismiss the Petition with prejudice in its entirety for lack of standing.

PRELIMINARY OBJECTION III
(CLAIMS II AND III)
LACK OF CASE OR CONTROVERSY: LACK OF RIPENESS

47. Respondents herein incorporate by reference the foregoing paragraphs as if set forth fully herein.

48. "A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic." *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991). *See also Pennsylvania State Lodge of Fraternal Ord. of Police by Bascelli v. Com.*, 571 A.2d 531, 533 (Pa. Commw. 1990), *aff'd,* 591 A.2d 1054 (Pa. 1991)

[12] While *GGNSC Clarion* was decided in the context of a motion to dismiss for mootness, the point is essentially the same: Petitioner Krasner's concerns are amenable to resolution and should be addressed in the impeachment forum, not by this Court.

("Declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur; it is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation.").

49. Under the doctrine of ripeness, "[w]here no actual controversy exists, a claim is not justiciable and a declaratory judgment action cannot be maintained." *Cherry v. City of Philadelphia*, 692 A.2d 1082, 1085 (Pa. 1997).

50. Even if this Court were inclined to consider the breadth of the definition of "civil officer" (Claim II) or the scope of the phrase "any misbehavior in office" (Claim III) in Article VI, § 6, those issues are not ripe for resolution.

51. No Pennsylvania Court has ever intervened in an ongoing impeachment proceeding to preemptively rule on questions that the Senate has not yet adjudicated.

52. At this stage in the proceedings, the only questions fairly before this Court are whether the General Assembly has authority for the power it has exercised, and whether it has exercised that authority within the bounds of the Constitution. *See Larsen,* 646 A.2d at 703.

53. As an initial matter, 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." *Id.* at 705.

54. Therefore, "regardless of whatever powers the courts may have to interpret actions of the legislative body, by way of review, after they have been taken," courts have no power to intervene "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."[13] *Id.*; *cf. Sweeney*, 375 A.2d at 708 (noting the question of justiciability was a close call, but reviewing the expulsion of a member of the state House of Representatives on a claim of due process rights violation *after* the contested action had occurred).

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[13] With respect to his third claim, Petitioner Krasner's heavy reliance on *In re Braig*, 590 A.2d 284 (Pa. 1991) is misplaced. That case did not involve impeachment under Article VI. Rather, *Braig* addressed the phrase "convicted of misbehavior in office" under Article V, § 18(*l*); thus, the *Braig* Court's commentary on the language of other Constitutional provisions is dicta, and it is not binding on this Court. *See In re Braig*, 590 A.2d at 287-88 (comparing language of Article V, § 18(*l*) to removal provision in Article VI, § 7 and summarizing prior cases on the removal provision, involving *ex post* challenges to whether an officer's removal was based on a conviction that constituted a "conviction of misbehavior in office"). The same is true for all the cases Petitioner Krasner cites on this issue, which largely involve challenges to removal proceedings. Whatever persuasive value those cases might have in construing convictions under Article VI's removal provision, those cases did not involve impeachment proceedings, and the Court had no occasion to consider the serious nonjusticiability issues addressed herein.

Importantly, *Larsen* is the only recent Pennsylvania case involving an impeachment proceeding. As Petitioner Krasner acknowledges, *Braig* was decided three years prior to this Court's decision in *Larsen*, yet the *Larsen* Court does not rely on it. *See id.* at 702 (noting petitioner's proposed definition of "misbehavior in office," which the Court did not adopt, and concluding that it "finds no support in judicial precedents"). That is because impeachment and removal are two distinct processes under Article VI.

55. Although courts decline to review the actions of another branch in cases involving political questions, the Supreme Court has explained that "[a] political question is not involved when a court concludes that another branch acted within the power conferred upon it by the Constitution," reasoning:

> In such cases . . . the court does not refuse judicial review; it exercises it. It is not dismissing an issue as nonjusticiable; it adjudicates. It is not refusing to pass upon the power of the political branches; it passes upon it, only to affirm that they had the power which had been challenged and that nothing in the Constitution prohibited the particular exercise of it.

Sweeney, 375 A.2d at 705 (quoting Louis Henkin, *Is There a "Political Question" Doctrine?*, 85 YALE L.J. 597, 606 (1976)).

56. Thus, at this stage, the sole questions before the Court are: (1) whether the House has the authority to initiate impeachment proceedings, and (2) whether the Senate has the authority to try Petitioner's Krasner's impeachment proceedings.

57. In accordance with Article VI, §§ 4-5, the answer to both questions is undoubtedly yes: the House has the sole authority to impeach; and the Senate has the sole authority to try the impeachment proceeding.

58. Petitioner is not entitled to ex ante judicial determinations on whether the district attorney's office is beyond the reach of impeachment or on the sufficiency of the impeachment charges or the likelihood of conviction. *See People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 330 (Sup. Ct. 1913) ("[A court] has

no jurisdiction to inquire into the sufficiency of charges for which a Governor may be impeached, nor, I take it, whether the proceedings looking to that end were properly conducted, unless at their foundation, in their exercise, constitutional guaranties are broken down or limitations ignored.") (citing Story on Const. Law, §§ 374 and 379)); *see also Larsen*, 646 A.2d at 696, 704 (rejecting the petitioner's request to intervene and order the Senate to rule on pretrial motions, which included a motion for dismissal, arguing that articles of impeachment failed to state an impeachable offense).

59. Indeed, Petitioner cites no case to support his unprecedented claim that this Court should insert itself in an ongoing impeachment proceeding.

60. This Court in *Larsen* expressly cautioned courts against intervening ex ante to rule on impeachment matters that the Senate has not had the opportunity to adjudicate. *See Larsen*, 646 A.2d at 695, 705 (considering "first-impression question as to whether there can be judicial intervention in advance, to bar the state Senate from proceeding with the impeachment trial, on the basis that violations of constitutional rights are threatened," and concluding 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"). In that regard, this case is no different: Petitioner's impeachment proceeding is ongoing, and any

legal arguments about whether he is subject to the charges or their sufficiency are properly directed to the Senate.

61. Thus, as in *Larsen*, the Court should deny Petitioner's extraordinary request for what amounts to prior restraint on the Senate's exclusive power to try impeachment proceedings.

WHEREFORE, Respondents herein respectfully request that this Honorable Court dismiss the second and third claims in the Petition with prejudice for lack of ripeness.

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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.

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CERTIFICATE OF SERVICE

I, Lawrence F. Stengel, certify that, on this date, I filed the foregoing Preliminary Objections of Respondents Representative Timothy R. Bonner and Representative Craig Williams to Petition for Review in the Nature of a Complaint for Declaratory Judgment 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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EXHIBIT 1

The Constitution of the United States (art. I, sec. 3, cl. 7) limits the judgment to removal and disqualification. The order of judgment following conviction in an impeachment trial is divisible for a separate vote if it contains both removal and disqualification (III, 2397; VI, 512; Apr. 17, 1936, p. 5606), and an order of judgment (such as disqualification) requires a majority vote (VI, 512; Apr. 17, 1936, p. 5607). Under earlier practice, after a conviction the Senate voted separately on the question of disqualification (III, 2339, 2397), but no vote is required by the Senate on judgment of removal from office following conviction, because removal follows automatically from conviction under article II, section 4 of the Constitution (Apr. 17, 1936, p. 5607). Thus, the presiding officer directs judgment of removal from office to be entered and the respondent removed from office without separate action by the Senate where disqualification is not contemplated (Oct. 9, 1986, p. 29873). A resolution impeaching the President may provide for only removal from office (H. Res. 1333, 93d Cong., Aug. 20, 1974, p. 29361) or for both removal and disqualification from holding any future office (H. Res. 611, 105th Cong., Dec. 19, 1998, p. 27828; H. Res. 755, 116th Cong., Dec. 18, 2019, p. __; H. Res. 24, 117th Cong., Jan. 13, 2021, p. __).

§ 620. Impeachment not interrupted by adjournments.

Continuance. An impeachment is not discontinued by the dissolution of Parliament, but may be resumed by the new Parliament. *T. Ray 383; 4 Com. Journ., 23 Dec., 1790; Lord's Jour., May 15, 1791; 2 Wood., 618.*

In Congress impeachment proceedings are not discontinued by a recess (III, 2299, 2304, 2344, 2375, 2407, 2505, see also § 592, *supra*). The following impeachment proceedings extended from one Congress to the next: (1) the impeachment of Judge Pickering was presented in the Senate on the last day of the Seventh Congress (III, 2320), and the Senate conducted the trial in the Eighth Congress (III, 2321); (2) the impeachment of Judge Louderback was presented in the Senate on the last day of the 72d Congress (VI, 515), and the Senate conducted the trial in the 73d Congress (VI, 516); (3) the impeachment of Judge Hastings was presented in the Senate during the second session of the 100th Congress (Aug. 3, 1988, p. 20223) and the trial in the Senate continued into the 101st Congress (Jan. 3, 1989, p. 84); (4) the impeachment of President Clinton was presented to the Senate after the Senate had adjourned sine die for the 105th Congress (Precedents (Wickham), ch. 1, § 8.2), and the Senate conducted the trial in the 106th Congress (Jan. 7, 1999, p. 272); (5) the impeachment inquiry of Judge Porteous was authorized in the 110th Congress (Sept. 17, 2008) and continued in the next Congress (Precedents (Wickham), ch.

1, § 8.1). Although impeachment proceedings may continue from one Congress to the next, the authority of the managers appointed by the House expires at the end of a Congress; and the managers must be reappointed when a new Congress convenes (Precedents (Wickham), ch. 1, § 8.2).

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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

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS OF RESPONDENTS REPRESENTATIVE TIMOTHY R. BONNER AND REPRESENTATIVE CRAIG WILLIAMS TO PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT

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I. INTRODUCTION

On December 2, 2022, Philadelphia District Attorney Larry Krasner ("Petitioner") filed a Petition asking this Court to grant him declaratory relief stopping the impeachment proceedings pending against him in the Pennsylvania General Assembly. Those impeachment proceedings were lawfully initiated when a majority of the members of the Pennsylvania House of Representatives voted to pursue seven Articles of Impeachment against Petitioner Krasner, determining that he had committed misbehavior in office, which is the Constitutional standard for impeachment, in the course of carrying out his duties as the District Attorney of Philadelphia. Rather than answering the Articles of Impeachment on the merits and in the proper forum, Petitioner Krasner now asks this Court to assist him in making an end run around the impeachment proceedings, which are the legitimate business of the legislative, not judicial, branch; are expressly authorized by our Constitution; and, importantly, have yet *to even be conducted*.

This Court should decline Petitioner Krasner's request to enter into this process, as the only issues he raises are nonjusticiable, involving political questions or matters that are neither ripe nor the basis of any case or controversy that presently could be adjudicated by this Court. Petitioner Krasner's request for declaratory relief should be seen for what it is: a misguided effort to circumvent

his impeachment trial and avoid answering the Articles of Impeachment pending against him.

To be sure, Petitioner Krasner will have every opportunity to answer for and defend his conduct in the impeachment trial, but he must do so in *that* forum, and not through this tribunal.

The Court should dismiss Mr. Krasner's Petition in its entirety.

II. STATEMENT OF JURISDICTION

Respondents object to this Court's exercise of jurisdiction because "the courts have no jurisdiction in impeachment proceedings and no control over their conduct, so long as actions taken are within constitutional lines," as they have been (and will continue to be) here. *See Larsen v. Senate of Pennsylvania,* 646 A.2d 694, 699 (Pa. Commw. 1994) (quoting *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d 802, 803 (Pa. 1938)).

III. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

In ruling on preliminary objections, the Court must "accept as true all well-pleaded material allegations in the petition for review and any reasonable inferences that . . . may [be] draw[n] from the averments." *Highley v. Dep't of Transportation*, 195 A.3d 1078, 1082 (Pa. Commw. 2018). A court should sustain

preliminary objections "when the law makes clear that the petitioner cannot succeed on his claim[.]" *Id.* A court's review of preliminary objections is limited to the pleadings and all inferences reasonable deducible therefrom. *Pennsylvania State Lodge, Fraternal Order of Police v. Com., Dep't of Conservation & Nat. Res.*, 909 A.2d 413, 415 (Pa. Commw. 2006).

IV. STATEMENT OF THE QUESTIONS INVOLVED

No. 1: Should this Honorable Court dismiss Claim I (on the continuation of impeachment proceedings form one General Assembly to the next) and Claim III (on whether the Articles allege conduct constituting "misbehavior in office") as nonjusticiable under the political question doctrine?

Suggested answer: Yes.

No. 2: Should this Honorable Court dismiss the Petition in its entirety for lack of standing for failure to allege any legally cognizable harm?

Suggested answer: Yes.

No. 3: Should this Honorable Court dismiss Claim II (on whether the office of the district attorney is within the reach of the General Assembly's impeachment power) and Claim III (on whether the Articles allege conduct constituting "misbehavior in office") because they are not (and may never be) ripe for adjudication, as Petitioner's impeachment trial has not even begun?

Suggested answer: Yes.

V. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On December 2, 2022, Petitioner Krasner filed his Petition for Review in the Nature of a Complaint for Declaratory Judgment ("Petition"). The Petition seeks declaratory relief only 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* (Claim I); (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 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. In his Application, Petitioner Krasner seeks 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.

Respondents Bonner and Williams have filed timely preliminary objections to the Petition (due December 12, 2022) and submit this brief in support of those objections.[1]

B. RELEVANT FACTS

On November 16, 2022, the Pennsylvania House of Representatives passed House Resolution 240, as amended, which contains the following seven Articles of Impeachment ("Articles") against Petitioner Krasner:

> Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
>
> Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation
>
> Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety

[1] While it is Respondents' position that there are ample grounds for dismissing the Petition as nonjusticiable, as set forth in their Preliminary Objections and this brief, Respondents also intend, in accordance with the schedule set forth in this Court's Order of December 6, 2022, to address the merits of Petitioner's arguments in accordance with the Court's requirement that briefs in opposition to the Application be filed no later than December 16, 2022. It is respectfully submitted, however, that the Court need not reach the merits and, indeed, should refrain from doing so for the reasons set forth in Respondents' Preliminary Objections and herein.

> and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*
>
> Article IV: Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Commonwealth v. Pownall*
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> Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights
>
> Article VII: Misbehavior In Office In the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

See Petition ¶¶ 24-26, 28, including Exhibit C, House Resolution No. 240, as amended (Nov. 16, 2022) ("HR 240").[2]

On November 18, 2022, consistent with the requirements of HR 240, Speaker of the House of Representatives Bryan D. Cutler appointed House Representatives Timothy R. Bonner, Craig Williams, and Jared Solomon to the

[2] The Constitution of the Commonwealth of Pennsylvania confers on the House of Representatives "the sole power of impeachment." Pa. Const. art. VI, § 4.

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 appear before the Senate 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).

In accordance with the Writ of Impeachment Summons, Petitioner Krasner's Answer to the Articles is not due until December 21, 2022, and the start of trial in the Senate[3] is more than a month away.

Instead of proceeding in accordance with the lawfully issued Writ of Impeachment Summons, Petitioner Krasner now asks this Court to intervene to stop the impeachment proceedings on his behalf.

Petitioner Krasner advances three main arguments: (1) the impeachment trial cannot proceed because impeachment proceedings do not carry over from the 206th General Assembly in which the Articles were passed and exhibited to the Senate (and which ended on November 30, 2022) to the current 207th General Assembly; (2) Article VI, § 6 of the Pennsylvania Constitution, which provides for impeachment of "civil officers," does not authorize the impeachment of a district attorney, and (3) the Articles do not allege impeachable conduct constituting "misbehavior in office" under Article VI, § 6.

Respondents herein, Representatives Bonner and Williams, submit that the Petition is not properly before this Court because: (1) Petitioner Krasner

[3] Pennsylvania's Constitution provides that "[a]ll impeachments shall be tried by the Senate." Pa. Const. art. VI, § 5.

challenges matters or actions that are within the exclusive jurisdiction and province of the General Assembly, such that the Court's intervention would violate the separation of powers doctrine; (2) Petitioner Krasner lacks standing, as he has suffered no harm to date (and, indeed, has not even alleged any redressable harm); and/or (3) Petitioner's claims are not (and may never be) ripe for judicial review.

VI. ARGUMENT

A. This Court should grant Respondents' preliminary objections and dismiss the Petition in its entirety because the matters it raises are not justiciable or fail to allege any case or controversy.

Challenges raising the foundational matters of political questions, standing, and ripeness arise under the body of caselaw governing "the general notions of case or controversy and justiciability." *Rendell v. Pennsylvania State Ethics Comm'n*, 983 A.2d 708, 717 (Pa. 2009).[4] Because they call into question the Court's jurisdiction and authority to act, "[i]ssues of justiciability are a threshold matter" to be "resolved before addressing the merits" of any dispute. *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 917 (Pa. 2013) (citing *Council 13, Am. Fed. of State, Cnty. & Mun. Emps., AFL-CIO v. Com.*, 986 A.2d 63, 74 n.10 (Pa. 2009)).

[4] Unless otherwise indicated, all additional citations are omitted.

Justiciability questions are properly raised in "preliminary objections to a petition for review filed in the original jurisdiction of the Commonwealth Court[.]" *Robinson Twp.*, 83 A.3d at 917.

1. Petitioner's first and third claims inappropriately ask this Court to intervene in nonjusticiable legislative matters in violation of the separation of powers doctrine.

"The political question doctrine derives from the principle of separation of powers which . . . is implied by the specific constitutional grants of power to, and limitations upon, each co-equal branch of the Commonwealth's government." *Robinson Twp.*, 83 A.3d at 926-27. The separation of powers "is essential to our triparte governmental framework"—consisting of the legislative, executive, and judicial branches—as it "prevents one branch of government from exercising, infringing upon, or usurping the powers of the other two branches." *Renner v. Ct. of Common Pleas of Lehigh Cnty.*, 234 A.3d 411, 419 (Pa. 2020); *see also Zemprelli v. Daniels,* 436 A.2d 1165, 1168 (Pa. 1981) (quoting *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977) for the principle that "no branch should exercise the functions exclusively committed to another branch").

Although, as this Court has observed, "nonjusticiable cases do not come already labeled with a 'Keep Off' sign to keep the courts at a distance," *Larsen v. Senate of Pennsylvania,* 646 A.2d 694, 700 (Pa. Commw. 1994), the political question doctrine is implicated when, among other triggers, there is "a textually

demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it[.]"[5] *Id.* (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)); *see also Robinson Twp.*, 83 A.3d at 928 (citing and relying on *Baker*, 369 U.S. at 217). "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

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[5] In *Baker v. Carr*, the Court set forth the following factors to guide the political question analysis:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. 186, 217 (1962). The presence of any one *Baker* factor has warranted abstention under the political question doctrine. *Id.*; *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996); *Zemprelli*, 436 A.2d at 1169. Our Supreme Court has recognized, however, that "prudential" concerns inform Pennsylvania law on the political question doctrine and that each case must be considered anew. *See William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 463 (Pa. 2017) ("[T]he political question doctrine in Pennsylvania is of wholly prudential cloth, and hence must be considered anew each time it is invoked.").

finally to political branches of government for self-monitoring." *Blackwell*, 684 A.2d at 1071.

Accordingly, 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.* Specifically, Petitioner Krasner raises political questions in his pleas for declaratory relief challenging both the continuation of the impeachment proceedings against him from one General Assembly to the next (Claim I) and whether he has committed impeachable conduct constituting "misbehavior in office" (Claim III).

a. It is exclusively for the General Assembly to decide, as a procedural matter, whether impeachment proceedings are continuing in nature.

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." *Id.* § 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 (Pa. 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.").

Especially relevant here, the Constitution confers on the House of Representatives "the sole power of impeachment," Pa. Const. art. VI, § 4 (emphasis added), and provides that "[a]ll impeachments shall be tried by the Senate." *Id.* § 5 (emphasis added). 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. *See id.* art. II, § 11.

Accordingly, it is not for this Court to offer or substitute its own judgment. *See Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939) ("There is no appeal to the courts from the judgment of the legislature as to the wisdom or policy which the Commonwealth shall adopt.").

While the foregoing, without more, is sufficient to end the inquiry on Petitioner's first claim, it is worth noting that a rule in fact exists that permits impeachment proceedings to carry over from one General Assembly to the next. Jefferson's Manual[6]— which the House Rules explicitly endorse as

[6] 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.

authoritative[7]—unequivocally provides that "impeachment proceedings are not discontinued by a recess" (*i.e.,* adjournment). Jefferson's Manual, § 620 (emphasis added) (attached to Respondents' preliminary objections as Exhibit 1).[8] While Petitioner Krasner cites other provisions of Article II and Pennsylvania regulations on the length of General Assembly sessions, *see* Petition ¶¶ 42-44, he merely cobbles them together, providing a strained reading designed to support his own narrative. On review, nothing in those provisions 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.

Further, the *absence* of statutory authority permitting impeachment proceedings from carrying over from one General Assembly to the next, *see* Petition ¶ 45, likewise fails to advance Petitioner's position. There is ample

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[7] 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/DisplayRules.cfm?Rules=2013HouRules.htm (last visited December 12, 2022).

[8] Section 620 cites five examples of impeachment proceedings that have carried over from one United States Congress to the next. Although they involve federal impeachments, Jefferson's Manual is relevant to state impeachment proceedings by operation of House Rule 78.

affirmative authority—first in the Constitution's bestowal of impeachment power on the General Assembly, and second in Jefferson's Manual—to support the conclusion that the continuation of impeachment proceedings is a matter to be taken up (if at all) within the legislative branch.

Simply put, impeachment is a political process constitutionally committed to the General Assembly, which the courts should not review. *See Nixon v. U.S.*, 506 U.S. 224, 228-38 (1993) (holding that challenge to federal impeachment trial received by Senate committee rather than full Senate was a nonjusticiable question); *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d 802, 803 (Pa. 1938) ("[T]he courts have no jurisdiction in impeachment proceedings, and no control over their conduct, so long as actions taken are within constitutional lines. . . . The courts cannot stay the legislature[.]"); *Larsen*, 646 A.2d at 703-04 (noting that state and federal constitutional provisions are nearly identical and concluding that it is "within the exclusive power of the Senate to conduct impeachment trial proceedings" and that impeachment procedures employed by the Senate "cannot be invaded by the courts").

Consistent with the United States Supreme Court's opinion in *Nixon*, which turned on a detailed and thorough analysis of the federal Constitution's analogous and unquestionable assignment of impeachment powers to the legislature, this Court should decline to intervene in this matter. *See Nixon,* 506 U.S. at 228-38.

For these reasons, Petitioner Krasner's challenge to the continuing nature of the impeachment proceedings against him should be dismissed.

b. It is likewise exclusively for the General Assembly to determine whether Petitioner has committed impeachable conduct constituting "any misbehavior in office."

As set forth above, the plain text of Article VI confers the power of impeachment exclusively to the General Assembly. *See* Pa. Const. art. VI, § 4 (bestowing the "sole" power of impeachment on the House), § 5 (committing all impeachments to trial by the Senate). Implicit in this grant of authority is the political question of whether a civil officer's conduct rises to the level of "any misbehavior in office" warranting impeachment. *See id.* § 6 ("The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office[.]").

That question, as to what constitutes "misbehavior in office," is for the General Assembly, and it alone; whether a civil officer has committed impeachable conduct constituting "any misbehavior in office" is a political question that this Court also should decline to review. *See Nixon*, 506 U.S. at 228-38; *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d at 803; *Larsen*, 646 A.2d at 703-04.

Determining what conduct rises to the level of "any misbehavior in office" warranting impeachment is a policy question that courts are ill-equipped to define.

See Baker, 369 U.S. at 217 (noting political question factors, including lack of judicially discoverable and manageable standards for resolving it, the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion, and the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government).[9]

For these reasons, Petitioner Krasner's challenge to whether he has been accused of impeachable conduct constituting "any misbehavior in office" is a political question not appropriately before this Court.

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[9] Indeed, what conduct rises to the level of an impeachable offense is widely regarded as a political question reserved for the legislature. *See* 2 Joseph Story, *Commentaries on the Constitution of the United States* § 795 (1833) ("Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."); *see also* Michael J. Gerhardt, *Rediscovering Nonjusticiability: Judicial Review of Impeachments After Nixon*, 44 Duke L.J. 231, 263-64 (1994) ("The question in . . . [an impeachment] proceeding is whether an impeachable officer is fit to preserve the public trust and therefore to remain in office. In other words, impeachment is a special disciplinary mechanism for special officials. The specific procedural protections given to the subjects of an impeachment are spelled out in the Constitution, including the division of impeachment authority between the House and the Senate and the requirements that senators act under oath, … and that at least two-thirds of the senators present agree in order to convict. Treating impeachments as sui generis is consistent with the absence of any evidence that the Fifth [or Fourteenth] Amendment, including the Due Process Clause, was ever intended to apply to the impeachment process.") (footnotes omitted).

2. The Petition should be dismissed in its entirety, as Petitioner lacks standing to challenge impeachment proceedings that have yet to occur.

"In seeking judicial resolution of a controversy, a party must establish as a threshold matter that he has standing to maintain the action." *Stilp v. Com., Gen. Assembly*, 940 A.2d 1227, 1233 (Pa. 2007). "A challenge to the standing of a party to maintain the action raises a question of law." *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). 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." *Id.*

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).

While Petitioner Krasner generally alleges that the impeachment proceedings against him are "unlawful," nowhere does he actually assert that he

has been aggrieved, let alone describe how. Indeed—while speculation about future harm would be insufficient to confer standing, *see Kauffman v. Osser*, 271 A.2d 236, 239 (Pa. 1970)—he does not even allege how he *might* suffer any possible harm.[10]

All that has happened to date is that Petitioner Krasner has been timely served with Articles of Impeachment and given the opportunity to answer to those Articles (first in writing, later this month, and then again during his impeachment trial scheduled to begin January 18, 2023)—nothing more.

To the extent that Petitioner Krasner believes that the proceedings against him are "unlawful," he will have the opportunity to make his case, defend himself, and avail himself of the various protections offered in the context of the trial before the Senate.[11] As the Constitution requires, it is in the Senate, and not in this Court,

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[10] In fact, it is difficult to imagine how Petitioner Krasner *could* suffer legally cognizable harm with regard to some of the points that he challenges. On the matter of the continuation of impeachment proceedings from one General Assembly to the next, for example, it is hard to conceive any possible harm. If the perceived "harm" (and, again, Petitioner Krasner has articulated none) is that Petitioner Krasner must defend himself in the impeachment trial (should he so choose), that is no harm at all; it is simply the operation of a legitimate process that is enshrined in our Constitution to serve as a check against abuses by government officials. To the extent conviction and removal is the harm he might suffer, that outcome is neither direct or imminent; it is speculative, and inadequate to confer standing.

[11] For example, Petitioner Krasner will have the opportunities, *inter alia*, to appear and be heard; to be represented by counsel of his choosing; to seek and obtain rulings on procedural and trial-related matters; to make opening and closing

that Petitioner Krasner must seek redress. *See Larsen,* 646 A.2d at 703-04 (it is "within the exclusive power of the Senate to conduct impeachment trial proceedings" and "courts cannot intervene with respect to procedure internal to the legislative body"); *cf. GGNSC Clarion LP v. Kane*, 131 A.3d 1062, 1069 (Pa. Commw. 2016), *aff'd*, 152 A.3d 983 (Pa. 2016) (where issues complained of in a declaratory judgment action could be raised and addressed in the context of a pending enforcement action by the Office of Attorney General, the declaratory judgment action was moot).[12]

3. Petitioner's second and third claims, effectively seeking pre-trial rulings on whether a district attorney is beyond the reach of impeachment and the sufficiency of the impeachment charges, do not present any actual case or controversy ripe for judicial review.

"A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic." *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991). *See also Pennsylvania State Lodge of Fraternal Order of Police by Bascelli v.*

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statements; and to examine and cross-examine witnesses. *See* SR 386, Petition at Exhibit D.

[12] While *GGNSC Clarion* was decided in the context of a motion to dismiss for mootness, the point is essentially the same: Petitioner Krasner's concerns are amenable to resolution and should be addressed in the impeachment forum, not by this Court.

Com., 571 A.2d 531, 533 (Pa. Commw. 1990), *aff'd,* 591 A.2d 1054 (Pa. 1991) ("Declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur; it is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation."). Under the doctrine of ripeness, "[w]here no actual controversy exists, a claim is not justiciable and a declaratory judgment action cannot be maintained." *Cherry v. City of Philadelphia*, 692 A.2d 1082, 1085 (Pa. 1997).

Even if this Court were inclined to consider the breadth of the definition of "civil officer" or the scope of the phrase "any misbehavior in office" in Article VI, § 6, those issues are not ripe for resolution.

No Pennsylvania Court has ever intervened in an ongoing impeachment proceeding to preemptively rule on questions that the Senate has not yet adjudicated. At this stage in the proceedings, the only questions fairly before this Court are whether the General Assembly has authority for the power it has exercised, and whether it has exercised that authority within the bounds of the Constitution. *See Larsen,* 646 A.2d at 703.

As an initial matter, 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." *Id.* at 705. Therefore, "regardless of whatever powers the courts may have to interpret

actions of the legislative body, by way of review, after they have been taken," courts have no power to intervene "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."[13] *Id.*; *cf. Sweeney*, 375 A.2d at 708 (noting the question of justiciability was a close call, but reviewing the expulsion of a member of the state House of Representatives on a claim of due process rights violation *after* the contested action had occurred).

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[13] With respect to his third claim, Petitioner Krasner's heavy reliance on *In re Braig*, 590 A.2d 284 (Pa. 1991) is misplaced. That case did not involve impeachment under Article VI. Rather, *Braig* addressed the phrase "convicted of misbehavior in office" under Article V, § 18(*l*); thus, the *Braig* Court's commentary on the language of other Constitutional provisions is dicta, and it is not binding on this Court. *See In re Braig*, 590 A.2d at 287-88 (comparing language of Article V, § 18(*l*) to removal provision in Article VI, § 7 and summarizing prior cases on the removal provision, involving *ex post* challenges to whether an officer's removal was based on a conviction that constituted a "conviction of misbehavior in office"). The same is true for all the cases Petitioner Krasner cites on this issue, which largely involve challenges to removal proceedings. Whatever persuasive value those cases might have in construing convictions under Article VI's removal provision, those cases did not involve impeachment proceedings, and the Court had no occasion to consider the serious nonjusticiability issues addressed herein.

Importantly, *Larsen* is the only recent Pennsylvania case involving an impeachment proceeding. As Petitioner Krasner acknowledges, *Braig* was decided three years prior to this Court's decision in *Larsen*, yet the *Larsen* Court does not rely on it. *See id.* at 702 (noting petitioner's proposed definition of "misbehavior in office," which the Court did not adopt, and concluding that it "finds no support in judicial precedents"). That is because impeachment and removal are two distinct processes under Article VI.

Although courts decline to review the actions of another branch in cases involving political questions, the Supreme Court has explained that "[a] political question is not involved when a court concludes that another branch acted within the power conferred upon it by the Constitution," reasoning:

> In such cases . . . the court does not refuse judicial review; it exercises it. It is not dismissing an issue as nonjusticiable; it adjudicates. It is not refusing to pass upon the power of the political branches; it passes upon it, only to affirm that they had the power which had been challenged and that nothing in the Constitution prohibited the particular exercise of it.

Sweeney, 375 A.2d at 705 (quoting Louis Henkin, *Is There a "Political Question" Doctrine?*, 85 Yale L.J. 597, 606 (1976)).

Thus, at this stage, the sole questions before the Court are: (1) whether the House has the authority to initiate impeachment proceedings, and (2) whether the Senate has the authority to try Petitioner's Krasner's impeachment proceedings. In accordance with Article VI, §§ 4-5, the answer to both questions is undoubtedly yes: the House has the sole authority to impeach; and the Senate has the sole authority to try the impeachment proceeding.

Petitioner is not entitled to ex ante judicial determinations on whether the district attorney's office is beyond the reach of impeachment or on the sufficiency of the impeachment charges or the likelihood of conviction. *See People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 330 (Sup. Ct. 1913) ("[A court] has no jurisdiction to inquire into the sufficiency of charges for which a Governor may be

impeached, nor, I take it, whether the proceedings looking to that end were properly conducted, unless at their foundation, in their exercise, constitutional guaranties are broken down or limitations ignored.") (citing Story on Const. Law, §§ 374 and 379)); *see also Larsen*, 646 A.2d at 696, 704 (rejecting the petitioner's request to intervene and order the Senate to rule on pretrial motions, which included a motion for dismissal, arguing that articles of impeachment failed to state an impeachable offense). Indeed, Petitioner cites no case to support his unprecedented claim that this Court should insert itself in an ongoing impeachment proceeding.

This Court in *Larsen* expressly cautioned courts against intervening ex ante to rule on impeachment matters that the Senate has not had the opportunity to adjudicate. *See Larsen*, 646 A.2d at 695, 705 (considering "first-impression question as to whether there can be judicial intervention in advance, to bar the state Senate from proceeding with the impeachment trial, on the basis that violations of constitutional rights are threatened," and concluding 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"). In that regard, this case is no different: Petitioner's impeachment proceeding is ongoing, and any legal arguments about whether he is subject to the charges or their sufficiency are properly directed to the Senate. Thus, as in *Larsen*, the Court should deny

Petitioner's extraordinary request for what amounts to prior restraint on the Senate's exclusive power to try impeachment proceedings.

WHEREFORE, Respondents herein respectfully request that this Honorable Court dismiss the second and third claims in the Petition with prejudice for lack of ripeness.

VII. CONCLUSION

Petitioner Krasner seeks a truly extraordinary remedy: he asks this Court to intervene to insulate him from an impeachment trial that has yet to begin; no court has done so in the history of our Commonwealth. He asks this Court to opine on the propriety of the impeachment charges against him and to dictate the Senate's pre-trial procedures in impeachment proceedings that our Constitution commits exclusively to the General Assembly. Even if the Court were to disagree, it is not for the Court to substitute its judgment for that of the policymaking branch responsible for impeachment proceedings. Petitioner Krasner cannot prevail on threshold justiciability requirements, and the Court should not overlook those shortcomings.

SAXTON & STUMP, LLC

Dated: December 12, 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.

CERTIFICATE OF WORD COUNT COMPLIANCE

I, Lawrence F. Stengel, hereby certify that the foregoing brief, excluding the cover page, table of contents, table of citations, proof of service, and signature block, contains 6,000 words, as calculated by the word count function of the word processing system used to prepare the brief, and complies with Pa. R.A.P. 2135.

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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

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2022, upon consideration of Petitioner's Application for Summary Relief and the Memorandum of Law of Respondents Representative Timothy R. Bonner and Representative Craig Williams in Opposition thereto, it is hereby ORDERED that the Application for Summary Relief is DENIED.

IT IS SO ORDERED:

_____
, J.

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 OF RESPONDENTS REPRESENTATIVE TIMOTHY R. BONNER AND REPRESENTATIVE CRAIG WILLIAMS IN OPPOSITION TO PETITIONER'S APPLICATION FOR SUMMARY RELIEF AND EXPEDITED BRIEFING

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I. INTRODUCTION

This matter is before the Court on a request for summary relief on three issues that are not properly before the Court in the first instance. They arise from the December 2, 2022 Petition of Philadelphia District Attorney Larry Krasner ("Petitioner"), which asks this Court to grant declaratory relief to stop the impeachment trial against Petitioner Krasner before it even begins.

A majority of the members of the Pennsylvania House of Representatives voted to pursue seven Articles of Impeachment against Petitioner Krasner, determining that he had committed misbehavior in office (the constitutional standard for impeachment) in the course of carrying out his duties as the District Attorney of Philadelphia. Rather than answering the Articles on the merits and in the proper forum (*i.e.*, his impeachment trial in the Senate), Petitioner Krasner now asks this Court to assist him in making an end run around the impeachment proceedings.

This Court should decline Petitioner Krasner's request to enter into this process. He has suffered no legally cognizable harm, and the only matters that he raises either constitute nonjusticiable political questions that are exclusively within the province of the General Assembly or are not (and may never be) ripe for judicial review.

Even if the Court were inclined to evaluate Petitioner Krasner's claims, however, none of them warrant summary relief for the reasons described below.

II. COUNTERSTATEMENT OF FACTS

On November 16, 2022, the Pennsylvania House of Representatives passed House Resolution 240, as amended, which contains the following seven Articles of Impeachment ("Articles") against Petitioner Krasner:

> Article I: Misbehavior in Office In the Nature of Dereliction of Duty and Refusal to Enforce the Law
>
> Article II: Misbehavior in Office In the Nature of Obstruction of House Select Committee Investigation
>
> Article III: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Robert Wharton v. Donald T. Vaughn*
>
> Article IV: Misbehavior In Office In the Nature of Violation of the Rules of Professional Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the Matter of *Commonwealth v. Pownall*
>
> Article V: Misbehavior in Office In the Nature of Violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor to Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and

> Appearance of Impropriety In the Matter In re: Conflicts of Interest of Philadelphia District Attorney's Office
>
> Article VI: Misbehavior in Office in Nature of Violation of Victims [sic] Rights
>
> Article VII: Misbehavior In Office In the Nature of Violation of the Constitution of Pennsylvania By Usurpation of the Legislative Function

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,

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

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 appear before the Senate 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).

Also 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).

In accordance with the Writ of Impeachment Summons, Petitioner Krasner's Answer to the Articles is not due until December 21, 2022, and the start of trial in the Senate is more than a month away.

III. LEGAL STANDARD

A petitioner in an original jurisdiction matter may seek summary relief at any time after filing a petition for review. Pa. R.A.P. 1532(b). "An application for summary relief is properly evaluated according to the standards for summary judgment." *Myers v. Com.*, 128 A.3d 846, 849 (Pa. Commw. 2015). Accordingly, "in ruling on a motion for summary relief, the evidence must be viewed in the light most favorable to the non-moving party and the court may enter judgment only if: (1) there are no genuine issues of material fact; and (2) the right to relief is clear as a matter of law." *Flagg v. Int'l Union, Sec., Police, Fire Pros. of Am., Local 506*, 146 A.3d 300, 305 (Pa. Commw. 2016). An application for summary relief should be denied where material facts are in dispute or the applicant's right to relief is not clear. *Brown v. Dep't of Corr.*, 932 A.2d 316, 318 (Pa. Commw. 2007).

IV. ARGUMENT

For the reasons set forth in Respondents' preliminary objections and supporting brief, which Respondents incorporate by reference as though fully set forth herein (and reiterate, in part, briefly below), this Court need not—indeed *should not*—undertake consideration of the merits of Petitioner Krasner's case. He has suffered no legally cognizable harm to date and the only matters that he raises either constitute nonjusticiable political questions that are exclusively within the

province of the General Assembly or are not (and may never be) ripe for judicial review. The Court should thus dismiss his case for those reasons alone.

Notwithstanding that, Petitioner Krasner is also not entitled to summary relief on any of his claims for the additional reasons set forth below.

A. Petitioner Krasner is not entitled to summary relief on his claim that impeachment proceedings may not continue from one General Assembly to the next.

1. Whether impeachment proceedings may "carry over" is a nonjusticiable political question.

Our Constitution expressly confers "the sole power of impeachment" on the House of Representatives, Pa. Const. art. VI, § 4, and provides that "[a]ll impeachments shall be tried by the Senate." *Id.* § 5.[2] The Constitution also vests in the House and Senate broad-ranging "power to determine the rules of [their] own proceedings." Pa. Const. art. II, § 11; *Killam v. Killam*, 39 Pa. 120, 123 (Pa. 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

[2] In light of the separate and distinct powers that the Constitution confers on the House and the Senate with respect to impeachment, Petitioner Krasner's characterization of the impeachment proceedings against him as "continuing" is, to a degree, artificial. The House, consistent with the powers vested in it, has already exercised its full and complete impeachment function. *See* Pa. Const. art. VI, § 4. The Senate, in turn, will take up the separate business of the impeachment trial in the next General Assembly, consistent with its distinct power to do so. *See id.* § 5.

expressly withheld from the Legislature inhere in it, and this is especially so when the Constitution is not self-executing.").

Because no constitutional provision prohibits impeachment proceedings from continuing from one General Assembly to the next, it is within the exclusive jurisdiction of the House and Senate, and not the courts, to determine whether they may do so. *See* Pa. Const. art. II, § 11.

Under the political question doctrine, which is triggered, *inter alia,* when there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department," *see Larsen v. Senate of Pennsylvania,* 646 A.2d 694, 700 (Pa. Commw. 1994) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)),[3] courts should decline to entertain "a challenge to legislative power which the

[3] In *Baker v. Carr*, the Court set forth the following factors to guide the political question analysis:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. 186, 217 (1962).

Constitution commits exclusively to the legislature." *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996); *see also Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939) ("There is no appeal to the courts from the judgment of the legislature as to the wisdom or policy which the Commonwealth shall adopt.").

Simply put, the impeachment process is constitutionally committed to the General Assembly and not a proper subject for judicial intervention. *See Nixon v. U.S.*, 506 U.S. 224, 228-38 (1993) (holding that challenge to federal impeachment trial received by Senate committee rather than full Senate was a nonjusticiable question); *Dauphin Cnt'y Grand Jury Investigation Proceeding (No 2)*, 2 A.2d 802, 803 (Pa. 1938) ("[T]he courts have no jurisdiction in impeachment proceedings, and no control over their conduct, so long as actions taken are within constitutional lines. . . . the courts cannot stay the legislature[.]"); *Larsen*, 646 A.2d at 703-04 (noting that state and federal constitutional provisions are nearly identical and concluding that it is "within the exclusive power of the Senate to conduct impeachment trial proceedings" and that impeachment procedures employed by the Senate "cannot be invaded by the courts"). For this reason alone, Petitioner Krasner's application for summary relief on Claim I should be denied.

Even if this Court were to consider Petitioner Krasner's first claim on its merits, however, he is not entitled to summary relief.

2. House Rules expressly provide that impeachment and trial need not occur during the same General Assembly.

The House indisputably has the power to promulgate rules on the conduct of impeachment proceedings, *see* Pa. Const. art. II, § 11, and the House has adopted a rule that unambiguously permits the continuation of such proceedings from one General Assembly to the next. Specifically, Jefferson's Manual[4]— which the House Rules explicitly endorse as authoritative[5]—unequivocally provides that "impeachment proceedings are *not discontinued* by a recess" (*i.e.,* adjournment, as referenced in the title of § 620 and evident from the examples that it cites). Jefferson's Manual, § 620 (emphasis added) (attached hereto as Exhibit 1).[6] This rule, which Petitioner Krasner does not acknowledge, could not be more clear.

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[4] 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.

[5] 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 12, 2022).

[6] As Petitioner Krasner's brief acknowledges, our courts have cited Jefferson's Manual as authoritative. *See* Petitioner's Brf. at p. 14.

The rule also makes good sense. By contrast, there is no sensible rationale for a contrary rule that would permit an individual who has been impeached by the House to avoid being tried in the Senate simply because he "beat the clock."

Moreover, even absent such a formal rule, the broad rulemaking power afforded to both houses of the General Assembly would allow for the impeachment proceedings to advance. This is a basic matter of procedure governing the business of the General Assembly and not one of any "right" owed to Petitioner Krasner.

3. There is historical precedent for the continuation of impeachment proceedings in both the federal and Pennsylvania contexts.

The rule set forth in Jefferson's Manual is not a theoretical one. It has been put into practice in both the federal and Pennsylvania contexts. Section 620 of Jefferson's Manual cites as examples five federal impeachments that carried over from one Congress to the next,[7] which (along with some additional detail from other sources) include the following:

- First, in 1803, the impeachment of U.S. District Court Judge John Pickering for misconduct as a judge and intoxication was presented to the U.S. Senate on the last day of the Seventh Congress; his trial was conducted by the Senate during the Eighth Congress; and he was convicted in 1804. *See* Lewis

[7] Although these were federal impeachments, Jefferson's Manual is relevant to state impeachment proceedings by operation of House Rule 78.

Deschler, *Deschler's Precedents of the United States House of Representatives* (Vol. 3), ch. 14, §§ 4, 4.1 (2015); Asher C. Hinds, *Hinds' Precedents* (Vol. 3) §§ 2319-2341 (1907).[8]

- Second, U.S. District Court Judge Harold Louderback, whose impeachment for misconduct in administering bankruptcy cases was presented to the Senate on the last day of the 72nd Congress in 1933, was tried (and acquitted) by the Senate in the 73rd Congress. *See Deschler* §§ 4, 4.1; *Proceedings of the U.S. Senate in the Trial of Impeachment of Harold Louderback*, S. Doc. No. 73, 73rd Cong., 1st Sess., 299-301 (1933).[9] Notably, "in neither the Louderback nor Pickering impeachments did the trial in the Senate begin before the adjournment *sine die* of the Congress."[10] *Deschler* § 4.1.

- Third, U.S. District Court Judge Alcee Hastings was impeached in 1988 for bribery and perjury during the 100th Congress (after having been acquitted of criminal charges) and then tried and convicted of some of the articles of

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[8] *Available at* https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/pdf/GPO-HPREC-HINDS-V3.pdf (last visited Dec. 15, 2022).

[9] *Available at* https://babel.hathitrust.org/cgi/pt?id=mdp.39015087654185&view=1up&seq=303 (last visited Dec. 15, 2022).

[10] Adjournment *sine die* is "[t]he ending of a deliberative assembly's or court's session without setting a time to reconvene." *Black's Law Dictionary* (11th ed. 2019).

impeachment in the 101st Congress in 1989. *Journal of the House of Representatives*, 100th Cong., 2nd Sess., 1247-51 (1988);[11] *Proceedings of the U.S. Senate in the Trial of Impeachment of Alcee Hastings*, S. Doc. No. 18, 101st Cong., 1st Sess., 885-973 (1989).

- Fourth, President William J. Clinton was impeached by the House of Representatives in 1998 during the 105th Congress and acquitted after his trial, which occurred in the Senate during the 106th Congress in 1999. Jefferson's Manual, § 620 (citing *Wickham's Precedents*, ch. 1, § 98.2).

- Fifth, U.S. District Court Judge Thomas Porteous' impeachment inquiry began in the 110th Congress, and he was convicted during the 111th Congress. Jefferson's Manual, § 620 (citing *Wickham's Precedents*, ch. 1, § 8.1). *See also Deschler* § 8 (observing that committee investigations, including but not limited to impeachment investigations, often continue from one Congress to the next, with the House in the next Congress formally reauthorizing the investigation and conferring jurisdiction over the matter on the new Congress).

Moreover, the continuation of impeachment proceedings is not unique to the federal context and has historical precedent in Pennsylvania. For example, Judge Alexander Addison was impeached for slander in March 1802 during the 26th

[11] *Available* at https://catalog.hathitrust.org/Record/002137422 (last accessed Dec. 15, 2022).

General Assembly, and his trial in the Senate occurred in January 1803 during the 27th General Assembly. [12]

Shortly thereafter, beginning in March 1804, three Pennsylvania Supreme Court justices (Chief Justice Edward Shippen IV, Justice Jasper Yeates, and Justice Thomas Smith) were impeached, the articles of impeachment exhibited, and impeachment managers appointed during the 28th General Assembly. The justices were then tried (but not convicted) in the 29th General Assembly.[13]

The impeachment of Seth Chapman, President Judge of the Court of Common Pleas of Northumberland, Union, Columbia and Lycoming Counties, began in the 49th General Assembly. 35 *Journal of the Senate of the Commonwealth of Pennsylvania*, 49th Sess., 814 (1825). The impeachment trial, conducted during the 50th General Assembly, started in the Senate on February 7, 1826 and concluded in Judge Chapman's acquittal on February 18, 1826. *See*

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[12] After Judge Addison was impeached and prior to his trial in the Senate, 62 new Representatives and at least five new Senators were seated. *See* Tufts University historical election data, *available at* https://elections.lib.tufts.edu/?f%5Bjurisdiction_sim%5D%5B%5D=State&page=44&q=pennsylvania&search_field=all_fields&sort=date_isi+asc%2C+title_ssi+asc.

[13] In the time between impeachment and trial, six members of the Senate and 29 members of the House had changed.

Journal of the Court of Impeachment for the Trial of Seth Chapman, Esq. Senate of the Commonwealth of Pennsylvania, 3, 28-30 (1826).[14]

The above historical examples, along with the absence of any constitutional prohibition on the continuation of impeachment proceedings and the existence of a House Rule expressly endorsing such continuances, collectively demonstrate the futility of Petitioner Krasner's claim. The provisions on terms and elections in Pennsylvania's Constitution and regulatory code, *see* Petitioner's Brf. at pp. 9-10, have never been interpreted to bar Senate impeachment trials from occurring in a General Assembly following the preceding one in which the House voted to impeach. Further, the *absence* of *statutory* authority permitting impeachment proceedings from carrying over from one General Assembly to the next, *see id.* at p. 10, likewise fails to advance Petitioner's position, as these are purely constitutional issues of inherent legislative dominion. Although Petitioner emphasizes that unenacted bills expire with an adjournment *sine die*, *see id.* at p. 14, there is nothing precluding one of the houses in the General Assembly from

[14] As noted in the Senate Journal for January 18, 1826, during the 50th General Assembly, the House of Representatives appointed new managers for the trial of Judge Chapman, withdrew the articles of impeachment exhibited during the 49th General Assembly and substituted new articles. 36 *Journal of the Senate of the Commonwealth of Pennsylvania*, 50th Sess., 175-76 (1825). If the articles of impeachment exhibited during the 49th General Assembly expired with its adjournment *sine die*, there would have been no need to withdraw those articles in order to substitute new ones.

taking it up again, *see Frame v. Sutherland,* 327 A.2d 623, 627 (Pa. 1974), and, in any event, this matter has nothing to do with expired legislation.

For all of these reasons, Petitioner Krasner is not entitled to summary relief on his claim that impeachment proceedings may not continue from one General Assembly to the next.

B. Petitioner Krasner is not entitled to summary relief on his claim that he is not a "civil officer" subject to impeachment.

1. Whether Petitioner Krasner is a "civil officer" subject to impeachment is not ripe for judicial review.

Declaratory judgments are not an appropriate means by which "to determine rights in anticipation of events which may never occur," *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991), or to address matters that are unripe for review and thus fail to present any "actual controversy." *Cherry v. City of Philadelphia*, 692 A.2d 1082, 1085 (Pa. 1997). Here, Petitioner Krasner's impeachment trial has yet to even begin, and it would be premature for this Court to involve itself in issues related to those proceedings (such as whether Petitioner Krasner is a "civil officer" subject to impeachment under Article VI, § 6), which are not ripe for resolution.

No Pennsylvania Court has ever intervened in an ongoing impeachment proceeding to preemptively rule on questions that the Senate has not yet adjudicated. As this Court previously recognized, the impeachment trial "is

committed by the Constitution to the Senate of Pennsylvania to an extent which clearly bars the courts from intervening with prior restraint." *Larsen,* 646 A.2d at 705. Therefore, "regardless of whatever powers the courts may have to interpret actions of the legislative body, by way of review, after they have been taken," courts have no power to intervene "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." *Id.*; *cf. Sweeney v. Tucker,* 375 A.2d 698, 708 (Pa. 1977) (noting the question of justiciability was a close call, but reviewing the expulsion of a member of the state House of Representatives on a claim of due process rights violation *after* the contested action had occurred).

At this stage, the sole questions before the Court are: (1) whether the House has the authority to initiate impeachment proceedings, and (2) whether the Senate has the authority to try Petitioner's Krasner's impeachment proceedings.
In accordance with Article VI, §§ 4-5 of the Pennsylvania Constitution, the answer to both questions is undoubtedly yes: the House has the sole authority to impeach; and the Senate has the sole authority to try the impeachment proceeding.

Petitioner is not entitled to ex ante judicial determinations on whether a district attorney is beyond the reach of impeachment. *See Larsen*, 646 A.2d at 696, 704 (rejecting the petitioner's request to intervene and order the Senate to rule on pretrial motions, which included a motion for dismissal, arguing that articles of

impeachment failed to state an impeachable offense). Indeed, Petitioner cites no case to support his unprecedented claim that this Court should insert itself in an ongoing impeachment proceeding.

This Court in *Larsen* expressly cautioned courts against intervening ex ante to rule on impeachment matters that the Senate has not had the opportunity to adjudicate. *See Larsen*, 646 A.2d at 695, 705 (considering "first-impression question as to whether there can be judicial intervention in advance, to bar the state Senate from proceeding with the impeachment trial, on the basis that violations of constitutional rights are threatened," and concluding that the impeachment trial "is committed by the Constitution to the Senate of Pennsylvania to an extent which clearly bars the courts from intervening with prior restraint"). This case is no different: Petitioner's impeachment proceeding is ongoing, and any legal arguments about whether he is subject to the charges are properly directed to the Senate. *Cf. GGNSC Clarion LP v. Kane*, 131 A.3d 1062, 1069 (Pa. Commw. 2016), *aff'd*, 152 A.3d 983 (Pa. 2016) (where issues complained of in a declaratory judgment action could be raised and addressed in the context of a pending enforcement action by the Office of Attorney General, the declaratory judgment action was moot). Thus, as in *Larsen*, the Court should deny Petitioner's extraordinary request for what amounts to prior restraint on the Senate's exclusive power to try impeachment proceedings.

As with Petitioner Krasner's first claim, however, even if the Court were inclined to evaluate his second claim on the merits, he is not entitled to summary relief.

2. The plain language of our Constitution and legal precedent demonstrate that Petitioner Krasner is a "civil officer" subject to impeachment.

As a threshold matter, Petitioner Krasner is subject to impeachment under the plain language of the Pennsylvania Constitution. Article VI, § 6 of the Constitution provides, in no uncertain terms, that "[t]he Governor and *all other civil officers* shall be liable to impeachment." Pa. Const. art. VI, § 6 (emphasis added). The term "civil officers" is not qualified; § 6 contains neither any exemption for "local" officers nor any limitation requiring that "civil officers" be holders of "statewide" offices.

In keeping with basic tents of constitutional interpretation, the words of § 6 should be interpreted in accordance with their plain meaning. *Appeal of Scowden*, 96 Pa. 422, 426 (1881); *Friedman v. Lewis*, 598 A.2d 1361, 1363 (Pa. Commw. 1991) (citing *Busser v. Snyder*, 128 A. 80, 83 (Pa. 1925); *Breslow v. Sch. Dist. of Baldwin Twp.*, 182 A.2d 501, 504 (Pa. 1962)); *see also Com. v. McNeil*, 808 A.2d 950, 955 n.2 (Pa. 2002) (While the "general principles governing the construction of statutes apply also to the interpretation of constitutions," courts "need not resort

to the rules of construction . . . [when] the plain meaning of the constitution is clear.").

The impeachment provision of our Constitution has always been understood to apply to state, county, and municipal officers. *See* Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania* 342 (1907) (noting that use of the term "civil officers" was meant to distinguish between state, county, and municipal officers, who are subject to impeachment by the House, and military or naval officers, who are not).

Indeed, our caselaw is replete with examples of cases in which the term "civil officer" has been understood to apply to a variety of county, municipal, or otherwise "local" offices. While most of that law has arisen in the context of cases involving our Constitution's removal provision, Article VI, § 7, the term "civil officer" is used comparably in both § 6 and § 7—*compare* Pa. Const. art. VI, § 6 (referring to "[t]he Governor and all other civil officers"), *with* Pa. Const. art. VI, § 7 (pertaining to "[a]ll civil officers")—and there is no reason to interpret that term differently in one section than the other.

Indeed, this Court has expressly recognized that a *district attorney* is an "elected constitutional officer" subject to the provisions of Article VI, § 7.[15] *See*

[15] To be clear, § 7's removal provisions for elected officers are *in addition to* the House's power to impeach (and the Senate's power to try impeachments). *See In re Petition to Recall Reese*, 665 A.2d 1162, 1167 (Pa. 1995) ("Section 7 . . .

Birdseye v. Driscoll, 534 A.2d 548, 550-51 (Pa. Commw. 1987) (citing Pa. Const. art. IX, § 4[16] and *McGinley v. Scott*, 164 A.2d 424 (Pa. 1960)).[17] In *Birdseye,* a case focused on the distinction between statutory and constitutional removal provisions, the Court held that the removal provision of the Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S.A. § 5726, was in conflict with the Constitution, and that Article VI, § 7 was the exclusive method for removal of the Westmoreland County District Attorney from office.[18] *See id.; see also Com. ex rel. Specter v. Martin*, 232 A.2d 729, 734, 738 (Pa. 1967) (plurality) (the District Attorney of Philadelphia is a constitutional officer subject to the provisions of Article VI, § 7); *id.* at 754 (Musmanno, J.) (the Philadelphia District Attorney is subject to removal via the "application of Article VI of the Constitution").[19]

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sets forth in unambiguous language the exclusive method, *absent impeachment*, conviction of crime or misbehavior in office, of removing such elected officers." (emphasis added; internal quotation, citation omitted).

[16] Article IX, § 4 identifies "county officers" to include district attorneys.

[17] "A district attorney is a constitutional officer, elected by the people of the county which he serves." *McGinley*, 164, A.2d at 431.

[18] Notably, in so holding, and consistent with Respondents' preliminary objections, this Court simultaneously concluded: "We are without jurisdiction to entertain suits seeking the removal of district attorneys." *Id.* at 551.

[19] While *Martin* involved a variety of opinions, Justice Jones (joined by Justices O'Brien and Roberts) and Justice Musmanno all agreed that the Philadelphia District Attorney is subject to Article VI of the Constitution.

While Petitioner Krasner attempts to draw a distinction between holders of statewide offices, who he concludes qualify as civil officers, and holders of local offices, who he concludes do not, that argument finds no support in our caselaw, and indeed has been *rejected* by our Supreme Court.

In *Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155 (Pa. 2007), for example, our Supreme Court concluded that a school superintendent qualifies as a "civil officer" within the meaning of Article VI. *See id.* at 1161 ("There is *no dispute* that [the] appellant [school district superintendent] was a civil officer.") (emphasis added). In so holding, the Court considered and *rejected* the "novel theory" proposed in Justice Saylor's concurrence (and advanced by Petitioner Krasner here) that the superintendent was not a civil officer "because he was not a statewide officer." *See id.* at 1161, n.6. The majority noted that the view offered in the concurring opinion was, at a minimum, in "facial tension with prior decisions" of the Court, including *Com. ex rel. Schofield v. Lindsay,* 198 A. 635 (Pa. 1938)—which quoted *In re Georges Twp. Sch. Dirs.,* 133 A. 223, 225 (Pa. 1926), for the proposition that the removal provisions in Article VI apply to appointed officers "whether the[ir] employment be by the state, a county, or municipality"—and *Finley v. McNair,* 176 A. 10, 11 & n. 1 (Pa. 1935)—in which the Court observed that holders of a variety of county and municipal officers were among those held to be "officers" in prior cases. As the *Burger* majority noted

(and Justice Saylor admitted), the Supreme Court has also applied Article VI, § 7 to the holders of other non-statewide offices. *See Burger,* 923 A.2d at 1611 n.6 (citing *S. Newton Twp. Electors v. S. Newton Twp. Sup'r, Bouch,* 838 A.2d 643 (Pa. 2003) (Article VI, § 7, not a local township code, provided the exclusive method for removing a township supervisor from office); *In re Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995) (Article VI, § 7 applied to the mayor of Kingston, a municipality in Luzerne County, and the conflicting recall provisions of the Kingston Home Rule Charter were unconstitutional); *Allegheny Inst. Taxpayers Coalition v. Allegheny Regional Asset Dist.,* A.2d 113, 118 (Pa. 1999) (Article VI, § 7 applied to board members of the Allegheny Regional Asset District).[20]

Indeed, while neither the *Burger* majority nor Justice Saylor cited the case, our Supreme Court considered and rejected the assertion that the Constitution's removal clause applies only to statewide officeholders *140 years ago* in *Houseman v. Com. ex rel. Tener*, 100 Pa. 222 (1882), noting that such a result could "only be reached by restricting the plain words of the constitution." *Id.* at 229. The Court explained:

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[20] *See also In re Kline Twp. Sch. Directors,* 44 A.2d 377, 379 (Pa. 1945) (removal provision of the Constitution applies to school directors and "other public officers"); White, *Commentaries on the Constitution* at 344 (observing that the Constitution's removal provision is "sufficiently broad to include officers of any kind, whether they are state, county or borough officers").

> In their literal sense it cannot be doubted that the words descriptive of the officials subject to removal, make no distinction between state, county and municipal officers, and do include them all. . . . The whole language of the section is very general. We see nothing in it which authorizes a distinction between state, county and municipal officers.

Id.

Our Supreme Court has also repeatedly acknowledged that the term "officers," as used in § 7, applies broadly to *all* civil officers, not just state officers. *See Com. ex rel. Benjamin v. Likeley,* 110 A. 167, 168 (Pa. 1920) ("It seems to us very clear that the word 'officers' here is used in the same sense throughout the section so far as their classification into state, county and municipal, is concerned."); *In re Petition to Recall Reese*, 665 A.2d at 1167 ("Article VI, Section 7 indisputably applies to *all elected* officers") (emphasis in original; internal quotation omitted). That same conclusion is equally applicable to § 6.

Thus, contrary to Petitioner's argument—and consistent with the manner in which our Supreme Court has interpreted our Constitution for well over a century—the Philadelphia District Attorney is a "civil officer" subject to impeachment under Article VI, § 6.

3. Petitioner Krasner is not exempted from the Constitution's impeachment provision by statute.

Petitioner Krasner goes to great lengths in an attempt to find a "loophole" to remove himself from the impeachment provision of Article VI, § 6. In the end, however, his effort falls short. There is nothing about the fact that he is the holder

of the District Attorney's office *of Philadelphia* that frees him from the reach of Article VI.

To evaluate Petitioner Krasner's argument, which is nothing if not complex, it helps to describe it. As the argument goes:

(1) Article IX, § 4 of the Constitution provides that district attorneys are "county officers." Pa. Const. art. IX, § 4.

(2) Article IX, § 4 further provides that "[p]rovisions for county government in this section shall apply to every county except a county which has adopted a home rule charter[.]" *Id.*

(3) Article IX, § 13(a) provides that "[i]n Philadelphia[,]" which is a home rule jurisdiction, "all county offices are hereby abolished, and the city shall henceforth perform all functions of the county government . . . through officers selected in such manner as may be provided by law." *Id.* § 13(a).

(4) Article IX, § 13(f) provides that "all county officers shall become officers of the City of Philadelphia, and . . . shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution and the laws of the Commonwealth in effect at the time this amendment becomes effective[.]" *Id.* § 13(f).

(5) The First Class City Government Law, enacted in 1919, was "in effect" when the foregoing amendment became effective. *See* Act June of 25, 1919, P.L. 581 (June 25, 1919).

(6) A provision of the First Class City Government Law sets forth grounds[21] for which "municipal officers" shall be liable for "impeachment, suspension, and removal from office." *See* 53 P.S. § 12199.

(7) Therefore—*and this is where Petitioner's argument takes a leap too far*—the legislature "committed the impeachment of Philadelphia's local officers to the General Assembly's statutes regulating Philadelphia officials" (*i.e.,* 53 P.S. § 12199) and left "no room for the operation of a completely separate impeachment process initiated by the House." *See* Petitioner's Brf. at pp. 25-26.

Petitioner cites no case standing for the latter proposition for the obvious reason that there is none. Indeed, he cites nothing to support the conclusion that § 12199 in any way limits, let alone entirely displaces, the impeachment powers expressly conferred on the General Assembly in Article VI.

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[21] While not pertinent to Petitioner's argument, the enumerated grounds include: "any corrupt act or practice, malfeasance, mismanagement, mental incapacity, or incompetency for the proper performance of official duties, extortion, receiving any gift or present from any contractor or from any person seeking or engaged in any work for, or furnishing material to, the city, or from any incumbent or occupant of, or candidate or applicant for, any municipal office, and for wilfully concealing any fraud committed against the city." 53 P.S. § 12199.

There are several problems with Petitioner's argument. First, Article IX, § 13(f) references not only "the laws of the Commonwealth" in place at the effective time of the amendment, but also "*the provisions of this Constitution*," and there is no question that our Constitution's impeachment provision was in effect when the amendment became effective.[22] Thus, *even if* § 12199 were to apply to the office of the district attorney, it does not displace the powers of impeachment conferred on the House and Senate in Article VI of the Constitution, *see* Pa. Const. art. VI, §§ 4-5, or render Petitioner Krasner exempt from reach of § 6.

Second, as noted above, while *Martin* resulted in a plurality opinion, four of the six justices in *Martin* found without question that the Philadelphia District Attorney is a civil officer subject to removal provisions of Article VI. *See Martin,* 232 A.2d at 738, 754. That conclusion is directly contrary to Petitioner Krasner's theory that the Philadelphia District Attorney is subject only to § 12199 and not the Constitution and begs the question why none of those four justices would have "recognized" this if it were true.

Third, it is not at all clear that § 12199, which pertains to "municipal officers," applies to the office of the Philadelphia District Attorney. In *In re Marshall*, 62 A.2d 30 (Pa. 1948), the Receiver of Taxes of Philadelphia argued that he was not a "municipal officer" subject to removal under the Act of 1919, but

[22] *See* White, *Commentaries on the Constitution* at 341.

instead a "county officer" who could only be removed by the legislature under Article VI of the Constitution. In rejecting that argument, the Supreme Court based its conclusion on the fact that the Constitution does not designate tax receivers—*unlike district attorneys*—as a county officers. *Id.* at 31. Further, to be clear, nothing in *Marshall* (or the subsequent opinion in *In re Marshall*, 69 A.2d 619 (Pa. 1949)) places any limitations on the General Assembly's powers to impeach and conduct the impeachment trial of the Philadelphia District Attorney.

For all of these reasons, Petitioner Krasner is not entitled to summary relief on his claim that he is not a "civil officer" subject to impeachment under the Constitution.

C. Petitioner Krasner is not entitled to summary relief on his claim that the Articles do not allege impeachable conduct constituting "misbehavior in office."

1. Whether Petitioner Krasner has committed impeachable conduct constituting "misbehavior in office" is for the Senate to determine and is not ripe for judicial review.

For the same reasons that are described above as to Petitioner's first claim (on whether impeachment proceedings may be continuing in nature), his third claim presents a nonjusticiable political question to be answered exclusively by the General Assembly. Similarly, for the reasons described above as to Petitioner's second claim (whether he is a "civil officer" subject to impeachment), his third

claim is also not ripe for judicial review. In the interests of efficiency and the avoidance of undue repetition, Respondents will not reiterate those arguments here.

2. As required by the Pennsylvania Constitution, it is for the General Assembly to determine whether to impeach and convict a district attorney for "any misbehavior in office."

As set forth in the Pennsylvania Constitution, it is for the General Assembly to determine whether to impeach and convict a district attorney for "any misbehavior in office." *See* Pa. Const. art. VI, §§ 4-6.

By oath of office, district attorneys are obligated to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and…discharge the duties of [the] office with fidelity." Pa. Const. art. VI, § 3. By statute, they are obligated to exercise the prosecutorial function of the Commonwealth. 16 Pa. Stat. Ann. § 1402. Though entrusted with prosecutorial discretion, which "is 'at the heart of the State's criminal justice system,' prosecutors' 'power to be lenient [also] is the power to discriminate," often at the expense of victims and the public." Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. Pa. L. Rev. 959, 961 (2009) (quoting *McCleskey v. Kemp*, 481 U.S. 279, 297, 312 (1987)). As a necessary check on the power delegated to the Commonwealth's prosecutors, the Constitution requires that a district attorney, like all civil officers, "shall hold their office[] on the condition that they behave themselves well while in office," Pa.

Const. art. VI, § 7, and provides for impeachment or removal by other branches of government. Pa. Const. art. VI §§ 4-7.

a. The impeachment clause of the Pennsylvania Constitution provides a critical check on the authority vested in district attorneys.

The impeachment clause of the Pennsylvania Constitution provides a critical check on the authority and discretion the Commonwealth vests in its district attorneys. "[O]ur charter is a fundamental document, which, in recognizing citizens' rights and establishing government, provides essential checks and balances whose complexity is to be neither undervalued nor disregarded." *In re Bruno*, 101 A.3d 635, 660 (Pa. 2014). Among the checks and balances integrated into the Commonwealth's tripartite government, the Constitution of 1968, like its predecessor, provides for the removal of civil officers by the other branches of government.

As relevant here, a civil officer, like Petitioner, may be removed from office in two distinct ways. First, as set forth in the removal clause, a civil officer may be removed automatically, "on conviction of misbehavior in office or of any infamous crime," or "by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate." Pa. Const. art. VI, § 7. The second, impeachment, is reserved for the General Assembly. *Id.* §§ 4-6. A civil officer is liable to impeachment for "any misbehavior in office." *Id.* § 6. The Constitution

does not define that phrase, but its text, structure, and history demonstrate that, as set forth in the impeachment provision, "any misbehavior in office" is a standard explicitly left for the General Assembly to determine.

Article VI of the Pennsylvania Constitution provides, in pertinent part, as follows:

> § 4 Power of impeachment. The House of Representatives shall have the **sole power of impeachment**.
>
> § 5. Trial of impeachments. 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.
>
> § 6. Officers liable to impeachment. The Governor and all other **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.
>
> § 7. Removal of civil officers. **All civil officers** shall hold their offices on the condition that they behave themselves well while in office, and **shall be removed on conviction of misbehavior in office or of any infamous crime**. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All **civil officers elected by the people**, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, **shall be removed by the Governor for reasonable cause**, after due notice and full hearing, on the address of two-thirds of the Senate.

Id. §§ 4-7 (emphases added).

Sections 5 and 6 include the grant of authority to each of the houses of the General Assembly: the House has the "sole" power to impeach, *id.* § 4; and "all impeachments" must be "tried" by the Senate." *Id.* § 5. Use of the words "sole" and "all impeachments" indicate that those powers are to be exercised exclusively by the House and the Senate, respectively.[23] *Cf. Nixon*, 506 U.S. at 229 (construing U.S. Constitution's impeachment provision, Art. I, § 3, cl. 6, and concluding that text, structure, and history of the provision establish the Senate's "sole" power to "try" impeachment proceedings; therefore, "the Senate alone shall have authority to determine whether an individual should be acquitted or convicted").

Tellingly, when intended, the impeachment provisions themselves specify procedural safeguards. Section 5 imposes two (and only two) specific requirements for impeachment trials, requiring that Senators preside on "oath or affirmation," and that a conviction requires a vote of "two-thirds of the members present." *Id.* By contrast, there are no procedural requirements for impeachment

[23] It is difficult to conceive of a clearer example than impeachment where the Constitution declares a single branch exclusive authority. *See, e.g.*, Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 Harv. L. Rev. 1, 8 (1959) (discussing application of political question doctrine, and stating: "Who, for example, would contend that the civil courts may properly review a judgment of impeachment when [the Constitution] declares that the "sole Power to try" is in the Senate? That any proper trial of an impeachment may present issues of the most important constitutional dimension…is simply immaterial in this connection.").

in § 4. The only criterion on the grounds for impeachments is stated in § 6, which provides that civil officers may be impeached for "*any* misbehavior in office." *Id.* § 6 (emphasis added). When read in the context of the other impeachment provisions and their exclusive grant of authority, the most natural reading of that language is that it is a standard of misbehavior to be determined by the General Assembly, not a strict criminal offense to be adjudicated by courts. *Cf. Nixon*, 506 U.S. at 235 ("Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the 'important constitutional check' placed on the Judiciary by the Framers.").

True enough, as Petitioner Krasner suggests, in the removal context, courts have construed the phrase "on conviction of *misbehavior in office*" to require a predicate conviction that would satisfy the elements of the old common law crime of misbehavior in office. *See, e.g., In re Braig*, 590 A.2d 284, 286 (Pa. 1991*)* (discussing requisite conviction in removal cases). However, a comparison of the impeachment and removal provisions demonstrates that the phrase "misbehavior in office," as used in each, is not coextensive. In the removal provision, that phrase is qualified by the requirement of a conviction: "*on conviction of* misbehavior in office or of any infamous crime," with the penalty of forfeiture self-executing; whereas, in the impeachment provision, the threshold is broader: "*any* misbehavior in office," and, instead of the traditional judicial process, the Constitution

expressly (and exclusively) delegates the charging and adjudication functions to the General Assembly. *See* Pa. Const. Art. VI §§ 4-7 (emphases added). To read §§ 6 and 7 as requiring the same predicate criminal behavior and judicial process, as Petitioner Krasner suggests, would violate the obvious textual differences between impeachment and removal. It is evident from the clear words of the Constitution that conviction of any infamous crime—or any crime for that matter—is simply not required for impeachment under § 6.

Historically, impeachments in Pennsylvania have addressed political (not necessarily criminal) misconduct, as a result of perceived abuses of office.[24] The same is true for federal impeachments.[25] At bottom, the determination of what

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[24] Early impeachments in Pennsylvania's history often stemmed from partisan disagreements. *See, e.g.*, Frank M. Eastman, *Courts and Lawyers of Pennsylvania; A History, 1623-1923* (Vol. 1) 127-129, 134 (1922), *available at* https://digitalarchives.powerlibrary.org/papd/islandora/object/papd%3Aslpgenealog_19163#page/1/mode/2up (last visited Dec. 13, 2022) (discussing articles of impeachment for Provincial Court's chief justice, Nicholas More, suggesting he was impeached for his arrogance and "ungovernable temper," and noting "if he had not been too haughty to appear and make a defence, most of the charges against him could have been disproved or satisfactorily explained"); *see also* Frank M. Eastman, *Courts and Lawyers of Pennsylvania; A History, 1623-1923* (Vol. 2) 345-46 (1922), *available at* https://archive.org/details/courtslawyersofp02east/page/350/mode/2up?q=impeach (last visited Dec. 13, 2022) (discussing Judge Alexander Addison, "an aggressive Federalist," known for "delivering political addresses in the shape of charges," whose impeachment was instigated by his political foe and described as "the most flagitious ever urged on by vicious hate and obnoxious partisanship").

[25] *See generally* Peter C. Hoffer & N.E.H. Hull, *Impeachment in America, 1635-1805* (1984) (recounting history of federal and state impeachments and

conduct rises to the level of an impeachable offense was historically, and continues to be regarded as, a question for the sitting legislature.[26]

Importantly, no court has endeavored to define the impeachment clause's phrase "any misbehavior in office" or adjudicate what conduct warrants impeachment.[27] The most recent Pennsylvania case involving impeachment

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describing how early impeachments were influenced by moments of political crisis and partisan political rivalry).

[26] *See* 2 Joseph Story, Commentaries on the Constitution of the United States § 795 (1833) ("Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."); *see also* Michael J. Gerhardt, *Rediscovering Nonjusticiability: Judicial Review of Impeachments After* Nixon, 44 Duke L.J. 231, 263-64 (1994) ("The question in . . . [an impeachment] proceeding is whether an impeachable officer is fit to preserve the public trust and therefore to remain in office. In other words, impeachment is a special disciplinary mechanism for special officials. The specific procedural protections given to the subjects of an impeachment are spelled out in the Constitution, including the division of impeachment authority between the House and the Senate and the requirements that senators act under oath, … and that at least two-thirds of the senators present agree in order to convict. Treating impeachments as sui generis is consistent with the absence of any evidence that the Fifth Amendment, including the Due Process Clause, was ever intended to apply to the impeachment process.") (footnotes omitted)); Michael J. Gerhardt, *Putting the Law of Impeachment in Perspective*, 43 St. Louis U. L.J. 905, 920-21 (1999) (reviewing historical impeachments and describing how the legislature, not courts, has defined on a case-by-case basis what political misconduct constitutes contemporary impeachable offenses through conviction or acquittal).

[27] Noticeably, Petitioner Krasner cites no case law or historical evidence that the Pennsylvania Constitution envisioned any role for courts in the

proceedings is *Larsen v. Senate of Pennsylvania*, 646 A.2d 694 (Pa. Commw. 1994). In *Larsen*, the petitioner – like Petitioner Krasner here – urged this Court to read "any misbehavior in office" as "referring only to the common law crime of misconduct in office…variously called misbehavior, misfeasance, or misdemeanor in office[.]" *Id.* at 702. The *Larsen* Court declined to do so, noting that it "finds no support in judicial precedents." *Id.*; *see also id.* at 701 (discussing "significant distinction between criminal convictions and removals by impeachment").

Petitioner Krasner's heavy reliance on *In re Braig*, 590 A.2d 284 (Pa. 1991) is misplaced. That case did not involve impeachment under Article VI. Rather, *Braig* addressed the phrase "convicted of misbehavior in office" under Article V, § 18(*l*). *Id.* at 287-88 (comparing language of Article V, § 18(*l*) to removal provision in Article VI, § 7 and summarizing prior cases on the removal provision, involving ex post challenges to whether an officer's removal was based on a conviction that constituted a "conviction of misbehavior in office"). Thus, the *Braig* Court's commentary on the language of other constitutional provisions is dicta, and it is not binding on this Court. *See Com. v. Romero*, 183 A.3d 364, 400

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impeachment process. When construing the similar federal provision, the U.S. Supreme Court has in fact cited the lack of any "evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers. This silence is quite meaningful in light of the several explicit references to the availability of judicial review as a check on the Legislature's power" in other provisions of the U.S. Constitution. *Nixon*, 506 U.S. at 233.

n.18 (Pa. 2018) (explaining that "judicial comment made while delivering a judicial opinion…unnecessary to the decision in the case" is "not precedential").

The same is true for all the cases Petitioner Krasner cites on this issue, which largely involve challenges following removal proceedings. Whatever persuasive value those cases might have in construing convictions under the removal provisions in Articles V or VI, those cases did not involve impeachment proceedings, and the Court had no occasion to consider either the serious nonjusticiability issues or the actual constitutional provisions at issue in this case.

In sum, no Pennsylvania court has adjudicated what conduct rises to the level of "any misbehavior in office," warranting impeachment, and for good reason. That standard is a political question left to the General Assembly.

For all of these reasons, Petitioner Krasner is not entitled to summary relief on his claim that he is not alleged to have engaged in "any misbehavior in office."

V. CONCLUSION

For all of the reasons set forth above, Petitioner Krasner is not entitled to summary relief on any of his claims, none of which—as a threshold matter—is properly before this Court. This Court should deny Petitioner Krasner's application for summary relief in its entirety.

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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.

CERTIFICATE OF WORD COUNT COMPLIANCE

I, Lawrence F. Stengel, hereby certify that the foregoing brief, excluding the cover page, table of contents, table of citations, proof of service, and signature block, contains 8,778 words, as calculated by the word count function of the word processing system used to prepare the brief, and complies with Pa. R.A.P. 2135.

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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*.	:	No. 563 MD 2022

ANSWER TO APPLICATION FOR SUMMARY RELIEF AND CROSS-APPLICATION FOR SUMMARY RELIEF BY RESPONDENT SENATOR KIM WARD

Per Pa.R.A.P. 123 and 1532(b), for the reasons set forth below and in the accompanying brief, which is incorporated here by reference, Respondent Senator Kim Ward hereby answers the pending application for summary relief, asking that it be denied, and also cross-moves for summary relief in her favor; in support of these requests, Senator Ward avers as follows:

1. Presently pending before the Court is Petitioner Larry Krasner's Application for Summary Relief.

2. An application for summary relief can only be granted "if a party's right to judgment is clear and no material issues of fact are in dispute." *Hosp. & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587, 602 (Pa. 2013) (quotations removed).

3. As set forth fully in the accompanying brief, Petitioner's right to judgment is not clear because each of his three claims are legally insufficient.

4. In contrast, Senator Ward is entitled to summary relief because not only do Petitioner's claims fail as a matter of law, but also he has failed to join indispensable parties, meaning this Court is without subject matter jurisdiction to entertain the Petition for Review.

WHEREFORE, Senator Ward respectfully requests that the Court deny Petitioner's application for summary relief, grant this cross-application for summary relief, and enter an order dismissing the Petition for Review.

Respectfully submitted,

Dated: December 16, 2022

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 563 MD 2022

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.

BRIEF OF RESPONDENT SENATOR KIM WARD IN OPPOSITION TO APPLICATION FOR SUMMARY RELIEF AND IN SUPPORT OF CROSS-APPLICATION FOR SUMMARY RELIEF

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I. INTRODUCTION

The Pennsylvania Constitution commands the Senate as follows: when the House presents articles of impeachment, they "shall" be tried. Nothing about this case warrants a different result. Impeachments across multiple sessions are ordinary and in no way prohibited. Further, the District Attorney of Philadelphia is a "civil officer" subject to impeachment. Next, whether Petitioner Larry Krasner's alleged conduct amounts to "misbehavior in office"—a phrase with plain meaning—is an un-ripe question, and one that Respondent Senator Ward, an impartial juror in the matter, cannot opine on at this stage. Finally, *even if* Petitioner's claims have merit (they do not), the Court is without subject matter jurisdiction to proceed. *The Senate* tries impeachments, and notably the Senate is not a party, despite Petitioner expressly seeking relief against it (and the non-party Senate Impeachment Committee). The absence of this indispensable party renders these proceedings improper. In sum, this matter should be dismissed for a variety of reasons, and, accordingly, the Court should deny Petitioner's Application for Summary Relief and grant Senator Ward's Cross-Application for Summary Relief.

II. QUESTIONS PRESENTED

1. Where the Senate's constitutional impeachment duty is outlined separately from its lawmaking power and where history reflects a long-standing practice of survival of impeachment across legislative sessions, is the continuation across successive legislative sessions proper? *Suggested answer: yes.*

2. Is Petitioner a "civil officer" subject to impeachment under Article VI, Section 6? *Suggested answer: yes.*

3. Does the phrase "any misbehavior in office" in Article VI, Section 6 include conduct beyond the common law definition of "misbehavior in office"? *Suggested Answer: yes.*

4. Should the Petition for Review be dismissed for lack of subject matter jurisdiction for failure to join indispensable parties? *Suggested answer: yes.*

III. STATEMENT OF THE CASE

A. Factual background

Petitioner Larry Krasner is the District Attorney of Philadelphia County. On October 26, 2022, the House introduced House Resolution 240, entitled, "Impeaching Lawrence Samuel Krasner, District Attorney of Philadelphia for misbehavior in office; and providing for the appointment of trial managers." PFR Ex. A. On November 16, 2022, HR 240 was amended and passed by the House. PFR Ex. C. Two days later, in accordance with HR 240, Speaker of the House Representative Bryan Cutler announced a committee to exhibit the Articles of Impeachment to the Senate and conduct a trial.

On November 29, 2022, the Senate adopted two resolutions to set rules for conducting impeachment trials, Senate Resolution 386, and to invite the House of Representatives to exhibit the Articles of Impeachment on November 30, 2022, Senate Resolution 387. PFR Ex. D and E.

The House exhibited the Articles as instructed, following which the Senate adopted Senate Resolution 388, directing the issuance of a Writ of Impeachment Summons to Petitioner. PFR Ex. F. The Writ was

served on Petitioner on December 1, 2022. PFR Ex. G. The 206th General Assembly ended on November 30, 2022.

B. Procedural history

On December 2, 2022, Petitioner filed his Petition for Review in the Nature of a Complaint for Declaratory Judgment, alleging three counts for relief. Specifically, Petitioner seeks a declaration that the Articles of Impeachment became null and void on the adjournment *sine die* of the 206th General Assembly; Article VI, Section 6 of the Pennsylvania Constitution does not authorize impeachment of Petitioner; the Articles of Impeachment do not allege conduct within the meaning of Article VI, Section 6; Respondents do not have authority to take up the Articles of Impeachment and any efforts to do so would be unlawful; and any effort by Respondents and/or the General Assembly to take up the Articles of Impeachment or related legislation is unlawful. PFR Prayer for Relief.

On the same day Petitioner filed the Petition for Review, he simultaneously filed an Application for Summary Relief and sought expedited briefing. This Court granted the application in part on December 6, 2022, issuing a schedule for expedited briefing, petitions

for intervention, answers or preliminary objections to the Petition for Review, and cross-applications for summary relief.

In accordance with the Court's order, Senator Ward filed an Answer and New Matter to the Petition for Review on December 13, 2022. Among other things, Senator Ward averred in New Matter that the Petition for Review should be dismissed for lack of subject matter jurisdiction due to failure to join indispensable parties and because the claims are legally insufficient. Answer and New Matter at ¶¶ 80-83. At the same time as this brief, Senator Ward also filed an Answer to the Application for Summary Relief and a Cross-Application for Summary Relief.

C. Historical impeachments

Impeachments in Pennsylvania are not well cataloged in any single source. But research reveals at least nine impeachments since 1780, covering some twelve different persons (including one impeached twice), where the proceedings advanced to a verdict:

(1) Judge Francis Hopkinson (acquitted, 1780);[1]

[1] *See The Pennsylvania Senate Trials: Containing the Impeachment, Trial, and Acquittal of Francis Hopkinson and John Nicholson, Esquires*, at 3, 62 (1794), *available at* https://archive.org/details/pennsylvaniastat00hoga/page/n5/mode/2up; *see also* Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History 1623-*

(2) Comptroller General John Nicholson (acquitted, 1794);[2]

(3) Judge Alexander Addison (convicted, 1803);[3]

(4) Chief Justice Edward Shippen, Justice Jasper Yeates, and Justice Thomas Smith (acquitted, 1805);[4]

(5) Judge Walter Franklin, Judge Jacob Hibshman, and Judge Thomas Clark (acquitted, 1817);[5]

(6) Judge Walter Franklin (second impeachment; acquitted, 1825);[6]

1923, vol. II, at 343 (1922), *available at* https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t0qr53419&view=1up&seq=9.

[2] *See The Pennsylvania Senate Trials*, at 67, 762.

[3] *See Trial of Alexander Addison, On an Impeachment Before the Senate of the Commonwealth of Pennsylvania, in January 1803* (1803), *available at* https://babel.hathitrust.org/cgi/pt?id=mdp.35112204856779&view=1up&seq=9&skin=2021; *see also* Eastman, *Courts*, at 345.

[4] *See Report of the Trial and Acquittal of Edward Shippen, Esquire, Chief Justice and Jasper Yeats and Thomas Smith, Esquires, Assistant Justices, of the Supreme Court of Pennsylvania on an Impeachment Before the Senate of Pennsylvania of the Commonwealth, January 1805* (1805), *available at* https://babel.hathitrust.org/cgi/pt?id=hvd.hxh38z&view=1up&seq=5&skin=2021; *see also* Eastman, *Courts*, at 349.

[5] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 27, appendix (1816) (appendix entitled: *Journal of the Proceedings of the Senate of Pennsylvania, Sitting as the High Court of Impeachment on the Trial of an Article of Accusation and Impeachment Preferred by the House of Representatives, Against Walter Franklin, President, and Jacob Hibshman and Thomas Clark, Associate Judges of the Court of Common Pleas of Lancaster County*), *available at* https://babel.hathitrust.org/cgi/pt?id=chi.74677493&view=1up&seq=471&skin=2021; *see also* Eastman, *Courts*, at 351.

[6] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 821 (1824) (section titled: *Journal of the Court of Impeachment, for the Trial of Walter Franklin, Esquire, President Judge of the second judicial district of Pennsylvania, for Misdemeanors in Office, Before the Senate of the Commonwealth of Pennsylvania*), *available at* https://babel.hathitrust.org/cgi/pt?id=chi.74677859&view=1up&seq=821.

(7) Judge Robert Porter (acquitted, 1825);[7]

(8) Judge Seth Chapman (acquitted, 1826);[8] and

(9) Justice Rolf Larsen (convicted, 1994).[9] [10]

Of the foregoing cases, five impeachments warrant further discussion because they spanned two sessions of the General Assembly, as does the present impeachment of Petitioner.

1. Impeachment of Comptroller General Nicholson

At the time of Comptroller General Nicholson's impeachment in 1793 and trial in 1794, sessions of the General Assembly were just one year, since representatives stood for election annually under the Constitution of 1790. *See* Pa. Const. of 1790 art. II, § 2 ("The

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[7] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, appendix (1825) (appendix entitled: *Journal of the Court of Impeachment for the Trial of Robert Porter, Esquire, President Judge of The Third Judicial District of Pennsylvania, Before the Senate of the Commonwealth of Pennsylvania*); *see also Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 769 (presentment in Senate of articles of impeachment against Judge Porter); Eastman, *Courts*, at 352.

[8] *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, appendix (1825) (appendix entitled: *Journal of the Court of Impeachment for the Trial of Seth Chapman, Esquire, President Judge of the Eighth Judicial District of Pennsylvania for Misdemeanors in office, Before the Senate of the Commonwealth of Pennsylvania*); *see also Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 760 (presentment in Senate of articles of impeachment against Judge Chapman); Eastman, *Courts*, at 352.

[9] *See In re Larsen*, 812 A.2d 640, 646 (Pa. Spec. Trib. 2002).

[10] Other impeachments have been introduced but failed in the House without triggering Senate action. *See generally* Robert B. Woodside, *Pennsylvania Constitutional Law*, at 364-67 (1985); Eastman, *Courts*, at 352.

Representatives shall be chosen, annually, by the citizens of the city of Philadelphia, and of each county, respectively, on the second Tuesday of October."). This continued until the Constitution of 1874, when representatives stood for election every two years. *See* Pa. Const. of 1874 art. II, § 3. Sessions of the General Assembly under the Constitution of 1790 began on the first Tuesday of December every year. Pa. Const. of 1790 art. II, § 10.

The articles of impeachment against Nicholson were first approved by the House of Representatives on April 10, 1793, and amended and adopted on September 3, 1793, during the legislative session beginning on December 4, 1792 (session 17). *See The Pennsylvania Senate Trials*, at 107, 188 (cited *supra* n.1); *see also* Dep't of Gen. Services, *The Pennsylvania Manual*, vol. 125, at 3-289 (2021).[11] They were presented in the Senate on September 3, 1793, and the Senate adjourned *sine die* on September 5. *See The Pennsylvania Senate Trials*, at 191, 193. However, the impeachment was not tried in the Senate until January 9, 1794, with a verdict on April 11, 1794. *See id.*

[11] *Available at* https://www.dgs.pa.gov/publications/Documents/ThePennsylvaniaManual_vol125_web.pdf.

at 195, 762. Thus, the trial was during the next legislative session (session 18), which began on December 3, 1793, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 17).

2. Impeachment of Judge Addison

The articles of impeachment against Judge Addison were approved by the House of Representatives on March 11, 1802, during the 26th legislative session, which began on December 1, 1801. *See Trial of Alexander Addison*, at 7 (cited *supra* n.3); *see also The Pennsylvania Manual*, at 3-289. The articles were presented to the Senate on March 23, 1802. *See Trial of Alexander Addison*, at 9. The Senate then adjourned *sine die* on April 6, 1802. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 12, at 404 (1801) (relevant pages attached as Exhibit A). However, the impeachment was not tried to a verdict until January 1803. *See Trial of Alexander Addison*, at 21, 151-152. Thus, the trial was during the next legislative session (session 27), beginning on December 7, 1802, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 26).

3. Impeachment of Justices Shippen, Yeates, and Smith

On March 23, 1804, the House adopted articles of impeachment against Justices Shippen, Yeates, and Smith during the 28th legislative session, which began on December 6, 1803. *See Report of the Trial and Acquittal of Edward Shippen*, at 22 (cited *supra* n.4); *see also Pennsylvania Manual*, at 3-289. They were presented to the Senate on March 24, 1804, which voted on March 27 to try the impeachment in January 1805. *See Report of the Trial and Acquittal of Edward Shippen*, at 22, 25-26. The Senate adjourned *sine die* on April 3, 1804. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 14, at 404 (1803) (relevant pages attached as Exhibit B).

The impeachment was tried to a verdict in January 1805. *See Report of the Trial and Acquittal of Edward Shippen*, at 33, 491; *see also* Eastman, *Courts*, at 351. Thus, the trial was during the next legislative session (session 29), which began on December 4, 1804, *see Pennsylvania Manual*, at 3-289; *see also Report of the Trial and Acquittal of Edward Shippen*, at 27, after the one in which the articles were presented (session 28).

4. Impeachment of Judge Porter

Articles of impeachment were exhibited in the Senate on April 11, 1825 against Judge Porter, which the Senate voted to try in December 1825. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 769, 777, 784 (cited *supra* n.6). This occurred during legislative session 49, which began on December 7, 1824. *See Pennsylvania Manual*, at 3-289. On April 12, 1825, the Senate adjourned *sine die*. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 800, 818. The impeachment was not tried until December 1825. *See Journal of the Court of Impeachment for the Trial of Robert Porter, Esquire, President Judge of The Third Judicial District of Pennsylvania, Before the Senate of the Commonwealth of Pennsylvania*, at 3, 59-62 (1825) (Exhibit C); *see also* Eastman, *Courts*, at 352. Thus, the trial was during the next legislative session (session 50), beginning on December 6, 1825, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 49).

5. Impeachment of Judge Chapman

Also on April 11, 1825, articles of impeachment were presented to the Senate against Judge Chapman. *See Journal of the Senate of the*

Commonwealth of Pennsylvania, vol. 35, at 760, 777 (cited *supra* n.6). The same day, the Senate voted to try this impeachment in February 1826. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 784. The vote occurred during legislative session 49, which began on December 7, 1824. *See Pennsylvania Manual*, at 3-289. The Senate adjourned *sine die* on April 12, 1825. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 35, at 800, 818. Trial took place in February 1826.[12] *See Journal of the Court of Impeachment for the Trial of Seth Chapman, Esquire, President Judge of the Eighth Judicial District of Pennsylvania for Misdemeanors in office, Before the Senate of the Commonwealth of Pennsylvania*, at 3, 28-30 (1826) (Exhibit D). Trial was therefore during the next legislative session (session 50), beginning on December 6, 1825, *see Pennsylvania Manual*, at 3-289, after the one in which the articles were presented (session 49).

[12] On January 16, 1826, just before the impeachment trial of Judge Chapman was to begin, the House withdrew and replaced the original articles of impeachment adopted during the prior legislative session. *See Journal of the Senate of the Commonwealth of Pennsylvania*, vol. 36, at 175-76 (1825). If the original articles had ceased to have effect as Petitioner suggests in his matter, there would have been nothing for the House to "withdraw" in 1826.

IV. SUMMARY OF THE ARGUMENT

First, Petitioner's assertion that adjournment *sine die* extinguishes articles of impeachment adopted in a prior legislative session is textually and historically infirm. This is evidenced by long-standing practice of the Pennsylvania Senate on impeachments, the Opinion of the Attorney General, and authority from Pennsylvania's sister jurisdictions.

Second, Petitioner holds an office of public trust, representing and exercising the power of the Commonwealth within Philadelphia. The nature and duties attendant to the office of district attorney compel the determination that Petitioner is a civil officer and is, therefore, subject to impeachment under Article VI of the Constitution. Even if statutory impeachment procedures apply to Petitioner, they are not the exclusive means by which he may be subject to impeachment. Article VI permits the impeachment of the Philadelphia District Attorney.

Third, Petitioner's argument regarding the definition of "misbehavior in office" is distilled to two broad points. One, this Court should rely on a Pennsylvania Supreme Court decision interpreting a different constitutional provision. Two, this Court should ignore the text

of Article VI, Section 6—specifically, the term "any"—and adopt a definition of "misbehavior in office" that contradicts: (i) the plain language; (ii) other related constitutional provisions; and (iii) Section 6's own amendment history. This Court should reject Petitioner's attempt to narrow the definition of "misbehavior in office" and thereby narrow the legislature's constitutional authority to remove civil officers who misbehave. Instead, this Court should hold that Section 6's definition of "any misbehavior in office" is broader than the common law definition.

Moreover, Petitioner's arguments concerning the merits of his claims are not yet ripe because a trial has not been held and evidence has not been presented. Regardless, Senator Ward—who will serve as an impartial juror during trial—must refrain from taking a position on the merits-based arguments of Petitioner.

Finally, this Court lacks subject matter jurisdiction due to the absence of indispensable parties—the Senate and its Impeachment Committee. A party is indispensable when its rights are so connected with the claims asserted that an order cannot be entered without impairing those rights. Petitioner expressly seeks relief against both the Senate and the future members of the Senate Impeachment Committee,

which would impair the rights of these absent parties. Further, the Senate is the only entity under the Constitution with the sole obligation to try impeachments; thus, an action regarding such a trial necessarily prejudices its rights.

V. ARGUMENT IN OPPOSITION TO APPLICATION FOR SUMMARY RELIEF

A. The Senate is not only permitted to act upon the Articles of Impeachment adopted in the preceding session, but also it is obligated to do so.

Petitioner's lead claim is that the Senate is prohibited from conducting an impeachment trial because the Articles of Impeachment expired and, in essence, ceased to exist when the 206th General Assembly adjourned *sine die*. In this regard, the general principle that legislative matters pending before the preceding session of the General Assembly terminate upon adjournment *sine die* and do not "'carry over' from one General Assembly to the next[]"—which Petitioner inexplicably devotes substantial energy toward establishing—is not in serious dispute. But where Petitioner's theory unravels is in his efforts to apply that doctrine of legislative power to impeachment proceedings, since an examination of the Constitution within the settled interpretative framework prescribed by the Supreme Court firmly establishes that adjournment *sine die* had no impact on the Senate's responsibilities relative to the Articles of Impeachment.[13] Specifically,

[13] *See Com. v. Molina*, 104 A.3d 430, 441 (Pa. 2014) (explaining that Court "conduct[s] Pennsylvania constitutional analysis consistently with the model set forth in *Edmunds*[,]" under which, the Court examines, *inter alia*, the relevant text

as developed in greater detail below, each of the three considerations relevant to the present analysis weigh against Petitioner's proposed construct and, considered together, establish that conducting a trial on the Articles of Impeachment in the next legislative session is on firm constitutional footing.

1. The text and structure of the State Constitution reflect a deliberate intent to ensure that the Senate's impeachment function exists independent of its legislative powers.

As Count I involves a quintessential exercise in textual interpretation, the starting point is the Constitution's plain language. Here, a review of the pertinent constitutional provisions—and, in particular the structure and placement of Articles II and VI—confirms that the Senate's impeachment power is not legislative power and, thus, is not impaired by adjournment *sine die*.

When tasked with interpreting constitutional provisions, courts must "first look to their placement in the larger charter." *Molina*, 104 A.3d at 442. It is therefore useful to first examine the structure of the State Constitution with an eye toward the source of the two

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of the Pennsylvania Constitutional, historic developments surrounding those provisions, including Pennsylvania case law, and any pertinent caselaw from other jurisdictions").

constitutional precepts principally at issue—namely: (1) *sine die* adjournment of a legislative session, which emanates from Article II; and (2) the Senate's duties relative to an impeachment trial, which are set forth in Article VI.[14]

A careful survey of Article II, which, as relevant here, governs the length of legislative sessions, demonstrates that it is strictly confined to the subject of *legislative* power. Specifically, not only is the Article entitled "The Legislature," but its introductory section also provides that "[t]he *legislative* power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." Pa. Const. art. II, § 1 (emphasis added). The three ensuing sections—which together form the predicate for the doctrine that adjournment *sine die* terminates all pending legislative business—relate to the election of Senators and Representatives in the General

[14] *Accord Com. v. Smith*, 186 A.3d 397, 402 (Pa. 2018) (explaining that courts do "not read words in isolation, but with reference to the context in which they appear"); *see also King v. Burwell*, 576 U.S. 473, 486 (2015) ("If the statutory language is plain, we must enforce it according to its terms. But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme." (internal quotation marks and citations omitted)).

Assembly, *see id.* at § 2, their terms of office, *see id.* at § 3, and the length of legislative sessions. *See id.* at § 4.

Equally important, nowhere in Article II is any reference made to impeachment.[15] Instead, that subject is covered in Article VI, titled "Public Officers." As relevant here, Section 4 vests "the sole power of impeachment" in the House of Representatives, *see* Pa. Const. art. VI, § 4, and Section 5 vests the Senate with the responsibility for trying impeached officers. *See* Pa. Const. art. VI, § 5. Finally, Section 6 provides, in part, that "[t]he Governor and all other civil officers shall be liable to impeachment for any misbehavior in office[.]" Pa. Const. art. VI, § 6. And again, just as Article II does not address impeachment, none of the provisions in Article VI reference the exercise of legislative power. In fact, the terms "General Assembly" or "Legislature" are nowhere to be found in the impeachment sections.

Against this textual backdrop, this Court should not countenance Petitioner's invitation to engraft Article II's limitations on legislative authority onto the impeachment provisions of Article VI. Specifically, as

[15] Similarly, Article III, titled "Legislation," also does not mention impeachment.

noted above, the central predicate of Petitioner's argument in this respect—*i.e.*, that adjournment *sine die* concludes all pending legislative matters—is derived from Article II, which relates to the exercise of *legislative* authority, which is defined as the power to "make, alter, and repeal laws." *Blackwell v. Com., State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989); *accord O'Neil v. Am. Fire Ins. Co.*, 30 A. 943, 944 (Pa. 1895). Stated differently, lawmaking is the power to prescribe "a rule of civil conduct[.]" *Belitskus v. Stratton*, 830 A.2d 610, 615 (Pa. Cmwlth. 2003) (internal quotation marks omitted)); *see also In re Baldwin Township Allegheny County Annexation*, 158 A. 272, 272-73 (Pa. 1931) (explaining that "[t]he word 'law' has a fixed and definite meaning[,]" which "[i]n its general sense … imports 'a rule of action[,]" (internal quotation marks omitted)).

But under the above definitional guidelines, the conduct of an impeachment trial—which is more accurately characterized as a "duty" enjoined upon the Senate, rather than a power granted to it—is not a "legislative" undertaking. Most fundamentally, the ultimate resolution of an impeachment trial does not result in a "rule of action," *Baldwin Township*, 158 A. at 272, or a "rule of civil conduct." *Belitskus*, 830 A.2d

at 615. Moreover, unlike an exercise of lawmaking under Article II, the Senate's impeachment verdict does not require concurrence from the House. *See Brown v. Brancato*, 184 A. 89, 93 (Pa. 1936) ("The Constitution contemplates the exercise of legislative power by concurrence of both House and Senate."). Indeed, the Constitution expressly imposes vastly different powers and duties on each chamber, with the House prosecuting, and the Senate adjudicating.

While the distinction between the power to impeach and the power to legislate is apparent from the Constitution's plain language and structure, to the extent there is any doubt in this regard, the Supreme Court's seminal decision in *Com. ex rel. Att'y Gen. v. Griest*, 46 A. 505 (Pa. 1900), further bolsters the conclusion that limitations on the exercise of legislative power are applicable only to actions taken by the General Assembly in its *lawmaking* capacity.

To explain, in *Griest*, the Court held that resolutions adopted pursuant to the General Assembly's power to propose constitutional amendments under Article XI were not subject to the procedural

requirements governing the exercise of legislative power.[16] In so holding, the Court first examined the structure of the State Constitution, under which it observed, "the method of creating amendments to the constitution is fully provided for" in "a separated and independent article, standing alone and entirely unconnected with any other subject." *Id.* at 506. Indeed, the *Griest* panel noted the Article does not "contain any reference to any other provision of the constitution as being needed or to be used in carrying out the particular work to which [it] is devoted[,]" but rather, "is a system entirely complete in itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution." *Id.* at 507.

Conversely, the Court emphasized, the entirety of Article III "is confined exclusively to the subject of legislation[,]" and does not contain "the slightest reference to or provision for the subject of amendments to the constitution[,]" or "even allude[] to [it] in the remotest manner." *Id.* at 507. Given that the act of proposing a constitutional amendment "is not lawmaking …, but it is a specific exercise of the power of a people to

[16] At the time *Griest* was decided, the Article concerning amendments was denominated as Article XVIII. Aside from being renumbered, the structure and substance of the relevant provisions are materially identical to the ones presently in force.

make its constitution[,]" *id.* at 506—and based on the structural considerations outlined above—the Court declined to interpret Article III as coextensive with Article XI.

Applying *Griest*'s constitutional rubric, the flaws in Petitioner's formulation become pronounced. To begin, like the amendment process of Article XI, "the method of [impeachment] is fully provided for" in Article VI, which is "a separated and independent article, standing alone and entirely unconnected with any other subject."[17] Moreover, in striking resemblance to Article XI, the impeachment provisions of Article VI do not "contain any reference to any other provision of the constitution as being needed or to be used in carrying out [an impeachment,]" but rather prescribe "a system entirely complete in

[17] *Griest*'s overarching conclusion that not every official undertaking of the legislative branch or its subparts is an exercise of the legislative power, has been recognized in other contexts as well. *See Sweeney v. King*, 137 A. 178, 178 (Pa. 1927) (holding that Article III proscription against "legislation upon subjects other than those designated in the proclamation of the Governor calling such session" did not prohibit adoption of a concurrent resolution proposing a constitutional amendment by the General Assembly when it was convened in a special session, since such action was not an exercise of legislative power); *see also Russ v. Com.*, 60 A. 169, 171 (Pa. 1905) (acknowledging that a concurrent resolution may fall outside the ambit of Article III, even if unrelated to a constitutional amendment). Thus, any argument that *Griest*'s rationale is confined to the narrow circumstances before that panel is unpersuasive.

itself; requiring no extraneous aid, either in matters of detail or of general scope, to its effectual execution."

For its part, the entirety of Article II, much like Article III, "is confined exclusively to the subject of [the legislature,]" and does not contain "the slightest reference to or provision for" impeachment, or "even allude[] to [it] in the remotest manner." And just as proposing a constitutional amendment is not lawmaking, the Senate's impeachment trial is not a legislative act, but rather "is a specific exercise of the power" to render a verdict in impeachment proceedings.

Notably, this Court has previously recognized, albeit in dicta, that the role of the legislative branch in impeachment matters is analogous to its function in the constitutional amendment process. *See Mellow v. Pizzingrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) (*en banc*) (explaining that a proposed amendment to the State constitution under Article XI "is not a legislative act at all, but a separate and specific power granted to the General Assembly, *similar to the impeachment and trial powers granted to the House of Representatives and Senate*, respectively, under Article VI, Sections 4 and 5" (emphasis added)); *accord Costa v. Cortes*, 142 A.3d 1004, 1013 (Pa. Cmwlth. 2016).

Finally, the language of Article VI, Section 5 standing by itself further suggests that articles of impeachment cannot be extinguished by adjournment *sine die*, because the Senate has a mandatory duty to conduct a trial once the articles of impeachment have been transmitted. *See* Pa. Const. art. VI, § 5. Specifically, this provision states that "[a]ll impeachments *shall* be tried by the Senate." Because "[t]he word 'shall' by definition is mandatory, and it is generally applied as such[,]" *Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099, 1104 (Pa. 2007), this constitutional command cannot be extinguished by adjournment *sine die*.

In sum, the text and structure of the Constitution suggest a conscious and deliberate intent to treat the impeachment function independent of the legislative power.

2. Persuasive authority from Pennsylvania and settled historical practices of the legislative branch firmly establish the Senate's duty to act upon articles of impeachment adopted in a prior session.

Another crucial factor in matters involving constitutional interpretation is the provision's "history, including Pennsylvania case law[.]" *Molina*, 104 A.3d at 441.

As an initial matter, although no court in Pennsylvania has assessed the interplay between *sine die* adjournment and the impeachment responsibilities vested in each chamber under Article VI, an opinion issued by the Attorney General—which, under this Court's precedent, is entitled to "great weight"[18]—expressly rejects the argument that the exercise of impeachment powers is affected by *sine die* adjournment. *See Umbel's Case*, 41 Pa.C.C. 414, 415 (Pa. Att'y Gen. June 26, 1913).[19]

To explain, in 1913, the chairman of a special committee empaneled by the House for the purpose of conducting an impeachment investigation requested a formal opinion from the Attorney General on "the power of [the] committee to continue its hearings and compel the attendance of witnesses and the production of books and papers after the adjournment *sine die* of the present session of the general assembly[.]" *Umbel's Case,* 41 Pa.C.C. at 415. Examining the provisions

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[18] *Baird v. Twp. of New Britain*, 633 A.2d 225, 229 (Pa. Cmwlth. 1993); *see also Com. ex rel. Pappert v. Coy*, 860 A.2d 1201, 1208 (Pa. Cmwlth. 2004) ("The Court notes, however, that although opinions of the Attorney General are not binding on the Court, the courts customarily afford great weight to official opinions of the Attorney General.").

[19] *Also available at* https://www.attorneygeneral.gov/wp-content/uploads/2018/01/1913_1914_AG_Bell_opinions.pdf (pages 362-366).

of the State Constriction and the relevant authorities, including *Com. v. Costello*, 21 Dist. R. 232 (Pa. Quar. Sess. Phila. 1912), on which Petitioner relies heavily, Attorney General Bell concluded the committee's authority to continue its business "will not cease by reason of the adjournment of the general assembly." *Umbel's Case*, 41 Pa.C.C. at 417.

While the Attorney General acknowledged that, under *Costello*, "the functions of the legislature are terminated by the adjournment, and that the conclusion of the session puts an end to all pending proceedings of a *legislative character*," he explained that the issue presented for his consideration was distinguishable and that *Costello* "furnishe[d] no precedent" because "the impeachment of a civil officer is not a joint power or duty, nor is it a legislative function within the ordinary acceptation of that word." *Umbel's Case*, 41 Pa.C.C. at 417 (emphasis added). Rather, "[e]ach branch of the legislature has a separate and distinct function to perform in such proceedings." *Id.*

Umbel's Case is on all fours and provides a simple, yet compelling rationale for its conclusion: adjournment *sine die* terminates pending business that is "legislative in character," but since impeachment is not

an exercise of legislative power, it is not subject to such adjournment. This Court should adopt the well-reasoned interpretation of the pertinent principles articulated in *Umbel's Case*.

Next, a historical survey of impeachment proceedings under the State Constitution reveals a long-standing recognition that impeachment is not a legislative undertaking and, thus, adjournment *sine die* has no impact on pending impeachment proceedings. Turning to that history, a careful review of the Senate's journals, *supra* § III.C, shows that at least ***five*** impeachment proceedings (more than half of all impeachment trials held by the Senate) saw articles of impeachment passed by the House in one session, then adjournment *sine die*, and a trial in the Senate in a new session.

Of course, the Senate's "understanding and practice are not … binding on the judiciary," *Com. ex rel. Greene v. Gregg*, 29 A. 297, 298 (Pa. 1894), but as the Supreme Court has emphasized, "the view of the two co-ordinate branches of the government … are entitled to respectful consideration and persuasive force, if the matter be at all in doubt." *Id.* And a "long continued legislative practice … is strong evidence of the true interpretation of the constitutional power of the legislature[.]"

Olive Cemetery Co. v. Philadelphia, 93 Pa. 129, 132 (1880). Here, the fact that multiple iterations of the General Assembly employed this procedure shows a "long continued legislative practice" and presents "strong evidence" in support of the procedure Petitioner seeks to declare infirm.

Importantly, the Senate's practice in this regard was not a novel arrogation of previously foreclosed powers. Rather, it is in keeping with the British parliament's longstanding interpretation of adjournment *sine die*, which is also sometimes referred to as "prorogation." As Sir William Anson, who has been described as "[o]ne of the most prominent English Constitutional Law scholars in the 1800s,"[20] explains, "[p]roceedings in the House of Lords on an impeachment are unaffected by a prorogation or a dissolution, and this has been held without question since Warren Hastings' case in 1786." Sir William R. Anson, *The Law and Custom of the Constitution*, pt. I, at 340 (2d ed. 1892);[21]

[20] Garrett Ward Sheldon, *Constituting the Constitution: Understanding the American Constitution Through the British Cultural Constitution*, 31 Harv. J.L. & Pub. Pol'y 1129, 1130 (2008).

[21] *Available at* https://babel.hathitrust.org/cgi/pt?id=nyp.33433075894778&view=1up&seq=366.

see also Jefferson's Manual of Parliamentary Practice, at § 620 (relying on authorities from the 1790s).

The Senate's centuries-old practice of allowing impeachment matters to proceed unimpeded from one session to the next is also consistent with settled practice in the United States Congress. Indeed, the first federal judge impeached (Judge John Pickering) was "impeached by the House in one Congress and tried by the Senate in the next." Lewis Deschler, *Deschler's Precedents of the United States House of Representatives*, vol. 3, ch. 14, § 4 (Jan. 1, 1994) (also noting that the impeachment of Judge Harold Louderback spanned from the 73rd to the 74th Congress); *see also id.* at § 4.1 ("It should be noted that in neither the Louderback nor Pickering impeachments did the trial in the Senate begin before the adjournment *sine die* of the Congress.").[22] And this practice has endured the test of time, as evidenced by the fact that President Clinton was impeached in the 105th Congress, but tried and acquitted by the Senate in the 106th Congress. *See generally* U.S.

[22] *Available at* https://www.govinfo.gov/content/pkg/GPO-HPREC-DESCHLERS-V3/pdf/GPO-HPREC-DESCHLERS-V3.pdf.

Senate, *Impeachment of President William Jefferson Clinton*, 106th Congress, Doc. 106-2 (Jan. 13, 1999).[23]

Petitioner, for his part, acknowledges federal practice, but maintains that Congressional precedent is irrelevant because: (1) "federal law, unlike Pennsylvania law, does not address when matters carry over to a new session or to a new Congress[;]" and (2) "unlike the Pennsylvania Senate, the U.S. Senate is a 'continuing body' because two-thirds of U.S. Senators (more than a quorum) do not change at any election." Petitioner Br. at 16 n.6. Neither argument withstands scrutiny.

As an initial matter, Petitioner's first argument is simply and manifestly wrong. The doctrine that adjournment *sine die* (or prorogation) terminates all pending legislative business is, as discussed above, a basic tenet of parliamentary law. *See N.L.R.B. v. New Vista Nursing & Rehab.*, 719 F.3d 203, 221-44 (3d Cir. 2013) (tracing the underpinnings of the concepts of adjournment and prorogation and its modern application). And like the Pennsylvania General Assembly,

[23] *Available at* https://www.govinfo.gov/content/pkg/CDOC-106sdoc2/pdf/CDOC-106sdoc2.pdf.

"Congress is automatically dissolved—and any ongoing session ended—every two years by termination of the terms of one-third of Senators and all members of the House." *Id.* at 223. In fact, specifically discussing the effect of this principle on the Senate, the Third Circuit explained a "session of the Senate, everyone agrees, begins at the Senate's first convening and ends either when the Senate adjourns *sine die* or automatically expires at noon on January 3 in any given year." *Id.* at 234; *see also The Pocket Veto Case*, 279 U.S. 655, 672 (1929).

As for Petitioner's second argument, this theory is candidly difficult to follow. Insofar as it simply recasts the first argument to focus on the one chamber, the notion that the U.S. Senate never adjourns *sine die* is wrong in light of the foregoing. The U.S. Senate, therefore, is plainly not a "continuing body"—despite the fact that, as a practical matter, it may experience less "turnover." Moreover, as at least one Pennsylvania Court has recognized, "[t]he Senate of Pennsylvania is a continuing body, the members of which are elected for a period of 4 years, but are so divided that one half of its members are elected every 2 years." *Shelby v. Second Nat. Bank*, 19 Pa. D. & C. 202, 211 (C.P. Fayette 1933). Relying on federal precedent, the *Shelby* Court

concluded that "[i]f the Senate of the United States is a continuing body, it would necessarily follow that the Senate of Pennsylvania is also a continuing body and that its committee would have authority to act during a recess of the legislature." *Id.* (citing *McGrain v. Daugherty*, 273 U.S. 135, 181 (1927)). Thus, neither of Petitioner's attempts to distinguish the U.S. Senate and the Pennsylvania Senate withstand scrutiny.

In short, therefore, historical practices further confirm that which is implicit in the text and structure of the State Constitution: adjournment *sine die* cannot extinguish any pending matter related to impeachment.

3. Courts in at least four states have expressly held that adjournment *sine die* does not affect impeachment.

Finally, authorities from other states with similar provisions concerning impeachment appear to be in universal agreement that adjournment *sine die* has no impact on any pending matters related to impeachment. Indeed, research shows that Petitioner's argument has been roundly rejected by the courts in at least four states: Texas, New York, Florida, and Kansas.

Taking these cases in reverse chronological order, in *Ferguson v. Maddox*, 263 S.W. 888 (Tex. 1924),[24] the Texas Supreme Court held that "an impeachment proceeding, begun at one session of the Legislature, may be lawfully concluded at a subsequent one." *Id.* at 891. Thus, articles of impeachment presented in one session and a trial in a subsequent session was found constitutional.

Approximately a decade earlier, in *People ex rel. Robin v. Hayes*, 143 N.Y.S. 325, 327 (N.Y. Sup. Ct. 1913), *aff'd*, 149 N.Y.S. 250 (App. Div. 1914),[25] the New York Supreme Court (a trial court) considered the same issue. Like the Texas High Court, the *Hayes* panel rejected the

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[24] The impeachment process under the Texas State Constitution is materially identical to Pennsylvania's. *See* Tex. Const. art. XV, § 1 ("The power of impeachment shall be vested in the House of Representatives."); *id.* at § 2 ("Impeachment of the Governor, Lieutenant Governor, Attorney General, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate."); *id.* at § 3 ("When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.").

[25] The New York State Constitution prescribed a substantially similar process for impeachment, whereby the power of impeachment was vested in the lower chamber, and the duty to conduct the trial imposed upon the upper chamber, sitting together with judges of the court of last resort in New York. *See* N.Y. Const. of 1894, art. VI, § 13 ("The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them.").

argument that "having adjourned *sine die* in any year, [the Legislature] is without power, no matter what hideous acts of crime or monstrous acts of tyranny or usurpation a Governor may be guilty of, to set the machinery of his punishment in motion until the stated day of the meeting of both branches of the Legislature." 143 N.Y.S. at 327. In this regard, the Court explained that "[t]he subject of impeachment, like the power of a legislative body to punish for contempt, has a different character from subjects requiring the action of both branches of the Legislature and of the Governor in order that laws may be enacted." *Id.* Addressing the general principle that adjournment *sine die* ends the session of an assembly, the Court explained that this precept "has reference only to the Legislature. It was not written of or concerning the Assembly as an independent state body exercising a function of a judicial character." *Id.* at 329.

About forty years prior to that, the Florida Supreme Court held that adjournment *sine die* did not extinguish articles of impeachment. *See In re Opinion of Justices*, 14 Fla. 289, 298 (1872).[26] Noting that in

[26] Although the current version of the Florida State Constitution expressly provides that the State Senate "may sit for the trial whether the house of representatives be in session or not[,]" Fla. Const. art. III, § 17(c), the provision in force at the time *In re Opinion of Justs* was decided was nearly identical to the

the impeachment context the Senate, in essence, sits as a judicial tribunal, the panel explained that "the Senate, like any other judicial tribunal, does not die or cease to exist with the adjournment of the session or term." *Id.* Rather, "[a]ll cases of impeachment pending and undisposed of at the preceding session remain upon its calendar or docket until *the Senate sitting as a court* enters an order finally disposing of each case." *Id.* (emphasis in original).[27]

And less than ten years before Florida, the Kansas Supreme Court held that adjournment *sine die* did not divest the Senate of its obligation and authority relative to impeachment and, thus, concluded that the ensuing trial was properly conducted. *State ex rel. Adams v. Hillyer*, 2 Kan. 17, 32 (1863).[28]

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impeachment process outlined in the Pennsylvania State Constitution. *See* Fla. Const. of 1868, art. IV, § 29 ("All impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present.").

[27] Notably, in addition to its interpretive guidance, this decision also underscores the central role of historical practices. Specifically, in reaching its conclusion, Florida's High Court afforded substantial weight to the fact that the Florida State Senate had recently allowed an impeachment to go "over from one session to another." *Id.* at 299. This, the Court explained, "presents a precedent to establish the proposition that an adjournment for a session and a change in the individual Senators composing the Senate did not destroy the court." *Id.*

[28] Other than clarifying the type of oath required when sitting to try an impeachment, Kansas' impeachment provision is conterminous with Pennsylvania's. *See* Kan. Const. art. II, § 27 ("The house of representatives shall

Against this weight of authority, Petitioner's argument is utterly untenable because, as explained above, neither text, nor history, nor decisional law from other states support his theory. Thus, Count I fails as a matter of law.

B. Petitioner is a civil officer subject to impeachment by the General Assembly under Article VI.

Petitioner, a public official representing the Commonwealth, is a civil officer under the Commonwealth who is subject to impeachment pursuant to Article VI. As a civil officer holding a constitutionally created office, Petitioner is subject to the Constitution's impeachment provisions regardless of any additional statutory impeachment or removal procedures for municipal officers.

1. Civil officers are characterized by the duties and powers of their office and not the statewide or municipal level of the office.

Petitioner was elected to a constitutionally created position of public trust in order to exercise the sovereign power of the Commonwealth in Philadelphia. *See* Pa. Const. art. IX, § 4 ("County

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have the sole power to impeach. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the senators then elected (or appointed) and qualified.").

officers shall consist of commissioners, controllers or auditors, district attorneys …"). In that position, he is a civil officer subject to impeachment by the General Assembly. Petitioner attempts to distinguish himself from a civil officer by equating civil officers with statewide officeholders and not local officials. This distinction is not based in caselaw or the common understanding of the term civil officer.

Civil officers can and often do include municipal officers because that role is defined not by the level of government but by the nature and inherent authority of the office. *See Richie v. City of Philadelphia*, 74 A. 430, 431 (Pa. 1909) (noting the considerations for analyzing whether an office is a public office is determined by the nature of the office's services, duties imposed, and the governmental function and important character of the office's duties); *Alworth v. Cty. of Lackawanna*, 85 Pa. Super. 349, 352 (1925) (considering the nature of services, duties imposed, powers, conferred, election or appointment, and tenure of the office in classifying a public officer).

Our Supreme Court explained this in the context of removal procedures for the office of tax collector, which it deemed to be a public

official.[29] *Houseman v. Com. ex rel. Tener*, 100 Pa. 222 (1882). *Houseman* addressed the validity of a tax collector's appointment and the former officeholder's removal. The former tax collector argued that his removal from office was improper because the relevant constitutional provision does not extend to municipal officers. The Supreme Court disagreed. *Id.* at 230. Then-Article VI, Section 4 provided that "appointed officers" may be removed at the pleasure of the appointing power. *Id.* at 229. While the former tax collector asserted that this provision did not apply to municipal officers, the Supreme Court "saw nothing in [that section] which authorizes a distinction between state, county and municipal officers." *Id.* Rather, the only distinction drawn was between appointed and elected officers. *Id.* at 230.

Further, focusing on the character of the public office, the Court explained that the tax collector receives public money, a considerable part of that money is payable to the Commonwealth, the sums received can be large, and "[n]o element of mere private trust pertains to his

[29] Public officer and civil officer are often used interchangeably in constitutional analysis. *See Opinions of the Attorney General of Pennsylvania, 1974*, Official Opinion No. 49 (Sept. 18, 1974).

functions[.]" *Id.* at 234. "[S]uch considerations sufficiently indicate the public character of his official position." *Id.; see also Com. ex rel. Foreman v. Hampson*, 143 A.2d 369, 372 (Pa. 1958) (interpreting the phrase "public officer" in the Constitution as applied to a county solicitor to mean an elected or appointed officer with important duties and some functions of government exercised for the public benefit).

Similarly, in Philadelphia County, the Court of Common Pleas focused on the nature of the office and not whether it was local or statewide in *Bromley v. Hadley*, 10 Pa. D & C. 23 (C.P. Phila. 1927). There, the Board of Revision of Taxes appointed a chief personal property assessor whose qualifications were challenged under Article II, Section 6's prohibition on senators or representatives being appointed "to any civil office under the Commonwealth." *Id.*; Pa. Const. art. II, § 6. Although concluding it was not a civil office, the Court further emphasized the importance of analyzing the duties of the office in that determination. The duties of the chief personal property assessor were defined and administrative, with no function of government being exercised, and no oath being required. *Bromley*, 10 Pa. D & C. at 24.

These duties and powers did not include "the delegation of sovereignty" that marks a civil office. *Id.* As the Court explained:

> "'Civil officer' is a term embracing such officers as in whom part of the sovereignty or municipal regulations or the general interests of society are vested.... 'Civil officers ... are governmental agents–they are natural persons–in whom a part of the state's sovereignty is vested or reposed, to be exercised by the individual so entrusted with it for the public good. The power to act for the state is confided to the person appointed to act. It belongs to him upon assuming the office. He is clothed with the authority which he exerts, and the official acts done by him are done as his acts and not as the acts of a body corporate[.]'"

Id. at 24-25 (quoting 11 Corpus Juris 797, title "Civil Officer," and notes). Therefore, the crux of the Court's analysis was the distinction between mere employees or contractors from public officers with governmental power, duties, and privileges. *See id.* at 25; *see also Com. v. Kettering*, 119 A.2d 580, 583 (Pa. Super. 1956) (equating a district attorney to a "quasi-judicial officer" entrusted with "grave responsibilities" in representing the Commonwealth). The local nature of the office was never a focus of the Court in determining if it were a civil office, as Petitioner urges this Court to consider.

Further, this Court in *In re Ganzman*, 574 A.2d 732 (Pa. Cmwlth. 1990), albeit in a statutory context, has defined and applied the term

"civil officer" without distinction for the municipal or statewide nature of the office. On an appeal from a nominating petition challenge, this Court analyzed whether the office of Member of the Democratic Executive Ward Committeeperson is a civil officer. *Id.* at 733. This Court first examined the definition of "civil office" in Black's Law Dictionary and "civil officer" in Corpus Juris, which defined the terms as non-miliary offices with the powers and sovereignty of the government. *Id.* at 734. Far from limiting civil officers to statewide officers, Corpus Juris even expressly defined civil officer as a term that "'primarily, if not solely, has reference to municipal and State officers.'" *Id.* (quoting 11 Corpus Juris 797). Distinguishing political party officials from civil officials, this Court reasoned that "'civil officials' are those who are paid by the public, are regulated by public law or regulations, or who owe their loyalty to the public at large, regardless of political party affiliation." *Id.*

Taken together, *Houseman*, *Bromley*, and *Ganzman* drive home the futility of Petitioner's argument that civil officers are statewide

officeholders only.[30] Civil officers are not determined based on their role as state officers. *Houseman*, 100 Pa. at 229-30; *Ganzman*, 574 A.2d at 734. Rather, civil officers are defined by the position of public trust they hold and the delegation of sovereign power they exercise. *See Houseman*, 100 Pa. at 229-30; *Bromley*, 10 Pa. D & C. at 24-25.

Under this framework, Petitioner is a civil officer. Regardless of the countywide nature of the office of district attorney, Petitioner is a "government agent," in whom the "state's sovereignty is vested[.]" *Bromley*, 10 Pa. D & C. at 24-25. He is in a position of public trust and is entrusted with exerting the power of the Commonwealth within Philadelphia County. *See id.* at 24-25; *Ganzman*, 574 A.2d at 734. The status of his office as one that is statewide, municipal, or local, is irrelevant.

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[30] If anything, the term "civil officer" seeks to distinguish between military officers and government officers only. *See Ganzman*, 574 A.2d at 734; *see also* CJS Officer § 8 ("The expression 'civil officer' means any officer who is not a military officer and includes all officers connected with the administration of the government except military officers."). One leading commentator on the Pennsylvania Constitution expressly theorized this was the meaning of the phrase in Article VI, § 6: "The expression of 'civil officers' was probably used to distinguish the officers of the state, county or municipality from military or naval officers." *See* Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania*, at 342 (1907), *available at* https://babel.hathitrust.org/cgi/pt?id=mdp.39015005476885&view=1up&seq=9. The *Commentaries* treatise has many times been relied up on by the appellate courts of this Commonwealth. *See, e.g.*, *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1111, 1129, 1130 (Pa. 2014).

2. The framers' intent supports including local, municipal, and state officers within the definition of civil officers.

Defining civil officers based on the duties of the office is consistent with the framers' intent. As a preliminary matter on intent, it is notable that the power of impeachment appears in the Article governing "Public Officers" generally, where, among other things, various officers, including "county officers," are required to take a specific oath of office. *See* Pa. Const. art. VI, § 3. If the framers' intent was to exempt county officers, like district attorneys, from the power of impeachment, their placement of that power in the same Article as provisions *expressly* applying to them is anomalous.

Further, Petitioner's reliance on selective portions of the *Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second Day of May, 1837*, vol. I (1837) ("1837 Debates") does not support an argument otherwise. For example, Petitioner notes a portion of the 1837 Debates in which it was questioned what civil officers were liable to impeachment. *See*

Petitioner Br. at 20-21 (quoting the 1837 Debates at 275). But ten pages later, the 1837 Debates include the following:

> But let it be remembered, that whilst this provision relates to judges, it also relates to the Governor, the Heads of Departments, the Prothonotaries, Clerks of Courts, Registers, Recorders, County Commissioners, and in fact, all the officers of the Commonwealth, of which the judges constituted but a small portion; and the provision is a general one as to all officers, whatever their tenure may be.

1837 Debates at 285. This shows that Article VI, Section 6 was intended to be a general provision without limitation to only statewide officers.

Next, former Chief Justice Saylor's concurrence in *Burger v. Sch. Bd. of McGuffey Sch. Dist.*, 923 A.2d 1155 (Pa. 2007), from which Petitioner again relies on selective portions, also does not support his argument. Initially, the majority controlling opinion in *Burger* cannot be ignored. At issue in *Burger* was whether the Public School Code removal provision for district superintendents was unconstitutional given an appointing power's exclusive right to remove an appointed official pursuant to Article VI, Section 7. "There [was] ***no dispute*** that the [superintendent] was a civil officer appointed by the School Board." *Id.* at 1161 (emphasis added). With that threshold question undisputed, the Court determined the removal power of Article VI, Section 7 was

not absolute, and the limitations placed on that power under the Public School Code were constitutional. *Id.* at 1163. Justice Saylor concurred and suggested that the superintendent was not a civil officer because he was not a statewide officer. *Id.* at 1167 (Saylor, J., concurring). But the Court's *majority* expressly noted Justice Saylor's opinion presented a "novel theory," and further observed the theory was in "facial tension with the prior decisions of this Court." *Id.* at 1161 n.6 (citing *Com. ex. rel. Schlofield v. Lindsay*, 198 A. 635 (Pa. 1938); and *Finley v. McNair*, 176 A. 10 (Pa. 1935)).

As Petitioner states, Justice Saylor reasoned that Article VI, Section 7 was intended to apply to district superintendents and the debates indicate that "state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed[,]" *See* Petitioner Br. at 19 (quoting *Burger*, 923 A.2d at 1167 (Saylor, J., concurring)). Petitioner omits the next part of the same sentence, in which Justice Saylor continued "little attention was paid to the concept of local *appointing* powers and the manner in which their removal powers should or should not be constrained. I recognize that this Court has previously applied Article VI, Section 7 to some classes of local

officials[.]" *Burger*, 923 A.2d at 1167 (Saylor, J., concurring; emphasis added). Although it was not clear to Justice Saylor that those holdings considered a distinction between local officials and Commonwealth officials, in his view, Article VI, Section 7 was not intended to restrain the General Assembly in hiring and firing district superintendents. *Id.*

Viewing the *Burger* opinion in its entirety, Justice Saylor's concurring opinion does not carry the weight Petitioner ascribes to it. In short, *Burger* supports that the District Attorney of Philadelphia is a civil officer.

3. District attorneys are officers "under this Commonwealth" subject to impeachment and removal.

As a civil officer, the District Attorney of Philadelphia is an officer "under this Commonwealth," subject to removal from office upon impeachment under Article VI. While Petitioner disagrees that local officials can hold an office "of trust or profit under this Commonwealth," this interpretation is untenable.

Initially, as explained above, Petitioner holds a position of public trust in which he represents the Commonwealth in Philadelphia County (indeed, every criminal proceeding his office brings is in the

name of the Commonwealth). If an officer exerting the power and authority of the Commonwealth, albeit in one county, is not an officer "under this Commonwealth," it begs the question of which offices would qualify.

Just as the term "civil officer" is not limited to statewide officers, neither is the phrase "under this Commonwealth." In fact, the Office of Attorney General, issuing an opinion interpreting that phrase, did not limit it this way. *See Opinions of the Attorney General of Pennsylvania, 1974*, Official Opinion No. 49 (Sept. 18, 1974).[31] The question posed to the Attorney General was whether a newly elected school district superintendent was precluded under Article II, Section 6 from simultaneously holding the office of state representative. *Id.* at 193. Article II, Section 6 prohibits a senator or representative from being appointed or elected "to any civil office under this Commonwealth to which a salary, fee or prerequisite is attached."

The Attorney General concluded that a school district superintendent is a civil officer under the Constitution because a

[31] *Available at* https://www.attorneygeneral.gov/wp-content/uploads/2018/01/1974_AG_Packel_opinions.pdf.

superintendent is elected by the school board, takes an oath of office, has powers and duties set by statute, is paid a minimum statutory salary, and is specifically created by statute for a specific tenure. Opinion No. 49 at 195. The Attorney General further advised that the district superintendent is an office "under this Commonwealth." *Id.* at 196-97. That a district superintendent's authority was limited to one district was not controlling on the question; instead, because a school district is a legislatively created agency that administers the constitutional requirement of maintaining a public school system, he deemed it to be an office under this Commonwealth. *Id.*

Applying this reasoning here, a district attorney is also a "civil officer" holding an office "under this Commonwealth." As developed above, the power and duties inherent in the office of district attorney make Petitioner a civil officer. It is not relevant that Petitioner's jurisdiction is limited to Philadelphia. He is a civil officer carrying out the duties of his constitutionally created office.

Citing *Emhardt v. Wilson*, 20 Pa. D. & C. 608 (C.P. Phila.1934), Petitioner disagrees with the foregoing. But the Court in *Emhardt*, also interpreting Article II, Section 6 like Opinion No. 49 above, does not

hold that Philadelphia officials are not officers under this Commonwealth. *See* Petitioner Br. at 18. While acknowledging that an "inspectorship" was not an office "under this Commonwealth," the Court ultimately held that the relevant office of "supervisor of the Bureau of Weights and Measures" was not in any act or ordinance and was "merely an employe of the commissioners." *Id.* at 609-10. Petitioner is not a mere employee of the Philadelphia City Council and cannot be simplified or equated to such. *See Duggan v. 807 Liberty Ave., Inc.*, 288 A.2d 750, 753 (Pa. 1972) ("[T]he office of district attorney is actually something of a hybrid, denominated a county office holder by the Constitution, the district attorney performs his duties on behalf of the Commonwealth.").

In sum, there is no basis to limit civil officers "under this Commonwealth" to statewide officers.

4. The First Class City Government Law is not the exclusive method for impeaching Petitioner.

Finally, the First Class City Government Law does not preclude impeachment proceedings against Petitioner pursuant to Article VI of the Constitution. While Section 12199 of the First Class City Government Law contains removal procedures, 53 P.S. § 12199,

Petitioner's assertion that Section 12199 is the sole method of impeachment and/or removal is untenable.

As a threshold matter, the office of district attorney is a constitutionally created county officer, as established by Article IX, Section 4. *See* Pa. Const. art. IX, § 4 ("County officers shall consist of commissioners, controllers or auditors, district attorneys …"). Constitutionally created officers are subject to removal (and impeachment) procedures as set forth in the Constitution. *See In re Bowman*, 74 A. 203, 204 (Pa. 1909) (regarding a constitutional office, explaining that "a constitutional direction as to how a thing is to be done is exclusive and prohibitory of any other mode which the Legislature may deem more convenient"). Petitioner is, therefore, subject to impeachment under the Constitution.

But he disputes this based, in part, on Article IX, Section 13. Through the adoption of Article IX, Section 13 of the Pennsylvania Constitution in 1951, county offices in Philadelphia County were abolished for the city to "perform all functions of county government within its area through officers selected in such manner as may be

provided by law." Pa. Const. art. IX, § 13(a). Article IX, section 13 states:

> Upon adoption of this amendment all county officers shall become officers of the City of Philadelphia, and ***until the General Assembly shall otherwise provide, shall continue to perform their duties and be elected, appointed, compensated and organized in such manner as may be provided by the provisions of this Constitution*** and the laws of the Commonwealth in effect at the time this amendment becomes effective, but such officers serving when this amendment becomes effective shall be permitted to complete their terms.

Pa. Const. art. IX, § 13(f) (emphasis added).

Accordingly, the existing county officers in Philadelphia in 1951, including district attorneys, continue to perform the same duties, are elected, appointed, compensated, and organized in the manner they were prior ***unless the General Assembly provided otherwise***. The General Assembly has not yet provided otherwise with regard to the Philadelphia District Attorney's Office. Petitioner holds a constitutionally created office and is thus subject to impeachment under Article VI. Therefore, Article VI, Section 1, governing the election or appointment of "[a]ll officers[] whose selection is not provided for in this Constitution," does not apply, despite Petitioner's contention otherwise. Pa. Const. art. VI, § 1; *see* Petitioner Br. at 22.

This is consistent with the Supreme Court's interpretation of Article IX, Section 13. Article IX, Section 13 simply eliminated county offices because county offices were now within the purview of the city. *Com. ex rel. Truscott v. City of Philadelphia*, 111 A.2d 136, 137-38 (Pa. 1955); *Lennox v. Clark*, 93 A.2d 834, 838 (Pa. 1953). "In other words the county, now city, officers were to carry on their duties or functions just as before the transformation took place and until such *duties* or *functions* should be changed by legislative action." *Lennox*, 93 A.2d at 838 (emphasis in original). Given that some county offices are constitutionally created, they remain unique even after Article IX, Section 13. The Court recognized this in *Lennox*, holding that the constitutionally created offices of prothonotary and register of wills were "not transformed into … city office[s]," subject to the Philadelphia Home Rule Charter. *Id.* at 842;[32] *see also Com. ex rel. Specter v. Freed*, 228 A.2d 382, 386 (Pa. 1967) (holding the Philadelphia district attorney was a state officer whose powers were not affected by the Charter).[33]

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[32] While the Supreme Court later held that these offices were subject to the Charter, this was the result of a statutory amendment that specifically provided that these offices "shall no longer be considered constitutional officers[.]" *Walsh v. Tate*, 282 A.2d 284, 288 (Pa. 1971).

[33] In a series of cases in the 1960s, the Supreme Court wrestled with classifying the role of the Philadelphia District Attorney as a city officer or a state

In fact, nine years ***after*** the adoption of Article IX, Section 13(f), the Supreme Court reiterated the constitutional status of the office of district attorney. *McGinley v. Scott*, 164 A.2d 424 (Pa. 1960). While quashing a subpoena issued by a Senate committee investigating the Philadelphia District Attorney's Office, the Court explained that permissible purposes for legislative investigative subpoenas include those issued for carrying out the House and Senate's power of impeachment pursuant to the Constitution. *Id*. at 430-31. Accordingly, nearly a decade after the adoption of Article IX, Section 13, the Court expressly contemplated that the Philadelphia District Attorney holds a constitutionally created office and may be subject to impeachment proceedings before the General Assembly.

Nonetheless, because Section 12199 was already in existence at the time Article IX, Section 13(f) was adopted, Petitioner contends that it is the sole method by which a district attorney may be impeached. This alleged exclusivity of Section 12199 is unfounded. Fundamentally, Section 12199 applies to "municipal officers." 53 P.S. § 12199. The First

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officer in the context of the Charter. The Court never squarely addressed the issue presented in this matter, and, in any event, never reached a majority reasoning. *See Chalfin v. Specter*, 233 A.2d 562 (Pa. 1967); *Com. ex rel. Specter v. Martin*, 232 A.2d 729 (Pa. 1967); *Com. ex rel. Specter v. Freed*, 228 A.2d 382 (Pa. 1967).

Class City Government Law does not define "municipal officers" subject to impeachment and, moreover, the office of district attorney is not mentioned anywhere in the First Class City Government Law.

The lack of clarity regarding the application of Section 12199 is evident in caselaw, further undercutting Petitioner's contention. The Supreme Court's decision in *In re Marshall*, 62 A.2d 30 (Pa. 1948), is the only case to meaningfully address Section 12199, though it was decided prior to the adoption of Article IX, Section 13. *Marshall* concerned the application of local impeachment procedures to Philadelphia's Receiver of Taxes. Arguing he was not a municipal officer subject to statutory removal procedures, the Receiver of Taxes claimed he was a county officer subject to removal only under Article VI, Section 4 of the 1874 Constitution.[34] *Id.* The Court disagreed, but only because the statute creating the office also permitted statutory removal. *See id.* at 310.

Petitioner does not occupy a statutorily created office. Moreover, if Petitioner's narrow constructions of Section 12199 and the term "civil

[34] Article VI, Section 4 of the 1874 Constitution governed the condition of official tenure and removal of officers. The substance of that provision is now in Article VI, Section 7. Pa. Const. art. VI, § 7.

officer" were correct, the Supreme Court in *Marshall* could have simply determined that the Receiver of Taxes, a local office, was not a civil officer and, therefore, not subject to Article VI at all. It did not and, instead, relied on the statutory provisions creating and governing the office, suggesting the officer at issue was in fact a "civil officer" under Article VI.

Finally, to the extent that Section 12199 is inconsistent with Article VI, Section 6, it cannot stand. Indeed, in the context of Article VI, Section 7,[35] statutory removal provisions are regularly struck down as violative of the exclusive method for removal of officials in Article VI, Section 7. *See, e.g.*, *South Newton Twp. Electors v. South Newtown Twp. Sup'r, Bouch*, 838 A.2d 643, 644 (Pa. 2003) (holding removal provisions in the Second Class Township Code were contrary to the exclusive method of removal for elected officials in Article VI, Section 7); *Birdseye*

[35] "All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate." Pa. Const. art. VI, § 7.

v. Driscoll, 534 A.2d 548, 550-51 (Pa. Cmwlth. 1987) (explaining the constitutional directive in Article VI, Section 7 for removal of elected constitutional officers is "exclusive and prohibitory of any other method which the legislature may deem better or more convenient"); *Residents of Lewis Twp. v. Keener*, 63 Pa. D. & C. 4th 1 (C.P. Northumberland 2003) (holding statutory removal procedures unconstitutional and contrary to Article VI, Section 7). Even home rule charter removal procedures contrary to Article VI, Section 7 cannot stand. *See In re Petition to Recall Reese*, 665 A.2d 1162, 1167 (Pa. 1995) (the Kingston home rule charter's recall provisions were unconstitutional and contrary to the exclusive method of Article VII, Section 7). Thus, if Section 12199 is contrary to the exclusive constitutional procedures for impeachment, it is invalid.

Accordingly, in light of all of the foregoing, Petitioner is a civil officer subject to impeachment under Article VI, Section 6.

C. Petitioner's preferred definition of "misbehavior in office" is incorrect and his request to apply his supplied definition is premature.

Petitioner insists the term "misbehavior in office" is defined conterminously with the common law offense of the same name. But

this argument fails for four reasons, as set forth below. Petitioner also maintains the Articles of Impeachment are insufficient to satisfy the elements of common law "misbehavior in office." In essence, Petitioner is asking for an advisory opinion because these merits arguments are plainly not ripe at this pre-trial, post-indictment (Articles of Impeachment) stage. In any event, Senator Ward is prohibited from addressing the merits because of her duty to act as an impartial juror during the impeachment trial.

1. The phrase "any misbehavior in office" as used in Article VI, Section 6 is broader than the common law.

(a) Petitioner's reliance on *In re Braig* is misplaced because that decision did not interpret Article VI, Section 6.

Petitioner's interpretation of "misbehavior in office" in Article VI, Section 6 is based entirely on a decision that did not interpret this provision. According to Petitioner, "[m]isbehavior in office requires a very high showing: a public official has engaged in 'misbehavior in office' only if he 'fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive.'" Petitioner Br. at 27 (quoting *In re Braig*, 590 A.2d 284,

286 (Pa. 1991)). The *In re Braig* Court endeavored to interpret the judicial removal provision in then-numbered Article V, Section 18(*l*):

> A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section 18 shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

In re Braig, 590 A.2d at 286 (quoting Pa. Const. art. V, § 18(*l*)).[36]

The Judicial Inquiry and Review Board sought to enforce this removal provision against former-judge Braig, who had already been convicted of three counts of mail fraud and sentenced accordingly. *Id*. at 285. The Board argued Braig's conviction amounted to a conviction "of misbehavior in office" and therefore he should be automatically removed from office. *See id*. at 286.

The Court first observed that "[o]ur Constitution has long contained provisions specifying that civil officers 'shall be removed on conviction of misbehavior in office or of any infamous crime.'" *Id*. (quoting Pa. Const. of 1838 art. VI, § 9;[37] Pa. Const. of 1874 art. VI,

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[36] This Section is now at Section 18(d)(3) and is substantively identical. Pa. Const. art. V, § 18(d)(3).

[37] "All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. of 1838 art. VII, § 9.

§ 4;[38] (renumbered Article VI, Section 7 on May 17, 1966)[39]). And, according to the *Braig* panel, when those provisions were examined by our courts, "it was uniformly understood that the reference to 'misbehavior in office' was to the criminal offense as defined at common law." *Id*.[40] The Court analyzed some of those cases and concluded: "Based on our reading of all the cases, we must conclude that the language of Article V, Section 18(*l*), like the identical language of present Article VI, Section 7, refers to the offense of 'misbehavior in office; as it was defined at common law." *Id*. at 287. Thus, *In re Braig*'s definition of misbehavior in office is moored directly to its interpretation of present-day Article VI, Section 7—a provision distinct from, albeit related to, Section 6.

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[38] "All officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. of 1874 art. VI, § 4.

[39] "All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime." Pa. Const. art. VI, § 7.

[40] Apparently, this principle was not uniformly understood after all. In *Com. ex rel. Duff v. Keenan*, 33 A.2d 244 (Pa. 1943), our High Court indicated that "misbehavior in office" is *not* limited to indictable offenses. *See Duff*, 33 A.2d at 249 n.4 ("'Misbehavior in office' justifying the incumbent's removal does not necessarily involve an act or acts of a criminal character. …. The official doin[g] of a wrongful act or official neglect to do an act which ought to have been done, will constitute the offence of misconduct in office, although there was no corrupt or malicious motive."). *In re Braig* did not even mention the Supreme Court's prior pronouncement.

Petitioner thus asks this Court to impose *In re Braig*'s interpretation of Article V, Section 18 on Article VI, Section 6.[41] In so doing, Petitioner dismisses out of hand the only Pennsylvania authority interpreting "any misbehavior in office" as used in Article VI, Section 6: *Larsen v. Senate of Pennsylvania*, 646 A.2d 694 (Pa. Cmwlth. 1994).

In *Larsen*, this Court considered former-Justice Larsen's request to preliminarily enjoin the Senate from conducting its impeachment trial. *See id.* at 695. One of Larsen's many claims was that the articles of impeachment did not set forth a constitutionally sufficient basis for impeachment. *See id*. at 698. Larsen argued that "misbehavior in office" was defined as it was at common law. *Id*. at 702. Because Larsen's conduct easily satisfied even the stringent common law standard, this Court did not have to decide the issue. *Id*. But, importantly, the panel noted that Larsen's interpretation "finds no support in judicial precedents." *Id*.

[41] Petitioner dismisses the distinctions between Article V, Section 18 and Article VI, Section 6 and asserts that the same "misbehavior in office" language is proof enough that they are the same. *See* Petitioner Br. at 39. In so doing, Petitioner wholly ignores the material distinction between removal, which requires conviction by a court, and impeachment, which is conducted exclusively by the House and Senate.

Petitioner downplays the significance of *Larsen* by arguing it is factually distinguishable; it is dictum; and *In re Braig* controls. *See* Petitioner Br. at 36-39. Each critique misses the mark. That Larsen's conduct was particularly severe and would have satisfied even the most stringent definition of "misbehavior in office" says nothing about what that definition is in Section 6. Next, although *Larsen*'s pronouncement is dicta, it is the only interpretation of "misbehavior in office" as used in Section 6 by any Pennsylvania Court. Finally, as developed above, *In re Braig* is inapposite as it involves the interpretation of an entirely different removal provision, and, as is important, was decided *three years before Larsen*, where this Court identified "*no support in judicial precedents*" for engrafting on the common law meaning. *See Larsen*, 646 A.2d at 488 (emphasis added).

The *Larsen* Court's wisdom will soon be apparent. Section 6's plain text, the relationship between the impeachment and removal processes, and the 1966 amendment to Section 6 all support a conclusion that "misbehavior in office" is not limited to its common law definition.

(b) A textual interpretation of Article VI, Section 6 leads to the inescapable conclusion that "any misbehavior in office" extends beyond the common law.

The plain language of Section 6 is controlling: It provides that civil officers are liable to impeachment "*for any* misbehavior in office[,]" Pa. Const. art. VI, § 6 (emphasis added). In contrast, civil officers are subject to removal "*on conviction of* misbehavior in office" under Section 7, and judges are subject to removal if "*convicted of* misbehavior" under Article V, Section 18(d)(3) (emphasis added). This textual difference is material. *See Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008) (actual language is "our ultimate touchstone" and "effect must be given to all of [the constitution's] provisions whenever possible" (internal quotations omitted)).

The language of the Constitution is interpretated "in its popular sense, as understood by the people when they voted for its adoption." *Id*.[42] According to Webster's Online Dictionary, the term "any" means "one or some indiscriminately of whatever kind" or "one, some, or all indiscriminately of whatever quantity[.]" *See also Mairhoffer v. GLS*

[42] Section 6 was last amended in 1966, therefore it should be interpreted as it would have been understood in 1966. *See* 1965 P.L.1928, J.R. 10 (May 17, 1966).

Capital, Inc., 730 A.2d 547, 550 (Pa. Cmwlth. 1999) ("In common usage, 'any' means 'one or more indiscriminately from all.' It is inclusive.") (quoting Webster's Third New International Dictionary 97 (1993)).

A natural reading of Section 6, giving the term "any" its due meaning, leads to the conclusion that Section 6 applies to one or more acts of misbehavior in office. The drafters used the "inclusive" term "any" ostensibly to broaden the scope of conduct captured by "misbehavior in office." An attempt to narrow that scope by confining the definition of "misbehavior in office" to a specific common law offense would be inconsistent with that inclusive language.[43] Petitioner's interpretation ignores the term "any"—a cardinal sin in constitutional interpretation. *Cf. Ind. Oil & Gas Assn. v. Bd. of Assessment*, 814 A.2d 180, 183 (Pa. 2002) ("Because the legislature is presumed to have intended to avoid mere surplusage, every word, sentence, and provision

[43] Critically, the framers used the term "any" in Section 7 as it relates to "infamous crimes." In so doing, the drafters demonstrated an intent to distinguish the specific (misbehavior in office) from the general (infamous crimes). *See In re Braig*, 590 A.2d at 286 n.4 (the generalized term "infamous crime" included "every species of *crimen falsi*"). The framers meant what they said when they used "*for any* misbehavior in office" in Section 6, and in order to give meaning to those words, Petitioner's interpretation must be rejected.

of a statute must be given effect."). The interpretation offered here is the only one that gives meaning to the *entirety* of the text of Section 6.

(c) The phrase "misbehavior in office" as used in the context of Article VI, Section 6 requires a different interpretation from the same phrase as used in Article VI, Section 7 and Article V, Section 18(d)(3).

Further still, Petitioner's interpretation must fail because it violates the well-established maxim that "the meaning of a particular word cannot be understood outside the context of the section in which it is used[.]" *Jubelirer*, 953 A.2d at 528. Here, Petitioner asks this Court to extract the meaning of the term "misbehavior of office" as used in Section 7 and Article V, Section 18(d)(3) and thrust it upon that same term in Section 6. But context is everything. And here the differences—as articulated in the Constitution—between Section 6 on the one hand and Section 7 and Article V, Section 18(d)(3) on the other—forbid Petitioner's request.

Section 6's impeachment process is unique in that it describes a process committed exclusively to the House and Senate, acting in sequence. *See Larsen*, 646 A.2d at 704. There is no judicial involvement and traditional rules of court do not apply—save for the requirement

that the impeachment trial be conducted in accord with all constitutional rights. Our drafters cabined the impeachment process within the House and Senate to reach those acts of misconduct that lay just out of our judiciary's grasp. Indeed, with regard to our federal charter:

> [O]ur fathers adopted a Constitution under which official malfeasance and nonfeasance, and, in some cases, misfeasance, may be the subject of impeachment, although not made criminal by Act of Congress or so recognised by the common law of England or of any state of the Union. They adopted impeachment as a means of removing men from office whose misconduct imperils the public safety, and renders them unfit to occupy official position.

William Lawrence, *The Law of Impeachment*, Am. L. Reg., vol. 6, at 647 (Sept. 1867);[44] *see id*. at 655 ("The purpose of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office" which cause may be a violation of law or "may exist where no offence against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office." (cleaned-up)).

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[44] *Available at* https://www.jstor.org/stable/pdf/3303883.pdf?refreqid=excelsior%3Afe251025796842905d7ccf5fffad6f19&ab_segments=&origin=&acceptTC=1.

It does not take much imagination to predict that any official subject to impeachment will claim good faith in the exercise of discretion, thereby insulating himself from the courts and from our impeachment proceedings. *See id*. at 677-780 (providing examples). That is an untenable outcome—an outcome certainly not intended by our drafters when they bestowed the House and the Senate with the power to regulate public officeholders.[45]

The drafters of our Constitution understood the breadth of conduct subject to impeachment and therefore imposed several safeguards to shield impeachment from political abuse: the two-thirds vote requirement; the separate oath taken by Senators; limiting the scope of actionable conduct to misbehavior *in office*; and the non-criminal nature of the punishment. *See* Pa. Const. art. VI, §§ 4-6.

To illuminate, as it relates to the two-thirds vote requirement, a robust debate took place at the 1837 Convention over an amendment to reduce the vote threshold to a majority for conviction. Those who argued

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[45] *See* John Norton Pomeroy, *An Introduction to The Constitutional Law of the United States: Especially Designed for Students, General and Professional*, at 482-93 (1868) (offering a compelling analysis for why impeachment is not limited to indictable offenses), *available at* https://babel.hathitrust.org/cgi/pt?id=coo.31924019960818&view=1up&seq=514.

against the amendment did so because they understood that "misdemeanor in office" (the language in the Constitution of 1790) was not well defined and thus impeachment was susceptible to political headwinds:

> But the public officer is arraigned, and for what? For misdemeanors in office. And what are misdemeanors in office? Are they a class of crimes recorded in the statute book? No. They are mere political offenses, to be tried by a political tribunal. They are crimes by construction; and may be crimes today, but not crimes tomorrow, according to the temper of the times, the fluctuations of political opinion, and the ascendancy of political parties. I do not know, with any certainty, to what class these offences can be referred.

The Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, Commenced and Held at Harrisburg, on the Second Day of May, 1873, vol. I, at 271-72 (1873). This sentiment was echoed by the preeminent Thomas Raeburn White: "The offense for which officers are impeached are, as a rule, offenses of a political nature." White, *Commentaries,* at 342.[46]

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[46] Justice Story made similar observations with respect to the United States Constitution:

> The offences, which the power of impeachment is designed principally to reach, are those of a political, or of a judicial character. They are not those, which lie within the scope of the ordinary municipal jurisprudence of a country. They are founded on different principles; are governed by different maxims; are directed to different objects; and

In this light, the drafters viewed the two-thirds requirement as a fundamental safeguard: "Knowing to what heights party violence carried men, he should hesitate long before he would place in the hands of a bare majority the exercise of so dangerous a power." 1837 Debates, vol. I, at 260 (Mr. Earle); *see id*. at 253-54 (James Biddle: citing Judge Addison's impeachment and conviction as an example where "party feeling was permitted to mingle its poisonous influence" and concluding Addison's impeachment demonstrated "every safeguard should be interposed to defend a judge from being swept away by a tempest of political fury").[47]

Thus, as evidenced by our Charter's text, the drafters intended impeachment to be a broad removal mechanism. And rather than limit

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require different remedies from those, which ordinarily apply to crimes.

Joseph Story, *Commentaries on the Constitution of the United States*, vol. II, at 220 (1833), *available at* https://babel.hathitrust.org/cgi/pt?id=hvd.hnqe3j&view=1up&seq=228.

[47] *See* White, *Commentaries,* at 342 (two-thirds "clause renders it extremely unlikely that any innocent person will ever be convicted"); *see also id*. at 341 (noting that the Senate is "the proper body to try impeachments" because "[i]t is a more conservative body, not so quickly answerable to waves of popular opinions or prejudices," and because "the offenses charged are apt to be of a political nature, which are more suitable to be tried by the senate than by a court"); Story, *Commentaries*, at 248 (advocating for two-thirds vote because "[i]f a mere majority were sufficient to convict, there would be danger, in times of high popular commotion or party spirit, that the influence of the house of representatives would be found irresistible").

the scope of conduct to which impeachment might apply—as Petitioner suggests—our drafters put in place safeguards that would prevent baseless convictions.[48] [49] Indeed, by leaving "misbehavior in office" vague the drafters invited the House and Senate to define its contours. *Cf.* Pomeroy, *An Introduction*, at 482-93 (arguing that "high crimes and misdemeanors" in the federal charter "seems to have been purposely vague; the words point out the general character of the acts as unlawful; the context and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty which might or might not have been an ordinary indictable offense.").

In contrast, the Article VI, Section 7 and Article V, Section 18(d)(3) removal processes are purely judicial mechanisms. That is, removal is complete upon a conviction of either misbehavior in office or any infamous crime. *See Com. ex rel. Specter v. Martin*, 232 A.2d 729,

[48] And those safeguards apparently work as there have only been two individuals in our Commonwealth's history who have been convicted by the Senate.

[49] *Cf.* Lawrence, *The Law of Impeachment*, Am. L. Reg., vol. 6, at 645 (discussing how the impeachment process in England was abused: "These abuses were not guarded against in our Constitution by limiting, defining, or reducing impeachable crimes, since the same necessity existed here as in England, for the remedy of impeachment, but by other safeguards thrown around it in that instrument.").

738 (Pa. 1967) (removal applies "by a sentence of a court"). Of course, a person must have committed a crime—either at common law or in statute—in order to be "convicted." This is the precise reason that the Court in *In re Braig* concluded the term misbehavior in office, as used in Section 18(d)(3), is coterminous with the common law *crime*.

With this context in mind, "misbehavior in office" as used in Article VI, Section 6 must be interpreted more broadly than that same phrase in Section 7 and in Article V, Section 18(d)(3) because Section 6—by its plain text, coupled with its two-thirds safeguard—was designed to reach a broader class of conduct. Petitioner ignores this context entirely. And Petitioner does so without citing to any authority interpreting or limiting "misbehavior in office" as used in Section 6. The authority above amply supports a broad interpretation in this context.

(d) The 1966 Amendment to Section 6 confirms it reaches beyond the common law.

Perhaps most consequentially, Section 6 was amended on May 17, 1966. *See* 1965 P.L. 1928, J.R. 10 (May 17, 1966).[50] Prior to the amendment, Section 6 subjected a civil officer to impeachment "for any

[50] *Available at* https://www.palrb.gov/Preservation/Pamphlet-Laws/View-Document/19001999/1965/0/const/jr10.pdf.

misdemeanor in office[.]" Pa. Const. of 1874 art. VI, § 3 (emphasis added). By 1966, this phrase accrued the common law definition of "misdemeanor in office." Indeed, in *In re Investigation by Dauphin County Grand Jury, September, 1938*, 2 A.2d 802 (Pa. 1938), our Supreme Court held the phrase means "a criminal act in the course of the conduct of the office, to which impeachments are limited." *Id.* at 803.

Apparently not satisfied with this restrictive definition, *cf. City of Philadelphia v. Clement and Muller, Inc.,* 715 A.2d 397, 399 (Pa. 1998) ("[t]he legislature is presumed to be aware of the construction placed upon statutes by the courts"), the electorate, after a joint resolution from the General Assembly, amended the provision to read "for any ***misbehavior*** in office[.]"[51]

Under Petitioner's interpretation of "misbehavior in office," this amendment would be meaningless because misbehavior in office and misdemeanor in office are the same to him. *See* Petitioner Br. at 28 (quoting *Com. v. Green*, 211 A.2d 5, 9 (Pa. Super. 1965) ("The common

[51] Just before this amendment in 1943, "misbehavior in office" had been interpreted by the Pennsylvania Supreme Court to extend beyond indictable offenses. *See Duff*, 33 A.2d at 249 n.4 (discussed *supra* n.40).

law crime of misconduct in office, variously called misbehavior, misfeasance or misdemeanor in office")). But that cannot be true. That the electorate amended Section 6 from "misdemeanor" to the broader term "misbehavior"—and maintained the word "any"—is compelling evidence that Section 6 reaches beyond the common law crime of misbehavior in office. *Cf. Masland v. Bachman*, 374 A.2d 517, 521 (Pa. 1977) ("A change in the language of a statute ordinarily indicates a change in legislative intent."). This Court should not give credence to Petitioner's attempt to render the 1966 amendment meaningless.

2. Petitioner's merits-based arguments are not ripe, and, in any event, Senator Ward cannot opine on whether the alleged conduct is misbehavior in office at this point in time.

At the outset, this Court should reject Petitioner's efforts to front a merits defense because those arguments are not yet ripe. As explained above, the impeachment process begins with the House filing articles of impeachment—which are analogous to an indictment in the criminal context. From there, the case proceeds to a trial before the Senate where evidence and argument will be presented to substantiate the allegations contained in the articles of impeachment.

To date, the Articles of Impeachment have been filed against Petitioner and he is awaiting trial. It is premature, at this pre-trial stage, for this Court to determine whether the Articles of Impeachment are sufficient to establish "any misbehavior in office" because we do not know what facts will be presented at trial. *See Phila. Entm't and Dev. Partners, L.P. v. City of Philadelphia*, 937 A.2d 385, 392 (Pa. 2007) ("The basic rationale underlying the ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements."). Petitioner can address these issues and defend his case at the trial, but this Court should decline his invitation to issue an advisory opinion on what the facts *might* reveal.

Regardless, pursuant to Article VI, Section 5, Senator Ward will be sworn in to serve as an impartial juror for the impeachment trial. *See* Pa. Const. art. VI, § 5; *see also* SR 386 at 13, lines 11-15 (setting forth oath, requiring all Senators to swear they "will do impartial justice") (PFR Ex. D). As such, Senator Ward cannot opine on whether the conduct alleged in the Articles of Impeachment are sufficient to remove Petitioner for misbehavior in office without pre-judging the facts and law, which would be inappropriate.

VI. ARGUMENT IN SUPPORT OF CROSS-APPLICATION FOR SUMMARY RELIEF

A. This Court lacks subject matter jurisdiction because Petitioner has failed to name indispensable parties.

A petitioner's failure to join an indispensable party "deprives this Court of subject matter jurisdiction and is fatal to a cause of action." *Bucks County Services, Inc. v. Philadelphia Parking Auth.*, 71 A.3d 379, 387 (Pa. Cmwlth. 2013); *accord Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988). "A party is indispensable when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." *Sprague*, 550 A.2d at 189. The "corollary" to the foregoing rule is that "a party against whom no redress is sought need not be joined." *Id.* As courts have articulated, the analysis of whether a party is indispensable is "sometimes said to require" an examination of these factors:

> 1. Do absent parties have a right or interest related to the claim?
>
> 2. If so, what is the nature of that right or interest?
>
> 3. Is that right or interest essential to the merits of the issue?
>
> 4. Can justice be afforded without violating the due process rights of absent parties?

HYK Const. Co., Inc. v. Smithfield Tp., 8 A.3d 1009, 1015 (Pa. Cmwlth. 2010) (citing *City of Philadelphia v. Com.*, 838 A.3d 566, 581 n.11 (Pa. 2003)). Finally, as is material here, under the Declaratory Judgments Act, "all persons shall be made parties who have or claim any interest which would be affected by the declaration." *Bucks County.*, 71 A.3d at 387-88 (citing 42 Pa.C.S. § 7540(a)).

1. The Senate is an indispensable party.

Under the foregoing standards, the Senate is an indispensable party, and Petitioner's failure to join the Senate deprives this Court of subject matter jurisdiction over the Petition for Review. To begin to explain this, the Court need look no further than Petitioner's Petition for Review and his proposed order in support of his Application for Summary Relief: in each he *expressly* seeks an order declaring the rights of the non-party Senate. Indeed, he prays that this Court declare that "any effort by Respondents, House of Representatives *or Senate* to take up the Amended Articles or related legislation … is unlawful." *See* PFR Prayer for Relief at ¶ (E) (emphasis added); *see also* Proposed Order #2 at ¶ 1(E) (same). He is, in his own words, seeking a remedy against the Senate, and is also implicitly seeking such relief throughout

the balance of the remedies he proposes (wherein, among other things, he seeks to prevent the Senate from addressing business that has been brought before it by the House, *see* PFR Prayer for Relief at ¶ (A); Proposed Order #2 at ¶ 1(A)). With these requests, he is seeking impermissible redress from an absent party. *Cf. Sprague*, 550 A.2d at 189.

But beyond Petitioner's own words, the applicable law also shows the Senate's rights will be impermissibly impaired if it is not a party to this action. The Constitution expressly provides that "All impeachments shall be tried *by the Senate*." Pa. Const. art. VI, § 5 (emphasis added). As this Court articulated during the Larsen dispute—where, notably, the Senate *was named* as the lead party-respondent—this provision "commits the impeachment trial function exclusively to the Senate[.]" *See Larsen*, 646 A.2d at 703. While the Court's analysis concerned whether the Senate could use a committee to report to the entire body (the Court held it could), the underlying point was that the impeachment function was a textual prerogative of the Senate—as a whole—and thus it was up to the Senate to decide how to handle the function. *See id.* The key element there was, of course, that *the whole*

Senate, and not individual Senators alone, carried this constitutional mandate. *Cf. id.* This further shows the Senate is an indispensable party.

Finally, expressly applying each of the factors set forth in *HYK Construction* demonstrates this action cannot proceed without the Senate. First, as just noted, the Senate has a right or interest related to Petitioner's claims in that he seeks to prevent the Senate—as a whole—from engaging in proceedings textually committed to it under the Constitution. *See* Pa. Const. art. VI, § 5. Second, the rights Petitioner is seeking to foreclose belong to the Senate as a whole, and not just to individual Senators. *Cf. Larsen*, 646 A.2d at 703. Further, those rights cannot be refused: the Constitution says the Senate "*shall*" try "*all*" impeachments. *See* Pa. Const. art. VI, § 5 (emphasis added). Third, the Senate's right or interest is central to the merits of this case; again, the Senate's right to try impeachment cases is exclusively the Senate's. Fourth, and finally, justice cannot be afforded without violating the due process rights of the Senate, since the rights Petitioner seeks to take, define, or cabin belong first and foremost to this absent party.

Under all of these circumstances, the Court should find that an indispensable party is absent and should, accordingly, dismiss the Petition for Review for lack of subject matter jurisdiction. *See Bucks County*, 71 A.3d at 388; *HYK Constr.*, 8 A.3d at 1016; *Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495, 497 (Pa. Cmwlth. 2002).

2. The Senate Impeachment Committee is an indispensable party.

Even if the Court were to disagree that the Senate's absence from this case forecloses jurisdiction, it should agree the Senate Impeachment Committee's absence prevents proceeding further. Here, again, the Court can look to Petitioner's own words. He names non-existent John Doe members of the Committee as Respondents. *See* PFR at ¶ 17. By doing so, Petitioner represents to this Court, among other things, that there is a proper purpose in naming these Committee members and that the claims against them "are warranted by existing law" and have factual "evidentiary support." *See* Pa.R.C.P. 1023.1(c). That is, he has a good faith basis to believe the Committee, through its constituent members, must be here to answer his claims.

But as Petitioner also seemingly understands, the Committee does not yet exist nor, of course, does it have members who can be

substituted for the John Doe placeholders. *See* PFR at ¶ 17. This is problematic for a variety of reasons, not the least of which is that "[n]o final judgment may be entered against a defendant designated by a Doe designation." Pa.R.C.P. 2005(g).[52] This comes into sharp focus given that this case will be argued on December 29, 2022, at a time when the John Does still could not be parties to this case because whether the Committee exists at all is up to the Senate as a whole, *see* SR 386, § 9(a) (PFR Ex. D); *see also* SR 388 at 3, lines 8-9 (PFR Ex. F), and the new Senate will not meet as a body until the first Tuesday in January 2023. *See* Pa. Const. art. II, § 4. Only then, *at the earliest*, could the President Pro Tempore, with the Senate's approval, exercise the power to empanel the Committee. *See* SR 386, § 9(a).

All of this, plus the following, illustrates why the absence of the Committee, through its "John Doe" members, forestalls this Court's exercise of jurisdiction. First, according to Petitioner himself, the Committee has a right or interest related to his claims; if not, the "John

[52] The John Does named are also problematic because the label is being used as a "mere placeholder," which is improper. *See* Pa.R.C.P. 2005, Explanatory Comment ("It is important to note that designating a Doe defendant as a mere placeholder … is not a valid use of Rule 2005."). The use here is just such a case because these John Does members of a non-existent committee simply do not exist, as Petitioner is well aware.

Doe" members would not have been identified as party-Respondents. Moreover, this Committee will certainly have rights and duties to conduct the impeachment proceedings, *see* SR 386, § 10; SR 388 at 3, lines 8-14, which rights and duties Petitioner seeks to take away with his proposed relief. *See* PFR Prayer for Relief at ¶¶ (D)-(E); Proposed Order #2 at ¶ 1(D)-(E). The Committee's rights or interests are fully expressed in the Senate's resolutions, which grant to the Committee various mandatory duties. *See* SR 386, § 10; SR 388 at 3, lines 8-14. Third, these rights are essential to the merits of Petitioner's claims in that he seeks to foreclose *any* action by *any* Senator (Committee-member or otherwise). Fourth, and finally, justice cannot be afforded without violating the due process rights of the Committee because, as a basic fundamental "notice" matter, no Senator yet knows whether he or she should step up and defend the Committee's rights. In the absence of this basic notice from Petitioner, the Committee, and its members, will lose their rights as legislators before they even have a chance to answer the claims against them. Thus, the Court should hold the Committee is an indispensable party.

As a final note on the Committee, the deficiency caused by its absence is equal parts lack of an indispensable party and ripeness. The latter prudential concept arises because Petitioner elected to come to Court too soon, at least insofar as he seeks to foreclose rights of an entity that does not yet exist. Nevertheless, he made the affirmative choice to file now and to name these John Doe Committee members as party-Respondents, tacitly admitting that the Committee's members should be here to defend his claims. His choices should be held against him in that the Court should find that the Committee is an indispensable party whose absence prevents this Court from exercising subject matter jurisdiction.

B. Petitioner has failed to state legally sufficient claims.

For the reasons set forth above in Sections V.A-C, Petitioner has failed to state any claims as a matter of law. As such, should the Court find it has subject matter jurisdiction even without the Senate and the Senate Impeachment Committee as parties, Petitioner's claims should be dismissed. In turn, the Court should enter relief in Senator Ward's favor on the Cross-Application.

VII. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Application for Summary Relief and should grant Senator Ward's Cross-Application for Summary Relief.

Respectfully submitted,

Dated: December 16, 2022

/s/ Matthew H. Haverstick

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 16, 2022 /s/ Matthew H. Haverstick

WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limit of the Court's Order of December 15, 2022 (18,000 words). Based on the word count feature of the word processing system used to prepare this brief, this document contains 17,277 words, exclusive of the cover page, tables, and the signature block.

Dated: December 16, 2022 /s/ Matthew H. Haverstick

Exhibit A

JOURNAL

OF THE

SENATE

OF THE

COMMONWEALTH

OF

PENNSYLVANIA,

WHICH COMMENCED AT *LANCASTER*, ON TUESDAY, THE FIRST DAY OF DECEMBER, IN THE YEAR OF OUR *LORD*, ONE THOUSAND EIGHT HUNDRED AND ONE, AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA THE TWENTY-SIXTH.

VOLUME XII.

LANCASTER,
Printed by WILLIAM & ROBERT DICKSON, North Queenſtreet,
1801.

I have alſo received the Addreſs of both Houſes of the Legiſlature, recommending the Removal of Henry Shoemaker, Eſquire, from the Office of a Juſtice of the Peace, in the County of Lycoming; and ſhall comply therewith, without delay.

THOMAS M'KEAN.

Lancaſter, April 6, 1802.

On motion of Mr. Whitehill, ſeconded by Mr. Mewhorter,

Reſolved, That a Committee be appointed, to join a Committee of the Houſe of Repreſentatives (if that Houſe ſhall judge it proper to appoint ſuch Committee) to inform the Governor, that the Legiſlature have agreed to adjourn this Day; and to inquire, whether he has any further Communications to make, at this time; and

Ordered, That Mr. Rodman, Mr. Whelen, and Mr. Harris be a Committee for the ſaid purpoſe.

Ordered, That an Extract of the foregoing be tranſmitted to the Houſe of Repreſentatives.

Mr. Huſton, Clerk of the Houſe of Repreſentatives, informed the Senate, that the Houſe of Repreſentatives have concurred the Amendments, by the Senate, on the Bill, entitled, "An Act to provide for the Payment of certain Expences of the Executive Department, and for other Purpoſes."

And alſo, on two Reſolutions, entitled, reſpectively, *to wit:*

1 A Reſolution, granting to Andrew Ellicott, Eſquire, a Teleſcope, with its Apparatus, the Property of this State.
2 A Reſolution, relative to the State of Maryland granting half Tolls, to the Suſquehanna Canal-company.

The Speaker informed the Senate, that the Clerk reports,

That, according to the Orders of the Senate, he has preſented to the Houſe of Repreſentatives, an Extract from the Journal of the Senate, appointing a Committee to join a Committee of the Houſe of Repreſentatives, to inform the Governor, that the Legiſlature have agreed to adjourn this day; and to know whether he has any further Communications to make, at this time.

Mr. Huſton, Clerk of the Houſe of Repreſentatives, preſented an Extract from the Journal of that Houſe; and the ſame was read, as follows, *to wit:*

In the Houſe of Repreſentatives.

TUESDAY, APRIL 6, 1802, P. M.

Reſolved, That a Committee be appointed, to join a Committee of the Senate (already appointed) to inform the Governor, that the Senate and Houſe of Repreſentatives have paſſed a Reſolution to adjourn this day; and to know if he has any further Communications to make to the Legiſlature; and

Ordered, That Mr. Mitchell, Mr. Wayne, and Mr. Ferguſon be a Committee for the ſaid Purpoſe.

Mr.

3. A Reſolution, relative to an Application to the Secretary of State of the United States, for a Copy of the laſt Cenſus of this State.

4. A Reſolution, relative to printing the Laws, Journals, and Bills, of each Houſe, on a Medium Paper, in Octavo Form, and with Type of Pica Size.

5. A Reſolution, relative to inſtructing the Senators repreſenting this State, in the Senate of the United States, to endeavour to procure a Repeal of the Act paſſed at the laſt Seſſion of Congreſs, entitled, "An Act to provide for the more complete Organization of the Courts of the United States."

6. A Reſolution, relative to authoriſing one able Counſel, to aſſiſt the Attorney-general in defending the Rights of the Commonwealth, in the Trial of two Cauſes, *to wit*; one againſt the Commonwealth, by William Turnbull; the other, by the Comptroller-general, againſt the Heirs and Deviſees of David Rittenhouſe, late State Treaſurer.

7. A Reſolution, granting to C. W. Peale, during the Pleaſure of the Legiſlature, the Uſe of certain Parts of the Statehouſe, to diſplay his Muſeum.

8. A Reſolution, requeſting the Governor to preſent to Andrew Ellicott, Eſquire, for his Uſe, during the Pleaſure of the Legiſlature, the Teleſcope, the Property of this State, &c.

9. A Reſolution, relative to the State of Maryland granting half Tolls to the Suſquehanna Company, on Produce going down the Suſquehanna.

The Senate then adjourned, ſine die.

GEORGE BRYAN,
Clerk of the Senate.

Exhibit B

JOURNAL

OF THE

SENATE

OF THE

COMMONWEALTH

OF

PENNSYLVANIA,

WHICH COMMENCED AT LANCASTER, THE SIXTH DAY OF DECEMBER, IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND THREE, AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA THE TWENTY-EIGHTH.

VOLUME XIV.

LANCASTER:

PRINTED BY BROWN & BOWMAN,

EAST KING-STREET.

1803.

1. "An act for the relief of Marcus, Hulings, jun.

2. "An act to incorporate an academy, or public school, in the town of Norris, and county of Montgomery, and for other purposes therein mentioned."

3. "An address to remove Samuel Preston from the office of judge of Wayne county."

4. "An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this commonwealth, by distributing the donation lands to all who are entitled thereto."

On motion of Mr. Steele, seconded by Mr. Barton,

Agreed, That the second reading, and further consideration of the bill, entitled "An act for annexing part of Luzerne county, to Lycoming county," be the order of the day, for Monday next, the 26th instant.

The Senate resumed the consideration of the bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and and for other purposes therein mentioned," postponed for the present, on the third January last.

Whereupon,

The Senate resolved itself into committee of the whole, (Mr. Gamble in the chair) for the further consideration of the same; and after some time spent therein, the committee rose, and the Chairman reported the bill with amendments; which were read, as reported.

On motion of Mr. Rodman, seconded by Mr. Pearson, and by special order, the said bill was read the second time as reported, considered by section, and agreed to.

The preamble and title being agreed to.

Ordered, That the said bill be transcribed for the third reading.

The report of the committee, read on the 10th instant, to whom was referred the petition of the inhabitants of Nittany Valley, and the memorial of George Bressler, was again read, and the resolution therein contained, adopted, to wit:

Resolved, That the petitioners have leave to withdraw their petition.

The Clerk of the House of Representatives, presented to the Speaker for signature, the bills, entitled as follow, to wit:

1 "An act authorising the Governor, to incorporate a company, for making an artificial road in Wayne and Luzerne counties."

2 "An act granting relief to the heirs of Michael Irick, deceased."

3 "An act altering and extending the powers of the corporation of the borough of Bristol."

Whereupon,

The Speaker signed the said bills.

Adjourned till 3 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

The Clerk of the House of Representatives presented an extract from the journal of that House; a copy of which is as follows, to wit:

"*In the House of Representatives,*
"*March* 23, 1804.

"Resolved, That the article of impeachment against Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Associate Justices of the Supreme

Court of Pennsylvania, be engrossed, and signed by the Speaker; and that a committee be appointed to exhibit said article to the Senate, and, on behalf of this House, to manage the trial thereof.

"And ordered,

"That Messrs. Maclay, Boileau, Engle, Mitchell, and Bucher, be the committee for that purpose."

The Speaker laid before the Senate, a letter from the Secretary of the Commonwealth, of which the following is a copy:

Secretary's Office, March 24th, 1804.

SIR,

In compliance with a resolution of the General Assemble, of the fourteenth of January, last, relative to the distribution of Carey and Bioren's edition of the laws; I addressed a circular letter to the Prothonotaries of the several counties within this commonwealth, requiring them to transmit to this office, a true statement, or list of the names of the judges and justices of the peace within their counties, respectively, who had not already been furnished with the first second and third volumes of Dallas's edition of the laws, or with Read's digest. I have now the honor to lay before the Senate the statements transmitted in reply to that letter; the last of which was received but two days since. It becomes necessary that I should state, for the information of the Legislature, that sixty-six new appointments of justices of the peace, have been made since the first of January last; who consequently cannot have been furnished with the laws and are not included in the Prothonotaries statements, to wit; in Philadelphia county one, Bucks one, Chester four, York one, Cumberland five, Bedford one, Westmoreland three, Washington one, Fayette five, Montgomery one, Luzerne two, Huntingdon three, Allegheny four, Mifflin three, Somerset seven, Lycoming one, Adams one, Centre one, Crawford six, Beaver six, and Butler nine; no communication has been received on this subject from the Prothonotary of Erie. The county

commissioners of that county have returned fourteen acting Justices of the peace, six of whom were in office whilst it constituted part of Allegheny county. There has also been commissioned for said county three Associate Judges not hitherto furnished with the laws.

I have the honor to be very respectfully, your obedient servant,

T. M. THOMPSON, *Sec'ry.*

The Honorable the Speaker of the Senate.

The amendments by the House of Representatives, on the bills, entitled as follow, were again read, considered, and concurred, to wit:

1. "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

2. "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

3. "An act for dividing the borough of Lancaster into two election wards."

Ordered, That the Clerk inform the House of Representatives thereof.

The Sergeant-at-Arms announced the managers, appointed by the House of Representatives, to conduct the impeachment against the Chief Justice of the Supreme court, and Jasper Yeats and Thomas Smith, esquires, justices of the same court.

Whereupon,

The managers being introduced, Mr. Maclay their Chairman, delivered the following message.

"Mr. Speaker,

"In obedience to a resolution of the House of Repre-

sentatives, the committee appointed for that purpose, prefer to the Senate, in the name of the representatives and citizens of the commonwealth of Pennsylvania, an accusation and impeachment against Edward Shippen, esquire, Chief Justice, and Jasper Yeats, and Thomas Smith esquires, Associate Justices of the Supreme court of the commonwealth, and are ready, on the part of the said representatives, to support the charges so exhibited, at such time as the Senate may appoint."

After which he presented to the Speaker the article of impeachment preferred by the House of Representatives, against the said judges,

Thereupon,

The managers being conducted to seats which had been provided for the occasion ;

The article of accusation and impeachment was read; a copy of which is as follows, to wit:

Article of Accusation and Impeachment, against Edward Shippen, esquire, Chief Justice, and Jasper Yeates, and Thomas Smith, esquires, Assistant Justices of the Supreme Court of the Commonwealth of Pennsylvania, preferred by the House of Representatives of the said Commonwealth in their name, and in the name of the People of Pennsylvania, and exhibited to the Senate of the said Commonwealth.

Article 1. That the said Edward Shippen esquire Chief Justice and Jasper Yeates and Thomas Smith esquires Assistant Justices of the Supreme Court of this Commonwealth of Pennsylvania duly commissioned and appointed and acting in their official capacities on the 18th day of September A. D. 1802 granted a rule against Thomas Passmore of the city of Philadelphia on the affidavits of Andrew Bayard and James Kitchen to shew cause on the first day of the then next term why an attachment should not issue against him the said Thomas Passmore for a contempt in consequence of the following publication to wit.

" The subscriber publicly declares that Pettit and Bayard " of this city merchants and quibbling underwriters has " basely kept from the subscriber for nine months " above five hundred dollars and that Andrew Bayard the " partner of Andrew Pettit did on on the third or fourth " instant go before John Inskeep esquire alderman and " swore to that which was not true by which the said Pettit and Bayard is enabled to keep the subscriber out of " his money for about three months longer; and the said " Bayard has meanly attempted to prevent others from " paying the subscriber about two thousand five hundred " dollars, but in this mean dirty action he was disappointed in: I therefore do publicly declare Andrew Bayard a " liar a rascal and a coward; and I do offer two and an " half per cent. to any good person or persons to insure " the solvency of Pettit and Bayard for four months from " this date.

" THOMAS PASSMORE.

" *Philadelphia, 8th Sept.* 1802."

That on the 8th of December 1802 an attachment was awarded against the said Thomas Passmore and he was bound with sureties to appear from day to day during the continuation of the court to answer such interrogatories as should be exhibited to him and to abide the sentence of the court.

That interrogatories were accordingly exhibited to the said Thomas Passmore which are as follows; together with the answers filed by the said Thomas Passmore to the same viz.

In the Supreme Court of Pennsylvania.

The Commonwealth of Pennsylvania vs. *Thomas Passmore.* } On Attachment for Contempt.

Interrogatories exhibited to Thomas Passmore the above named defendant.

1*st Interrogatory.* Was there an action depending in the Supreme Court of Pennsylvania on the 8th day of September 1802 wherein you were plaintiff and Andrew Pettit and Andrew Bayard merchants and co-partners trading under the firm of Pettit and Bayard were defendants. If aye, when was such action instituted and is the same still depending in the said court.

2*d Interrogatory.* If such action was brought and is still depending in the said court, state whether the same was referred by consent of parties; whether the referrees made report, and when; whether exceptions were filed to the report, by whom and when; whether an affidavit was made by the said Andrew Bayard in support of the said exceptions; when, and before whom the said affidavit was made; and whether the said exceptions and affidavit were filed in the said court on or before the 8th day of September 1802.

3*d Interrogatory.* Peruse the paper filed in this court purporting to be signed by you, dated Philadelphia 8th Sept. 1802, whereupon the motion was made in this court for a rule to shew cause why an attachment should not issue against you for a contempt of the said court; and declare whether the said paper is written and subscribed by you, and when the same was written and subscribed; and whether the said paper so written and subscribed was by you or by any other person, and who, by your request and direction placed and affixed to a board in the exchange room in the city-tavern in the city of Philadelphia and attached to the said board in the said room by wafers in the manner advertisements are there usually posted up and fixed.

4*th Interrogatory.* If the said paper was subscribed and written by you, and by you or by some person by your request and direction, placed and affixed as above mentioned, state whether the declaration in the said paper contained, to wit: "That Andrew Bayard the partner of Andrew Pettit did on the third or fourth instant go before John Inskeep esquire alderman and swore to that which was not true" refers to the said affidavit taken and filed in this court by the said Andrew Bayard as aforesaid, in support of the said exceptions filed to the said report of the referees in the said action depending in this court as aforesaid between you as plaintiff and the said Pettit and Bayard as defendants?

By J. DALLAS.

(Copy.)

Supreme Court—Pennsylvania.

The Commonwealth of Pennsylvania vs. *Thomas Passmore.* } Sur Attachment for Contempt.

The answer of Thomas Passmore the examinant to the several interrogatories filed on the part of the prosecutor in this case.

1*st Interrogatory.* To the first Interrogatory the said examinant answers, That to the best of his judgment and belief there was no action depending in the Supreme Court of Pennsylvania on the 8th day of September last wherein he was plaintiff and Andrew Pettit and Andrew Bayard merchants and co-partners trading under the firm of Pettit and Bayard were defendants. That such an action had been instituted on or about the 13th day of July last, referred under an amicable agreement between the said parties, a report made in favor of the plaintiff and the suit determined by a judgment entered thereupon on or about the 6th day of August last,

2*d Interrogatory.* In answer to the second interrogatory the examinant saith that he apprehends this question is best answered by a recurrence to the records of the court which must certainly afford the surest evidence of the facts to which the interrogatory relates but the examinant has no objection to declaring that the said suit instituted by him against the said Andrew Pettit and Andrew Bayard was referred by consent of parties that the referees made report

thereon in favor of the said Thomas Passmore, on or about the 6th day of August last, that the exceptions to the said report were filed on the part of Messrs. Pettit and Bayard on or about the fourth day of September last together with an affidavit made by the said Andrew Bayard as this examinant has heard and believes in support of the same exceptions before John Inskeep esquire one of the aldermen of the city; and this defendant further saith that the action was instituted by him against the said Andrew Pettit and Andrew Bayard in order to recover from them the loss sustained by him on a policy subscribed by them for five hundred dollars in the office of Shoemaker and Berret of this city on or about the thirteenth day of September in the year one thousand eight hundred and one, on the brig Minerva belonging to this examinant; and to the best of his recollection he took out of the office of the prothonotary of this court on the very day on which the said award was rendered two copies thereof and left at the insurance office of the said Shoemaker and Berrett on the next day one copy of said report, with directions to them to communicate the same to Messrs. Pettit and Bayard and the other underwriters in the said policy. And the examinant has been informed and believes, that the said award was made known by them to the said Andrew Pettit and Andrew Bayard, or the said Andrew Bayard, on or about the seventh day of August last, and the examinant declares that on the ninth or tenth of the said month the said Andrew Bayard told this examinant he had seen it; that the examinant has always understood and believed and at the present day doth believe it to be a rule of this court, that if exceptions are not filed to an award under such circumstances, to wit: When the report is by the tenor of the submission to be made into the office within four days after the same is made known to the party against whom it is to operate such award is thereby rendered absolute and unavoidable. This was the impression on the mind of the examinant from about the middle of August last to the day when he first learned that the exceptions in said cause were filed and it immediately afterwards occurred to

him that they were out of time and void and therefore that the judgment in this examinant's favour must remain absolute. And this examinant was more confirmed in the belief of the validity of this report, because James Lysle an underwriter on the same risk for one thousand dollars gave an order in the examinant's favor for the amount on the next day after the said award was rendered Messrs. Phillips, Cramond, & Co. underwriters also on the same risk for one thousand dollars, gave an order for the amount in this examinant's favor within about four days after, and Messrs. Nicklin & Griffith underwriters on the same risk for five hundred dollars gave a similar order at about the same time. That the examinant soon after was allowed without opposition to prove his loss on the said policy against the estate of James Yard a bankrupt who also was an underwriter of one thousand dollars on said policy so that of the four solvent defendants parties to the said award Messrs. Pettit and Bayard were the only underwriters who had not settled with the defendant on said policy, in a very few days after the said award given.

3d Interrogatory. In answer to the third interrogatory this examinant saith, that the paper alluded to in this interrogatory was subscribed by him on the day of its date and by the examinant placed or fixed up to a board in one of the rooms of the city-tavern but it was pulled down within a minute after before any person could read it.

4th Interrogatory. In answer to the fourth interrogatory this examinant saith, that the first exception filed to the said award states that the referees therein named had a meeting on the subject of the reference with the plaintiff when the defendants the said Pettit and Bayard were not present nor notified in opposition to which the examinant states that there was no meeting of the said referees to which either of the parties to that suit were admitted of which a notification was not given either by information to the said Andrew Bayard himself or by the referees when they made their adjournment. That this examinant was conscious of this when he signed the said paper and did for

that reason assert that what was so stated in the affidavit taken before John Inskeep esquire in support of said exceptions was not true, but in doing this he had not the most distant intention to prejudice the public mind in his favor or to treat with disrespect the judicial authority of his country for which he has always entertained the utmost respect. That this defendant having recently settled with every other of the underwriters in said policy and having every reason to believe that the award would not be disputed by any other person than the said Andrew Bayard was surprised to find that such exceptions had been filed on the part of Pettit and Bayard as he had perused, wearied by the delays and trouble which he had undergone in the pursuit of his just claim, hearing that the said Andrew Bayard had expressed himself in terms derogatory to the character of the examinant and reflecting on the referees having good reason to believe that he used every exertion in his power to prevent the other underwriters on the policy from settling with the examinant he felt much irritated when he first saw the exceptions and in the moment of his heat and passion published the impressions he experienced without allowing himself time to reflect on the harshness of the manner in which they were conceived or the extent of their application. With respect to Mr. Andrew Pettit one of the said firm of Pettit and Bayard the examinant has always entertained a respectful opinion of him and is sorry that expressions escaped him which from their generality may tend to implicate a gentleman who has never been seen to take any active step in the measures of which he complains and altho' he thought at that time and still thinks that he was extremely ill used by Mr, Bayard he certainly would not have adopted the measure of publishing if the impetuosity of the moment had not hurried him into it.

THOMAS PASSMORE.

Sworn 27th December 1802, before

EDWARD BURD, *Prothonotary.*

In which answers the examinant deposeth to the best of his judgment and belief that there was no action depending in the Supreme court of Pennsylvania wherein he was plaintiff and Andrew Pettit and Andrew Bayard were defendants at the time the supposed contempt was committed.

And in his fourth answer disclaims in the most explicit terms the most distant intention either to prejudice the public mind in his favor or treat with direspect the judicial authority of his country which answers ought in legal construction to have purged the contempt if any had existed notwithstanding which the Justices aforesaid passed sentence upon the said Thomas Passmore on the 28th day of December A. D. 1802, "That the said Thomas Passmore should be committed to the custody of the Sheriff of Philadelphia county in the debtors' apartment of the common jail of said county for the space of thirty days and pay a fine of fifty dollars to the commonwealth and in the mean while that he should be committed &c." Which sentence of fine and imprisonment under all the circumstances of the case was arbitrary and unconstitutional and a high misdemeanor of the said Chief Justice and the Associate Justices aforesaid in their official capacities.

First. Because the publication did not reflect on the Judges in their judicial capacity nor personal character.

Second. Because there was no direct allusion in the paper called a libel to any cause pending before the court.

Third. Because it appears from the record that the said Thomas Passmore was warranted in the conclusion that the suit between him and Pettit and Bayard was then ended judgment having been entered and execution issued this opinion is confirmed because the judgment was not set aside until after the term of his imprisonment had expired and after his application to the Legislature for the impeachment of the Judges.

Fourth. Because it appears from the evidence that the

court were satisfied with the answers of Thomas Passmore to the interrogatories so far as respected the alledged contempt against themselves.

Fifth. Because it appears that the punisment was inflicted not because he had committed a contempt of court but because he would not apologize or make atonement to Mr. Andrew Bayard as the court had expected.

And the said House of Representatives saving to themselves by protestation the liberty of exhibiting at any time hereafter any other accusation or impeachment against the said Edward Shippen esquire Chief Justice and the said Jasper Yeates and Thomas Smith esquires Assistant Justices as aforesaid of the Supreme Court and also of replying to the answers which the said Justices or any of them shall make to the impeachment aforesaid and of offering proof of the premises and every part of them or any other accusation or impeachment which shall or may be exhibited by them as the case may require against the said Chief Justice or Justices aforesaid or any of them Do demand that the said Edward Shippen esquire Chief Justice as aforesaid and the said Jasper Yeates and Thomas Smith esquires Associate Justices as aforesaid and each of them may be put to answer all and every of the premises and that such proceedings examination trial and judgment may be had against them or any of them as are conformable to the constitution and laws of this Commonwealth—And the said House of Representatives are ready to offer proof of the premises at such time as the Senate of the said Commonwealth of Pennsylvania may appoint.

SIMON SNYDER,

Speaker of the House of Representatives.

Moved by Mr. Reed, seconded by Mr. Porter,

That the Speaker do inform the managers, that the Senate will, as early as convenient, take order on the articles of accusation and impeachment exhibited by the said managers, and inform them of the result thereof.

The question on the motion, being put; was determined in the affirmative.

Whereupon,

The Speaker rose, and addressed the managers, who also rose, as follows:

Gentlemen,

Senate will, without delay, attend to your demand, take order on the article of accusation and impeachment preferred by the House of Representatives, and which you have presented; and timeously inform you of the order which shall be so taken.

Thereupon,

The managers withdrew.

On motion of Mr. Pearson, seconded by Mr. Porter,

The following resolution was twice read, considered and adopted to wit:

Resolved, That a committee be appointed to ascertain and fix, at what time it may be most proper and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. Chief Justice of the Supreme Court of Pennsylvania, and Jasper Yeates, Esq. and Thomas Smith, Esq. Judges of the said court, on an article of impeachment exhibited against them by the House of Representatives, in their name, and in the name of the people of Pennsylvania.

Ordered, That Mr. Pearson, Mr. Rodman, Mr. Reed, Mr. Porter, and Mr. Hartzell, be the committee for that purpose.

Adjourned till 10 o'clock Monday morning.

MONDAY, March 26, 1804.

The Senate met according to adjournment.

According to the orders of the Senate, the Clerk presen-

ted to the House of Representatives, for concurrence, the bill, entitled "An act for the inspection of ground black-oak bark, intended for exportation."

And he informed the House of Representatives, that the Senate have concurred the amendments by that House, on the bills, entitled, as follow, to wit:

1 "An act for dividing the borough of Lancaster into two election wards."

2 "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

3 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

The Secretary of the Commonwealth presented a message from the Governor, together with the bills, mentioned therein, numbered 2, and 4, and informed, that he has returned to the House of Representatives, the other bills mentioned in the message.

The message was read; a copy of which is as follows, viz.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses, in which they originated, to wit:

1 "An act for the relief of the supervisors of Somerset township, in Somerset county, for the year 1801."

2 "An act to incorporate the Philadelphia insurance company."

3 "An act to erect parts of Lycoming, Huntingdon and Somerset counties, into separate county ditricts."

4 "An act in confirmation of a partition made of certain lands in Lycoming county."

5 "An act transferring the powers of the trustees of the county of Adams, to the commissioners of said county, and authorising them to levy a further sum, for completing the public buildings therein."

6 "An act for the relief of Elizabeth Febiger."

THOMAS M'KEAN.

Lancaster, March 26th, 1804.

Mr. Pearson, from the committee appointed for the purpose, on the 24th inst. made the following report, to wit:

The committee, appointed to ascertain the time, when it may be most proper, and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Judges of the Supreme Court;—Report,

That, having maturely considered the subject referred to them; offer the following resolution, to wit:

Resolved, That the second Tuesday of December next, will be the most convenient time for the Senate to commence the said trial.

The bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned;" was read the third time.

Whereupon,

Resolved that this bill pass;—and

Ordered, That the Clerk present the same to the House of Representatives, for concurrence.

According to the order of the day, the bill, entitled

The remaining sections, with the title, being agreed to.

Ordered, That the said bill be transcribed for the third reading.

On motion of Mr. Barton, seconded by Mr. Lane,

Resolved, That a member be added to the committee, appointed to compare bills, and present them to the Governor for his approbation, in the room of Mr. Rodman, who is absent.

Ordered, That Mr. Harris be added to that committee.

The report of the committee, appointed to ascertain the time, when it may be most proper, and convenient for the Senate to proceed to the trial of Edward Shippen, Esq. chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Judges of the Supreme Court, was again read.

Whereupon,

On motion of Mr. Heston, seconded by Mr. Lane,

The Senate resolved itself into committee of the whole, (Mr. M'Arthur in the chair) for the further consideration of the resolution contained in the report of the committee, to wit:

"Resolved, That the second Tuesday of December next, will be the most convenient time for the Senate to commence the said trial;" and after some time spent therein, the committee rose, and the Chairman reported the same, without amendment.

On motion of Mr. Reed, seconded by Mr. Pearson;

Ordered, That the second reading, and further consideration of the bill, entitled "An act for re-building the bridges over Swatara Creek and Deep Creek, on the Tulpehocken road, in the county of Berks," be the order of the day, for to-morrow.

The resolution presented by Mr. Pearson, on the 22d instant, was again read, considered, and adopted, as follows, to wit:

Resolved, That a committee be appointed, to join a committee of the House of Representatives, to ascertain particularly, what laws, passed this session, ought to be published in the newspapers, at the public expence, in pursuance of a resolution of the General Assembly, passsd in the present session.

Ordered, That Mr. Pearson, Mr. Steele, and Mr. Heston, be the committee for that purpose; and that the Clerk present an extract from the journal respecting the same.

Mr. Harris, from the committee appointed for that purpose, reported, that the bills, entitled as follow, have been duly compared, to wit:

1 "An act to empower the administrators to the estates, and guardians of the minor children of Benjamin Lodge, and James Carnahan deceased, to sell and convey certain real estates."

2 "An act dividing the borough of Lancaster into two election wards."

3 "An act authorizing Jacob Eichelberger, and Frederick Shultz, to sell and convey, a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation, in and near Hanover, in the said county."

4 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

5 "A supplement to the act, entitled "An act concerning divorces and alimony."

Mr. Lane, from the same committee, reported, that the bill, entitled "A supplement to an act entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton." has been duly compared.

According to the order of the Senate, the Clerk presen-

ted to the House of Representatives, for concurrence, the bill, entitled "An act, to repeal part of an act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned."

Adjourned until 10 o'clock to-morrow morning.

TUESDAY, March 27, 1804.

The Senate met according to adjournment.

Mr. Brady presented the memorial of Edward Shippen, Chief Justice, Jasper Yeates, and Thomas Smith, Esqrs. Justices of the Supreme Court, which was read;

Whereupon,

It was moved by Mr. Brady, seconded by Mr. Barton, and

Agreed, That the said memorial be inserted at large on the journal; the following is a copy thereof, to wit:

To the Honorable the Senate of the Commonwealth of Pennsylvania.

The memorial of the subscribers, Justices of the Supreme Court of the said Commonwealth,

Respectfully Sheweth;

That your memorialists have understood, that the honorable House of Representatives have preferred articles of impeachment against them, for a high misdemeanor in office, by arbitrarily, and unconstitutionally, fining and imprisoning Thomas Passmore.

They verily believed, that every thing they have done in the premises, in their judicial capacity, is warranted by the laws and constitution of the state; and their consciences

acquit them of every species of corruption and partiality whatever.

They have urged a speedy trial, by two memorials to the House of Representatives; they are prepared to answer for their conduct; they demand, as a matter of constitutional and common right, a speedy public trial by an impartial court, to confront their adversary, and meet the witnesses face to face.

They cannot dissemble their satisfaction, that they are entitled to a hearing in a court of justice, where their conduct will be judged of by the evidence alone; where passion, prepossession, and prejudice cannot enter, and where a due discharge of the official duties of the members is secured to them by the sanctions of religion, a solemn appeal to Heaven.

Your memorialists beg leave to represent, that their labors of the last term are just terminated and they will soon be called to the performance of other duties in the circuit courts.

They implore you, as men of honor and virtue, to take into your serious consideration, whether thus charged with a breach of the constitution they have sworn to support, and with arbitrary conduct, unsupported by law, they can with propriety, go into the different counties, to administer the justice of the country; and whether such a step, while the charge against them remains untried, would not reflect disgrace on their individual and official characters, in the eyes of every virtuous citizen, and do irreparable injury to the obedience justly due to the laws.

They therefore request your honorable House to appoint an early day for the trial of their impeachment, which they are anxiously prepared to answer, and to grant them compulsory process for obtaining witnesses in their favor.

And your memorialists will pray, &c.

(SIGNED) EDWARD SHIPPEN,
J. YEATES,
THOMAS SMITH.

That the said bill be postponed, and recommended to the Senate, at their next session.

The question on the motion, being put, was determined in the affirmaative.

On motion of Mr. M'Arthur, seconded Mr. Mewhorter,

Agreed, That the second reading, and further consideration of the bill, entitled "An act for ascertaining the rights of this state to certain lands, lying north and west of the rivers Ohio, Allegheny, and Conewango Creek," be the order of the day, for to-morrow.

On motion of Mr. Pearson, secon ded by Mr. eed,

Agreed, That the second reading, and further consideration of the bill, entitled "A supplement to the act for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," be the order of the day, for Thursday, the 29th instant.

The Clerk of the House of Representatives, presented to the Speaker for signature, the bills and resolution, entitled as follow, to wit:

1 "An act authorising Jacob Eichelberger and Frederick Shultz, to sell and convey a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation in and near Hanover, in the said county."

2 "An act for dividing the borough of Lancaster into two election wards."

3 "A supplement to an act, entitled "An act to authorise the Governor of this commonwealth, to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton."

4 "An act to empower the administrators to the estates and guardians of the minor children of Benjamin Lodge,

and James Carnahan, deceased, to sell and convey certain real estates."

5 "An act conferring certain powers on the commissioners of Berks county, and for other purposes."

6 "A supplement to the act, entitled "An act concerning divorces and alimony."

7 "Resolution to prevent laws of a local nature from being printed in newspapers, at the public expence."

Whereupon,

The Speaker signed the said bills and resolution.

The report of the committee, fixing the the time for trying the impeachment preferred against three of the Judges of the Supreme Court, as reported yesterday, by committee of the whole, was read the second time.

Whereupon,

It was moved by Mr. Hes on, seconded by Mr. Barton and

Agreed, That the said report be re-committed to the committee of the whole.

On motion of Mr. Lane, seconded by Mr. Brady, and by special order, the memorial of three of the Judges of the Supreme Court, presented this day, was again read, and referred tothe committee of the whole, to whom was recommitted the report on the same subject.

Thereupon,

The Senate resolved itself into committee of the whole, (Mr. M'Arthur in the chair) for the further consideration of the said report; and after some time spent therein, the committee rose, and the Chairman reported the resolution contained therein, with an amendment; which was read, as reported, to wit:

"Resolved, That the first Monday in January next, will be the most convenient time for the Senate to commence the said trial."

On motion of Mr. Barton, seconded by Mr. Lane, and by special order, the report of the committee of the whole, was read the second time;

Whereupon,

It was moved by Mr. Barton, seconded by Mr. Lane,

That the words "the first Monday in January" be stricken out, and "Thursday, the 5th of April" be inserted in place thereof.

The yeas and nays, on agreeing to the amendment, were required by Mr. Barton, and Mr. Pearson; and on the question being put, the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Barton,	Messrs.	4 Harris,
	2 Brady,		5 Lane,
	3 Follmer,		6 Pearson,
NAYS.		NAYS.	
Messrs.	1 Gamble,	Messrs.	9 Piper,
	2 Hartzell,		10 Poe,
	3 Heston,		11 Porter,
	4 Lower,		12 Reed,
	5 Lyle,		13 Richards,
	6 M'Arthur,		14 Spangler,
	7 Mewhorter,		15 Steele,
	8 Morton,		16 Whitehill,
			Speaker.

Six yeas, and sixteen nays; by which it appeared, that the question was determined in the negative.

Whereupon,

The yeas and nays, on the question, on adopting the said resolution, were required by Mr. Barton, and Mr. Harris; and on the question being put, the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Brady,	Messrs.	12 Morton,
	2 Follmer,		13 Pearson,
	3 Gamble,		14 Piper,
	4 Harris,		15 Poe,
	5 Hartzell,		16 Porter,
	6 Heston,		17 Reed,
	7 Lane,		18 Richards,
	8 Lower,		19 Spangler,
	9 Lyle,		20 Steele.
	10 M'Arthur,		21 Whitehill,
	11 Mewhorter,		*Speaker.*

NAY. Mr. Barton.

Twenty-one yeas, and one nay; by which it appeared, that the question was determined in the affirmative, and the resolution adopted, as follows, to wit:

"Resolved, That the first Monday in January next, will be the most convenient time for the Senate to commence the said trial."—And,

Ordered, Mr. Porter, That Mr. Lane, and Mr. Lyle, be a committee to inform the House of Representatives thereof.

According to the orders of the Senate, the Clerk returned to the House of Representatives, the bills, entitled as follow, to wit:

1 "An act to empower Chambers Gaw, to sell and convey a certain real estate therein mentioned, and for other purposes."

2 "An act directing the mode of selling unseated lands for taxes."

And informed, that the Senate have passed the first bill without amendment, and the last, with amendments.

7 "An act granting relief to the heirs of Michael Irick, deceased."—And, an

8 "An address for the removal of Samuel Preston, an associate judge of Wayne county, from office."

Adjourned till 10 o'clock to-morrow morning.

WEDNESDAY, March 28, 1804.

The Senate met according to adjournment.

Mr. Heston, from the committee to whom was referred, on the 24th instant, the bill, entitled "An act to regulate the payment of costs on indictments," reported the said bill with amendments, which were read as reported.

Ordered, That the further consideration of the said bill, be the order of the day, for to-morrow.

Mr. Porter, from the committee appointed yesterday, to acquaint the House of Representatives, that the Senate have fixed on the first Monday in January next, for the trial of Edward Shippen, Esq. Chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs. Justices of the Supreme Court, reported that the committee had performed that service.

Mr. Harris, from the committee appointed for that purpose, reported, that the bill, entitled an "An act to empower Chambers Gaw, to sell and convey certain real estate therein mentioned, and for other purposes," has been duly compared.

The bill, entitled "An act erecting certain election districts, and making alterations in other districts in certain counties within this commonwealth," was read the third time.

Whereupon,

Resolved that this bill pass;—and

Ordered, That the Clerk return the said bill to the House of Representatives, with information, that the Senate have passed the same, with amendments, in which the concurrence of that House is requested; which amendments are as follow, to wit:

Section I, Strike out all that follows the word "that" in line 4, to the end of the section, and insert as follows; "until another public school-house shall be erected in Mifflin town, the electors of Fermanagh and Milford townships in the county of Mifflin shall hold their elections in the school-house now occupied by David Steele in Mifflin town aforesaid."

Section II, Line 3, strike out "aforesaid" and insert "of Bedford."

Section XI, Line 5, strike out "Barnet Gilliland" and insert "Alexander Ramsey."

The Clerk of the House of Representatives, presented for concurrence, the bills, entitled as follow, to wit:

1 "An act to enable persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same."

2 "An act for the relief of Nicholas Reim."

3 "A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned."

4 "A supplement to the act, entitled "An act to alter and amend the act, entitled "An act to regulate the elections within this commonwealth."

5 "An act to authorise and require the State Treasurer to receive the interest arising on federal stock, the property of this commonwealth, and for other purposes."

recting the mode of selling unseated lands for taxes," were again read.

Whereupon,

Resolved, That the Senate recede therefrom; and

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported, that he had given the House of Representatives, the information directed on the said bills.

Moved by Mr. Pearson, seconded by Mr. Reed,

Resolved, That the Senate will meet at the court-house, in the borough of Lancaster, on the first Monday in January, 1805, and then and there, commence the trial of Edward Shippen, Esq. Chief Justice of the Supreme Court of Pennsylvania, and Jasper Yeates, and Thomas Smith, Esqrs. Assistant Justices of the same Court, on the article of impeachment, exhibited against them by the House of Representatives, in their name, and the name of the people of Pennsylvania; and that the Speaker be directed to issue an order, requiring them, the said Edward Shippen, Jasper Yeates, and Thomas Smith, Esqrs. to attend on the day aforesaid, to answer to the article of impeachment aforesaid; and, that the said order be served on them, and a copy of the said article of impeachment be delivered to each of them, the said Edward Shippen, Jasper Yeates, and Thomas Smith, Esqrs. at least thirty days before the day appointed for trial.

Ordered to lie upon the table.

Adjourned till 3 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

Mr. Barton, from the committee appointed for that purpose, reported, that the bills, entitled as follow, have been duly compared, to wit:

1 "An act to provide for the inspection of ground black oak bark, intended for exportation."

2 "An act to authorise Alexander M'Intire, to erect a toll-bridge over French Creek."

The Senate resumed the consideration of the question on transcribing the bill, entitled "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife," postponed for the present, on the 15th ult. and on the question being put, *Shall the said bill be transcribed for the third reading?* it was determined in the affirmative.

On motion of Mr. Lyle, seconded by Mr. Pearson, and by unanimous consent, the said bill was read the third time.

Whereupon,

The yeas and nays, on the question *Shall this bill pass?* were required by Mr. Lane, and Mr. Morton; and on the question being put; the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Follmer,	Messrs.	8 Pearson,
	2 Harris,		9 Piper,
	3 Hartzell,		10 Poe,
	4 Heston,		11 Richards,
	5 Lower,		12 Steele,
	6 Lyle,		13 Whitehill,
	7 M'Arthur,		*Speaker.*

NAYS.		NAYS.	
Messrs.	1 Lane,	Messrs.	4 Porter,
	2 Mewhorter,		5 Reed,
	3 Morton,		

Thirteen yeas, and five nays; by which it appeared, that the question was determined in the affirmative.

Ordered, That the Clerk return the same to the House of Representatives, with information that the Senate have passed the said bill without amendment.

After some time, The Clerk reported that he had performed that service.

Mr. Harris, from the committee appointed for that purpose, reported, that the bill, entitled as above, has been duly compared.

The resolution presented in the forenoon, by Mr. Pearson, respecting the trial of three of the Judges of the Supreme Court, was again read, considered, and adopted.

The Clerk of the House of Representatives, returned the bill, entitled "An act to repeal part of the act, entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned," and informed the Senate, that the House of Representatives have passed the same, with amendments; in which they request the concurrence of Senate.

And he presented, for signature, the bills and address, entitled respectively as follow, to wit:

1 "An act to provide for the inspection of ground black oak bark, intended for exportation."

2 "An act to authorise Alexander M'Intire, to erect a toll-bridge over French Creek."

3 "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife."

4 "Address to the Governor, for the removal from office, of H. H. Brackenridge, one of the Judges of the Supreme Court."

And he informed that the House of Representatives have receded from their non-concurrence, in the amendments by Senate, on the bill, entitled "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

The Speaker signed the bills and address presented for signature, numbered 1, 2, 3 and 4.

On motion, and by special order, the amendments by the House of Representatives on the bill, entitled "An act to repeal part of the act entitled "An act to enforce the due collection of the revenues of the state and for other purposes therein mentioned, were agaid read as follow, to wit:

Strike out the preamble.

Section I, strike out all that follows the word "allowed" in line 5, to the end of the section and insert "the sum of one thousand dollars per annum to pay clerk hire in the Treasury-Office"

Whereupon,

On the question, *Will the Senate agree to the said amendments?* being put, was determined in the negative.

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported that he had performed that service.

The Senate resumed the consideration of the bill, entitled "An act suspending for a limited time, the act entitled "An act to establish and confirm the place for holding the courts of justice and to provide for erecting the public buildings for the use of Armstrong county."

Section I, being under consideration;

The question, on agreeing thereto, being put; was determined in the negative, and so the bill was lost.

The report of the committee, read the 24th ult. to whom was referred, the petition of Arthur St. Clair, was again read, and the resolution therein contained adopted, to wit:

Resolved, That the petition of Arthur St. Clair be recommended to the early attention of the next Legislature.

Mr. Lane from the committee appointed for that pu
pose, reported, that the bills and address entitled as follo
have been presented to the Governor for his approbation,
wit:

1 "An act to enable James Wallis to obtain a title to
lot of land in the township of Charlestown, and county
Chester."

2 "An act to regulate the payment of costs on indi
ments,"

3 "An act to authorise and require the State-Treasu
to receive the interest on federal stock the property
this commonwealth, and for other purposes."

4 "An act declaring part of big Fishing creek and Ca
wissa creek in the county of Northumberland, public hig
ways."

5 "An act to enable persons appointed to offices of pu
lic trust, to recover official documents appurtenant to t
said offices from persons detaining the same."

6 "An act to enable the proprietor or proprietors
the Conewago canal, to receive a toll from the boats, raf
and vessels passing the same."

7 "An act authorising the State-Treasurer to transfer to
certain individuals the stock held by the state for their use
in the Loan-Office of the United States."

8 "An act to provide for the inspection of ground
black oak bark, intended for exportation."

9 "An act to authorise Alexander M'Intire to erect a
toll-bridge over French creek."

10 "An act to dissolve the marriage contract between
Thomas Dewees, and Mary his wife."

11 "Address to the Governor, for the removal from of
fice, of Hugh Henry Brackenridge, one of the Judges of
the Supreme Court."

12 "An act directing the Register-General and State-Treasurer to exhibit printed statements of their accounts."

13 "An act for the election of Constables in the township of Pittsburg."

14 "A supplement to the act entitled "An act for establishing an Health-Office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases."

Adjourned until 9 o'clock to-morrow morning.

TUESDAY, April 3, 1804.

The Senate met according to adjournment.

Mr. Pearson, from the commitee of accounts, made further report, as follow, to wit:

That the committee have examined the account of George Bryan, Clerk of the Senate, and find that he has made the following disbursements, to wit:

Paid for Ellicott's Journal, 3 copies	$	18	
Paid for alteration in stove-pipe, and other iron work		27	80
Paid Thomas Dobson for supplementary volumes of the Encyclopediæ		34	
Paid Do. for stationary		1	25
Paid Adam Hart, door-keepers' account for sundries		17	5
Paid Miller and Getz accounts for binding books		24	52 1-2
Paid for Tucker's Blackstone		20	
Paid Frederick Steinman for sundries		19	41
Paid Jacob Eberman for candles		23	38
Paid J. Humrich for sundries		4	66
Paid G. Lechler for mending chairs, &c.		6	25
Amount Carried forward,	$	196	32 1-2

Amount brought forward,	$ 196	32 1-2
Paid sundry small accounts - -	12	77
Paid Zachariah Poulson for newspapers -	18	
Paid Bronson & Chauncey for ditto -	5	26
	$ 232	35 1-2
Deduct a warrant issued in favor of the Clerk 12th January last -	200	
Balance due the Clerk,	$ 32	35 1-2

And, that the following accounts remain unpaid, to wit:

William Duane for newspapers - -	$ 40	60
Wilson & Blackwell do. - -		48
Samuel Relf - do. - - -	2	87 1-2
Henry Miller book-binding - -	1	33
William Dickson stationary - - -	52	75
Stacy Potts, jun. transcribing bills -	154	87 1-2
George Moore, postage on newspapers -	27	27
Adam Hart, for twine - - -		28
	$ 280	44

The committee therefore, offer the following resolution, to wit:

Resolved, That the Speaker draw a warrant on the State-Treasurer, in favor of George Bryan, Clerk of the Senate, for $ 32 35 cents; and also one for $ 280 44 to satisfy the above accounts.

Whereupon,

The said report was, on motion, and by special order, again read, considered, and the resolution therein contained, adopted; and warrants were accordingly so drawn.

Moved by Mr. Pearson, seconded by Mr. Reed.

Resolved by the Senate and House of Representatives of the Commonwealth of Pennsylvania,

That the Secretary of the Commonwealth be, and he is

hereby enjoined and required, to transmit to the prothonotaries of the respective counties, the necessary number of copies of the edition of the laws of this Commonwealth, printed by Mathew Carey and John Bioren, for the use of the justices of the peace of the said counties respectively, as they may be entitled to receive the same, agreeably to a resolution of the General Assembly, of the 14th January last, and the statements transmitted by the said prothonotaries to the office of the Secretary, aforesaid.

On motion, and by special order, the said resolution was again read, considered, and adopted.

Ordered, That the Clerk present the same to the House of Representatives, for concurrence.

After some time, The Clerk reported that he had performed that service.

On motion of Mr. Pearson, seconded by Mr. Reed,

The following resolution was twice read, considered and adopted, to wit:

Resolved, That a warrant be drawn by the Speaker, on the State-Treasurer, in favor of George Bryan, Clerk of the Senate, for $ 200 to defray the incidental expences thereof, he to be accountable therefor.

And a warrant was accordingly so drawn.

The Secretary of the Commonwealth presented a message from the Governor, together with the bill therein mentioned.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have perused and considered the bill, entitled "An act to empower the administrators to the estates, and guardians of the minor children of Benjamin Lodge, and James Car-

nahan, deceased, to sell and convey, certain real estates," and as I do not approve it, have directed the Secretary to return it to the Senate, in which it originated; with my reasons for not assenting to its being passed into a law.

My objection to this bill is, that it appears to me to be inoperative and ineffectual; as the laws of Kentucky alone can direct the manner in which real estates, lying within that state can be acquired, aliened, or lost. Besides, I cannot consent that the real estate of the minors, mentioned in the bill, should be sold, unless other reasons shall be assigned, than those therein alledged.

THOMAS M'KEAN.

Lancaster, April 2, 1804.

Whereupon,

The said bill was taken up for re-consideration; and on the question, *Shall this bill pass?* the yeas and nays, according to the constitution in such cases, were required; and on the question being put, the members voted as follow, to wit:

YEAS.		YEAS.	
Messrs.	1 Harris,	Messrs.	4 Piper,
	2 Hartzell,		5 Poe,
	3 Morton,		

NAYS.		NAYS.	
Messrs.	1 Follmer,	Messrs.	7 Pearson,
	2 Heston,		8 Porter,
	3 Lane,		9 Reed,
	4 Lower,		10 Richards,
	5 Lyle,		11 Whitehill,
	6 M'Arthur,		*Speaker.*

Five yeas, and eleven nays; by which it appeared, that the question was determined in the negative, and so the bill was lost.

The Clerk of the House of Representatives returned the "Resolution for the further distribution of the laws of this state, printed by Carey and Bioren," and informed, that the House of Representatives have passed the same with an amendment, in which the concurrence of the Senate is requested; which amendment is as follows, to wit:

"And it shall be the duty of the prothonotaries respectively, to take receipts from the justices to whom the said laws shall be delivered, and to transmit such receipts to the office of the Secretary of the Commonwealth, in order that it may be ascertained, whether the same have been distributed agreeably to the directions of the Legislature."

Whereupon,

On motion, and by special order, the said amendment was again read, considered, and concurred.

Ordered, That the Clerk inform the House of Representatives thereof.

After some time, The Clerk reported that he had performed that service.

The Secretary of the Commonwealth presented a message from the Governor, together with the two last bills mentioned therein; and informed, that he had returned the other bills, mentioned in the message, to the House of Representatives.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses, in which they originated, to wit:

1 "An act declaring part of big Fishing creek and Catawissa creek in the county of Northumberland, public highways."

2 "A supplement to the act entitled "An act for establishing an health office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases."

3 "An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll from the boats, rafts, or vessels passing the same."

4 "An act to authorise and require the State-Treasurer to receive the interest on federal stock the property of this commonwealth, and for other purposes."

5 "An act authorising the State-Treasurer to transfer to certain individuals the stock held by the state for their use in the Loan-Office of the United States."

6 "An act to enable James Wallis to obtain a title to a lot of land in the township of Charlestown, and county of Chester."

7 "An act to enable persons appointed to offices of public trust, to recover official documents appurtenant to the said offices from persons detaining the same."

8 "An act directing the Register-General and State-Treasurer, to exhibit printed statements of their accounts."

9 "An act for the election of constables in the township of Pittsburg."

10 "An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife."

11 "An act to authorise Alexander M'Intire to erect a toll-bridge over French creek."

12 "An act to provide for the inspection of ground black oak bark, intended for exportation."

THOMAS M'KEAN.

Lancaster, April 2, 1804.

Mr. Barton, from the committee appointed for that purpose, reported, that the bills and resolution, entitled as follow, have been duly compared, to wit:

1 "An act to ascertain the rights of this state to lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek."

2 "An act directing the mode of selling unseated lands for taxes."

3 "An act for the punishment of perjury, or subornation of perjury."

4 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

5 "An act erecting certain election districts, and making alterations in other districts, within this Commonwealth."

6 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this Commonwealth, and for laying out private roads."

"Resolution for the further distribution of Carey and Bioren's edition of the laws of Pennsylvania."

The Clerk of the House of Representatives presented to the Speaker, for signature, the above-mentioned bills and resolution.

Whereupon,

The Speaker signed the said bills, and resolution.

After some time,

Mr. Lane from the committee appointed for that purpose, reported, that the above-mentioned bills and resolution, have been presented to the Governor for his approbation.

The Clerk of the House of Representatives, presented an extract from the journal of that House; a copy of which is as follows, to wit:

"*In the House of Representatives, April* 3, 1804.

"Resolved, That a committee be appointed, to join a committee of the Senate, (if the Senate shall appoint such committee) to inform the Governor, that the Legislature have agreed to adjourn this day; and to enquire whether he has any further communications to make at this time—and

"Ordered, That Messrs. Holgate, Findley, and Heister, be the committee for that purpose."

Adjourned till 5 o'clock in the afternoon.

SAME DAY, *in the Afternoon.*

The Senate met according to adjournment.

The Secretary of the Commonwealth, presented a message from the Governor, together with the resolution therein mentioned; and informed, that he had returned the bills mentioned in the message, to the House of Representatives.

The message was read; a copy of which is as follows, to wit:

To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

I have this day approved, and signed the following acts of the General Assembly, and directed the Secretary to return the same to the respective Houses in which they originated, viz.

1 "An act erecting certain election districts, and making alterations in other districts, in certain counties within this Commonwealth."

2 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads."

3 "An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek."

4 "An act for the punishment of perjury, or subornation of perjury."

5 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

6 "An act directing the mode of selling unseated lands for taxes."

7 "A resolution respecting the distribution of Carey and Bioren's edition of the laws."

THOMAS M'KEAN.

Lancaster, April 3, 1804.

On motion of Mr. Porter, seconded by Mr. Reed, the following resolution was twice read, considered, and adopted, to wit:

Resolved, That a committee be appointed, to join a committee of the House of Representatives, to inform the Governor, that the General Assembly is now ready to adjourn, and to enquire whether he has any further communications to make.

Ordered, That Mr. Porter, Mr. Reed, and Mr. Lower, be the committee for that purpose.

Mr. Pearson, from the committee appointed for that purpose, made report; and the same was read, as follows, to wit:

The committee, appointed to join a committee of the House of Representatives, and ascertain particularly, what laws, passed this session, should be printed in the newspa-

pers, at the public expence, in pursuance of a resolution of the General Assembly, passed in the present session; have agreed to recommend to their respective Houses, that the following laws, in addition to those reported on the 29th ult. be published in the newspapers, to wit:

1 "An act for the recovery of debts and demands, not exceeding one hundred dollars, before a justice of the peace, and for the election of constables, and for other purposes."

2 "An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this Commonwealth, by distributing the donation lands to all who are entitled thereto."

3 "A supplement to the act, entitled "An act concerning divorces and alimony."

4 "A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned."

5 "An act to provide for the payment of certain balances of purchase money yet due, and remaining charged on lands which have been patented on warrants obtained since surveys were originally made, in pursuance of old proprietary warrants and location, and for other purposes."

6 "An act making compensation to brigade inspectors, for printing blank forms."

7 "A supplement to the act entitled "An act to alter and amend the act entitled "An act to regulate the general elections within this commonwealth."

8 "An act for annexing part of Luzerne county, to the county of Lycoming."

9 "A supplement to the act, entitled "An act for establishing an health-office, and to secure the city and port of

Philadelphia from the introduction of pestilential and contagious diseases."

10 "An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll, from the boats, rafts or vessels, passing the same."

11 "An act enabling persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same."

12 "An act to provide for the inspection of ground black oak bark, intended for exportation."

13 "A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads."

14 "An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek."

15 "An act for the punishment of perjury, or subornation of perjury."

16 "An act making appropriations for the expences and support of government, for the year 1804, and for other purposes."

17 "An act directing the mode of selling unseated lands for taxes."

18 "A Resolution respecting the distribution of Carey and Bioren's edition of the laws."

Whereupon,

On motion, and by special order, the said report was again read, considered, and adopted.

On motion of Mr. Steele, seconded by Mr. Pearson,

The following resolution was twice read, considered, and adopted, to wit:

Resolved, That the Clerk be instructed, to ascertain with precision, how far the printers for the Senate, have complied with their contracts, agreeably to a resolution, passed the 19th of February, 1802; and that any deficiencies therein, shall be deducted in the final settlement of their accounts.

On motion of Mr. Pearson, seconded by Mr. Reed,

The following resolution was twice read, considered, and adopted, to wit:

Resolved, That the Clerk of the Senate, be directed to furnish the Secretary of the Commonwealth with a transcript of the titles of those laws passed in the present session, which are to be published in the newspapers, at the public expence:—and

Ordered, That it be presented to the House of Representatives, for concurrence.

After some time, The Clerk reported that he had performed that service.

Mr Porter, from the committee, appointed to wait upon the Governor, and inform his excellency, that the General Assembly have agreed to adjourn, *sine die*, this day, and to know whether he had any further communication to make to the Legislature, reported that the committee had performed that service, and that the Governor was pleased to say, he had no further communications to make.

A committee from the House of Representatives being introduced, informed the Senate, that the House of Representatives have finished their business, and are now ready to adjourn.

On motion, Mr. Steele was appointed a committee to acquaint the House of Representatives that the Senate have finished their business, and are now ready to adjourn.

After some time, Mr. Steele reported that he had performed that service.

The following resolution was laid upon the Clerks' table by Mr. Porter and Mr. Hartzell, and the same was read to wit:

Resolved, That the Senate vote their thanks to the Speaker, for his impartial and judicious conduct during the present session.

And, on the question, on agreeing thereto, being put by the Clerk; it was unanimously adopted.

Whereupon,

The Speaker rose, and expressed the high sense he felt of the approbatory vote of the Senate, in the discharge of his duties as Speaker.

Mr. Lane, from the committee appointed for that purpose, reported, that the acts passed in the present session have been deposited in the Rolls-Office, the titles of which are as follow, to wit:

1 An act to revive the act, entitled "A supplement to the act, entitled "An act to extend the powers of the justices of the peace of this state." Passed January 2, 1804.*

2 An act for the inspection of butter, intended for exportation. Approved January 7, 1804.

3 An act to ratify on behalf of the state of Pennsylvania, an amendment to the constitution of the United-States, relative to the choosing of a President and Vice-President of the United States. Approved January 7, 1804.

4 An act altering and erecting certain election districts, in the county of Somerset. Approved January 7, 1804.

5 An act to quiet the claim of James Gunn, to the estates real and personal of General James Gunn, deceased. Approved January 7, 1804.

* *This act was returned by the Governor, with his objections, and passed by a constitutional majority of the General Assembly.*

6 An act authorising Elizabeth Shiner, Christian Shiner and John Neyman, administrators of Christophel Shiner, deceased, to convey a certain messuage and tract of land, situate in New-Hanover township, in the county of Montgomery. Approved January 14, 1804.

7 An act enabling certain trustees, to sell and dispose of the real estate of Henry Meckley, a lunatic. Approved January 14, 1804.

8 An act directing the mode of taking testimony in cases of complaint against justices of the peace. Approved January 14, 1804.

9 An act for the relief of John Loney. Approved January 14, 1804.

10 An act to alter the limits of the borough of Beaver. Approved January 14, 1804.

11 An act to dissolve the marriage contract between Samuel Swan, and Hannah his wife. Approved January 20, 1804.

12 An act in aid of the Northumberland academy, in the town and county of Northumberland. Approved January 20, 1804.

13 An act erecting the townships of Rockhill, Bedminster, and Hiltown, in the county of Bucks, into an election district. Approved January 20, 1804.

14 An act for the relief of Alexander Boaticar. Approved January 30, 1804.

15 A supplement to the act, entitled "An act to enable the owners of Greenwich island, to embank and drain the same, to keep the outside banks and dams in good repair for ever, and to raise a fund to defray sundry contingent yearly expences accruing thereon." Approved January 30, 1804.

16 A supplement to an act, entitled "An act to provide for the erection of houses, for the employment and support of

the poor, in the counties of Chester and Lancaster." Approved January 30, 1804.

17 An act dissolving the marriage between Cornelius Burk and Elizabeth his wife. Approved January 30, 1804.

18 An act declaring Le Pœuf creek, in the county of Erie, from the town of Waterford, to Brotherton's mills, a public highway. Approved January 30, 1804.

19 An act to incorporate the Union insurance company of Philadelphia. Approved February 6, 1804.

20 An act to incorporate the Phœnix insurance company of Philadelphia. Approved February 6, 1804.

21 An act to continue in force for a limited time, the act, entitled "An act for instituting a board of property, and for other purposes therein mentioned." Approved February 6, 1804.

22 An act to raise by way of lottery, a sum not exceeding eight thousand dollars, for the use and benefit of the minister, wardens, and vestry of the African Episcopal church of Saint Thomas, in the city of Philadelphia. Approved February 6, 1804.

23 An act appointing a trustee in the county of Centre. Approved February 6, 1804.

24 An act declaring Wyosox creek from the mouth thereof, to Jacob Meyers's mill-dam, in the county of Luzerne, a public stream or highway. Approved February 6, 1804.

25 An act to provide for the erection of a house for the employment and support of the poor in the county of York. Approved February 6, 1804.

26 An act prohibiting the commissioners of the respective counties of this Commonwealth, from selling, for a limited time, unseated lands for taxes. Approved February 8, 1804.

27 An act to regulate the fisheries in the river Delaware and its branches and for other purposes. Approved February 8, 1804.

28 An act for the relief of Alexander Patterson. Approved February 10, 1804.

29 An act to enable the Governor of this Commonwealth to incorporate a company for making an artificial road from Erie to Waterford. Approved February 13, 1804.

30 An act declaring Clearfield creek, in the county of Huntingdon, and Sinnemahoning creek, in the county of Lycoming, public highways. Approved February 13, 1804.

31 An act to provide for the erection of a house, for the employment and support of the poor, in the county of Delaware. Approved February 13, 1804.

32 An act for the relief of George Stevenson. Approved February 13, 1804.

33 A supplement to an act for establishing a nightly watch, providing lamps and supporting pumps for public use, in the borough of Lancaster, in the county of Lancaster; passed the fourth day of April, one thousand seven hundred and ninety two. Approved February 20, 1804.

34 A supplement to an act, entitled "An act to empower the overseers and guardians of the poor of the several townships of this commonwealth, to recover certain fines, penalties and forfeitures, and for other purposes," passed the fourth day of April, one thousand eight hundred and three. Approved February 20, 1804.

35 An act altering the place of holding elections in Southampton township, in Somerset county. Approved February 20, 1804.

36 An act for the relief of John Gilchrist. Approved February 20, 1804.

37 An act to empower the heirs, executors or administrators, to the estate of John Hirst, senior, deceased, to sell and convey a certain lot or piece of ground, with the buildings thereon erected, in the city Philadelphia. Approved February 20, 1804.

38 An act authorising and directing the Comptroller and Register-Generals to adjust and settle a certificate with John Evans, lawful administrator of the estate of Thomas M'Farlane, deceased, in whose name it was issued. Approved February 27, 1804.

39 An act declaring Mushannon creek (a boundary line between Centre and Huntingdon counties) a public highway. Approved March 5, 1804.

40 An act to enable the Governor of this commonwealth to incorporate a company, for making an artificial road from Lancaster, through Elizabeth-town, to Middletown. Approved March 5, 1804.

41 An act for the relief of George Eicholtz. Approved March 5, 1804.

42 An act to enable the Governor of this commonwealth to incorporate a company for making an artificial or turnpike-road, from the intersection of Bristol and Newtown roads, at the rock in Oxford, through Bustleton and Smithfield, in the county of Philadelphia, to the Buck tavern in Southampton, in the county of Bucks. Approved March 5, 1804.

43 An act appointing the place whereupon to erect the court-house and public offices for the county of Crawford. Approved March 5, 1804.

44 An act to alter the place of holding the elections in the seventh election district, in the county of Huntingdon. Approved March 5, 1804.

45 An act authorising the Governor of this commonwealth to incorporate a company, for making an artificial road from the western side of Laurel-hill, near Union-Town, to the state line, in a direction towards Cumberland, in the state of Maryland. Approved March 5, 1804.

46 An act declaring part of Conedogwinet Creek, in the

county of Cumberland, a public highway. Approved March 5, 1804.

47 An act to alter an act, entitled "An act to erect the town of Pittsburg, in the county of Allegheny, into a borough, and for other purposes therein contained. Approved March 5, 1804.

48 An act to enable the administrators of Conrad Weiser, to sell, and make title to certain lots, adjoining the town of Selinsgrove, in Northumberland county. Approved March 5, 1804.

49 An act to erect Somerset town, in the county of Somerset, into a borough. Approved March 5, 1804.

50 An act to enable the Governor of this Commonwealth to incorporate a company to make an artificial road from the top of Chesnut-hill, through Flour-town, to the Springhouse tavern, in Montgomery county. Approved March 5, 1804.

51 An act to incorporate the Philadelphia Bank. Approved March 5, 1804.

52 An act for the relief of Robert Harris. Approved March 12, 1804.

53 An act authorising Joseph Potts and Joseph Thomas, administrators of Martha Potts, deceased, to sell and convey a certain messuage and lot of land, in the township of Plymouth, and county of Montgomery. Approved March 12, 1804.

54 An act to authorise the Governor of this Commonwealth, to incorporate a company for erecting a bridge over the river Delaware, near the town of Milford, in the county of Wayne. Approved March 12, 1804.

55 An act erecting one new election district, and changing the places of holding elections in two other districts in the county of Northumberland. Approved March 12, 1804.

56 An act to erect Weisenburg and Lynn townships, in the county of Northampton, into a separate election district. Approved March 12, 1804.

57 An act to enable Alexander M'Pherson to obtain a title to a lot of land in the township of Sadsbury, and county of Chester. Approved March 12, 1804.

58 A supplement to the act, entitled, "An act to enable executors and administrators, by leave of court, to convey lands and tenements contracted for with their decedents, and for other purposes therein mentioned." Approved March 12, 1804.

59 An act to incorporate the Delaware insurance company of Philadelphia. Approved March 12, 1804.

60 An act to enable and enforce the owners and possessors of a certain tract of marsh meadow, situate partly in the township of Lower Chichester and the township of Chester, in the county of Delaware, adjoining the river Delaware, to keep the banks, dams, sluices and flood-gates gates in repair, and for other purposes. Approved March 19, 1804.

61 An act to raise by way of lottery, a sum not exceeding ten thousand dollars, for the use and benefit of the trustees and members of the fourth Presbyterian church in the city of Philadelphia. Approved March 19, 1804.

62 An act to erect a new election district in the county of Franklin. Approved March 19, 1804.

63 An act enjoining certain duties on the Surveyor-General. Approved March 19, 1804.

64 An act for the relief of Alexander Simonton. Approved March 19, 1804.

65 An act to provide for the more effectual education of the children of the poor, gratis. Approved March 19, 1804.

66 An act to raise by way of lottery, a sum of money,

not exceeding two thousand and sixty dollars, to finish and complete two churches, in the county of Franklin. Approved March 19, 1804.

67 An act for the relief of Jacob Walter, the legal representative of Michael Walter, deceased. Approved March 19, 1804.

68 An act to appropriate a sum of money, for viewing, marking, and opening a road from Tuscarora Valley, in Mifflin county, to Sherman's Valley, in Cumberland county. Approved March 19, 1804.

69 An act for the relief of the heirs of captain John Brady, late of Northumberland county, deceased. Approved March 1, 1804.

70 An act to enable the Governor of this commonwealth to incorporate a company, to make an artificial road from the Susquehanna river, at or near Wright's ferry, to the borough of York. Approved March 19, 1804.

71 An act to enable Margaret Keim to sell and convey a certain tract of land in Middletown township, Cumberland county. Approved March 19, 1804.

72 An act to regulate the administering of certain oaths. Approved March 19, 1804.

73 An act for the relief of Peter Keplinger. Approved March 19, 1804.

74 An act to authorise the select and common councils of the city of Philadelphia, to erect market-houses in the said city. Approved March 19, 1804.

75 An act to enable the Governor of this commonwealth to incorporate a company, for making an artificial road, by the best and nearest route, from the north-eastern branch of the Susquehanna river, between the Lower Whopehawley and Nescopeck creeks, in Luzerne county, to the north side of Nesquehoning creek, near its entrance into the river Lehigh. Approved March 19, 1804.

76 An act for the relief of [illegible] ervisors of Somerset township, in Somerset county, for the year one thousand eight hundred and one. Approved March 26, 1804.

77 An act to incorporate the Philadelphia insurance company. Approved March 26, 1804.

78 An act to erect parts of Lycoming, Huntingdon, and Somerset counties, into separate county districts. Approved March 26, 1804.

79 An act in confirmation of a partition made of certain lands in Lycoming county. Approved March 26, 1804.

80 An act transferring the powers of the trustees of the county of Adams, to the commissioners of said county, and authorising them to levy a further sum for completing the public buildings therein. Approved March 26, 1804.

81 An act for the relief of Elizabeth Febiger. Approved March 26, 1804.

82 An act for the recovery of debts and demands, not exceeding one hundred dollars, before a justice of the peace, and for the election of constables, and for other purposes. Passed March 28, 1804.*

83 An act authorising the Governor to incorporate a company for making an artificial road in Wayne and Luzerne counties. Approved March 29, 1804.

84 An act granting relief to the heirs of Michael Irick, deceased. Approved March 29, 1804.

85 An act to incorporate an academy or public school in the town of Norris, and county of Montgomery, and for other purposes therein mentioned. Approved March 29, 1804.

86 An act altering and extending the powers of the cor-

* *This act was kept by the Governor ten days, consequently it became a law without his signature.*

poration of the borough of Bristol. Approved March 29, 1804.

87 An act to erect the town of Morrisville into a borough. Approved March 29, 1804.

88 An act to extend and continue an act, entitled "A supplement to the act, entitled "An act to complete the benevolent intention of the Legislature of this Commonwealth, by distributing the donation lands to all who are entitled thereto." Approved March 29, 1804.

89 An act for the relief of Marcus Hulings, jun. Approved March 29, 1804.

90 A supplement to an act, entitled "An act to authorise the Governor of this commonwealth to incorporate a company for erecting a bridge over the river Delaware, at or near Trenton. Approved April 2, 1804.

91 An act conferring certain powers on the commissioners of Berks county, and for other purposes. Approved April 2, 1804.

92 An act authorising Jacob Eichelberger and Frederick Shultz, to sell and convey a certain lot of land in Heidelberg township, in the county of York, belonging to the German Lutheran congregation in and near Hanover, in the said county. Approved April 2, 1804.

93 An act for dividing the borough of Lancaster into two election wards. Approved April 2, 1804.

94 An act to empower Chambers Gaw, to sell and convey certain real estate therein mentioned and for other purposes. Approved April 2, 1804.

95 A supplement to the act, entitled "An act concerning divorces and alimony. Approved April 2, 1804.

96 An act to provide for opening and improving a road through Igoe's narrows, in the county of Huntingdon. Approved April 2, 1804.

97 An act for rebuilding the bridges over Swatara creek and Deep creek, on the Tulpehocken road, in the county of Berks. Approved April 2, 1804.

98 A further supplement to the act, entitled "An act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned." Approved April 2, 1804.

99 An act to provide for the payment of certain balances of purchase money yet due, and remaining charged on lands which have been patented on warrants obtained since surveys were originally made, in pursuance of old proprietary warrants and location, and for other purposes. Approved April 2, 1804.

100 An act for the relief of David Jackson. Approved April 2, 1804.

101 An act for the relief of Nicholas Reim. Approved April 2, 1804.

102 An act making compensation to brigade inspectors, for printing blank forms. Approved April 2, 1804.

103 An act to provide for the copying a certain ancient book of records, in the office of the recorder of deeds, in the county of Chester. Approved April 2, 1804.

104 A supplement to the act, entitled "An act to establish a board of wardens for the port of Philadelphia, and for the regulation of pilots and pilotages, and for other purposes therein mentioned." Approved April 2, 1804.

105 A supplement to the act, entitled "An act to alter and amend the act entitled "An act to regulate the general elections within this commonwealth." Approved April 2, 1804.

106 An act for annexing part of Luzerne county, to the county of Lycoming. Approved April 2, 1804.

107 An act to authorise Alexander M'Intire, to erect a toll-bridge over French creek. Approved April 3, 1804.

108 An act directing the Register-General and State-Treasurer, to exhibit printed statements of their accounts. Approved April 3, 1804.

109 An act for the punishment of perjury, or subornation of perjury. Approved April 3, 1804.

110 An act to provide for the inspection of ground black oak bark, intended for exportation. Approved April 3, 1804.

111 An act to dissolve the marriage contract between Thomas Dewees, and Mary his wife. Approved April 3, 1804.

112 An act directing the mode of selling unseated lands for taxes. Approved April 3, 1804.

113 An act erecting certain election districts, and making alterations in other districts, in certain counties within this Commonwealth. Approved April 3, 1804.

114 A supplement to the act entitled "An act for establishing an health office, and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases. Approved April 3, 1804.

115 An act for ascertaining the right of this state to certain lands, lying north and west of the rivers Ohio and Allegheny, and Conewango Creek. Approved April 3, 1804.

116 An act to authorise and require the State-Treasurer to receive the interest on federal stock the property of this commonwealth, and for other purposes. Approved April 3, 1804.

117 An act enabling persons appointed to offices of public trust, to recover official documents appurtenant to the said offices, from persons detaining the same. Approved April 3, 1804.

118 An act for the election of constables in the township of Pittsburg. Approved April 3, 1804.

119 A supplement to the act, entitled "An act for laying out and keeping in repair, the public highways within this commonwealth, and for laying out private roads." Approved April 3, 1804.

120 An act to authorise the proprietor or proprietors of the Conewago canal, to receive a toll, from the boats, rafts or vessels, passing the same. Approved April 3, 1804.

121 An act to enable James Wallis to obtain a title to a lot of land in the township of Charlestown, and county of Chester. Approved April 3, 1804.

122 An act declaring part of big Fishing creek and Catawissa creek in the county of Northumberland, public highways. Approved April 3, 1804.

123 An act making appropriations for the expences and support of government, for the year 1804, and for other purposes. Approved April 3, 1804.

124 An act authorising the State-Treasurer to transfer to certain individuals the stock held by the state for their use in the Loan-Office of the United States. Approved April 3, 1804.

RESOLUTIONS.

1 A resolution requiring the Comptroller-General to lay before the Legislature, a statement of such proceedings, if any, as have been had, agreeably to a resolution passed 18th February, 1802. Approved December 28, 1803.

2 A resolution for distributing the laws of the state, printed by Mathew Carey and John Bioren. Approved January 14, 1804.

3 A resolution authorising the Comptroller-General to employ counsel to prosecute the suit brought by the commonwealth, against the heirs and devisees of David Rittenhouse, deceased. Approved March 19, 1804.

4 A resolution respecting the printing of the laws in the newspapers, at the public expence. *Approved April 2, 1804.*

5 A resolution for the printing of certain laws extending the jurisdiction of the justices of the peace. Approved *April 2, 1804.*

6 A resolution for the further distribution of Carey and Bioren's edition of the laws of Pennsylvania. Approved *April 3, 1804.*

Thereupon,

The Senate adjourned *Sine Die.*

GEORGE BRYAN,

Clerk of the Senate.

EXPIRATION OF THE APPOINTMENTS OF THE MEMBERS OF SENATE.

1804.

John Pearson,
William Rodman,
Christian Lower,
Matthias Barton,
Aaron Lyle,
James Harris.

1805.

John Porter,
Jonas Hartzell,
Robert Whitehill,
John Piper,
Thomas Morton,
William M'Arthur:
William Reed,

1806.

James Gamble,
John Kean,
John Heister,
John Steele,
Jacob Follmer,
Presley Carr Lane.

1807.

Edward Heston,
Thomas Mewhorter,
John Richards,
Rudolph Spangler,
James Poe,
James Brady.

INDEX

TO THE

JOURNAL

OF THE

SENATE

OF

PENNSYLVANIA.

SESSION 1803—4.

LANCASTER,
PRINTED BY WILLIAM DICKSON.
1807

Exhibit C

JOURNAL

OF THE

COURT OF IMPEACHMENT

FOR THE TRIAL OF

ROBERT PORTER, ESQUIRE,

President Judge of the third Judicial District of Pennsylvania,

FOR

MISDEMEANORS IN OFFICE,

BEFORE

THE SENATE

OF THE

COMMONWEALTH OF PENNSYLVANIA.

HARRISBURG:

PRINTED BY CAMERON & KRAUSE,

1825.

TUESDAY, December 13, 1825.

At half past three o'clock, P. M. the Senate proceeded to organize themselves as a court of impeachment. The following members present:

Henry Allshouse, William Audenried, Thomas Burnside, Lewis Dewart, Stephen Duncan, James Dunlop, George Emlen, Christian Garber, Daniel Groves, John Hamilton, William G. Hawkins, Mathew Henderson, Zephaniah Herbert, James Kelton, John Kerlin, Henry King, Ely Kitchin, Jonathan Knight, John Leech, Joel K. Mann, William M'Ilvain, Robert Moore, Alexander Ogle, Samuel Power, Adam Ritscher, John Ryon, junr. George Schall, John St. Clair, Moses Sullivan, Joel B. Sutherland, Henry Winter, Alexander Mahon, *President.*—32

The oath prescribed by the constitution, and in the form required by the resolution of the senate, adopted on this day, was administered to the president, by Mr. Burnside,

After which,

Mr. Sutherland asked leave to be excused from serving as a member of the court, on account of his having signed the articles of impeachment, as Speaker of the House of Representatives.

Which was not agreed to.

Mr. King asked leave to be excused from serving as a member of the court, on account of his being a witness on the part of the commonwealth.

Which was agreed to.

Mr. Sullivan asked leave to be excused from serving as a member of the court, on account of his having been, at the time the charges were preferred, a member of the House of Representatives.

On the question,

Will the court excuse Mr. Sullivan from serving?

The yeas and nays were required by Mr. Emlen and Mr. Ogle, and were as follow:

YEAS.	YEAS.
Messrs. Burnside,	Messrs. Kitchin,
Dewart,	Knight,
Duncan,	M'Ilvain,
Dunlop,	Schall,
Emlen,	Sutherland,
Henderson,	Winter,
Kelton,	Mahon, president, 15.
Kerlin,	

NAYS.		NAYS.	
Messrs.	Allshouse,	Messrs. Mann,	
	Audenried,	Moore,	
	Garber,	Ogle,	
	Groves,	Power,	
	Hamilton.	Ritscher,	
	Hawkins,	Ryon,	
	Herbert,	St. Clair,	15.
	Leech,		

So it was determined in the negative.

The president administered the oath required and prescribed, to the following members, viz: Messrs Herbert, Power, Mann, St. Clair, M'Ilvain, Dunlop, Moore, Henderson, Hamilton, Winter, Ogle, Audenried, Ryon, Hawkins, Duncan Kelton, Burnside, Emlen, Kitchin, Sutherland and Dewart, who subscribed their respective names thereto.

And the affirmation, to Messrs. Schall, Garber, Groves, Ritscher, Allshouse, Leech, Knight, Sullivan and Kerlin.

The court being now duly organized and opened by proclamation.

On motion,

Ordered, that the clerk give notice to the House of Representatives, that the court of impeachment for the trial of Robert Porter, Esq. president judge of the courts of common pleas for the third judicial district of Pennsylvania, is ready to proceed to business.

In a few minutes the managers. viz: Messrs. Maclean, Irwin, Thomas, Cunningham, Farrel, W. B. Forster and M'Reynolds, accompained by the House of Representatives, in committee of the whole, entered and took the seats assigned them respectively.

The president ordered Robert Porter, Esq. president judge of the courts of common pleas of the third judicial district of Pennsylvania, to be called; and on his appearance at the bar, the president directed John De Pui, clerk of the Senate, to read the articles of impeachment preferred by the late House of Representatives, in their own name and in the name of the people of Pennsylvania, a copy of which is as follows:

ARTICLES of impeachment exhibited by the House of Representatives of the commonwealth of Pennsylvania, in their own name and in the name of the people of Pennsylvania, against Robert Porter, Esquire, president judge of the third judicial district of the commonwealth of Pennsylvania, in support of their impeachment against him for misdemeanors in office.

ARTICLE I.

That the said Robert Porter, being duly appointed and commissioned president judge of the third judicial district of the commonwealth of Pennsylvania, composed of the counties of Berks, Northampton and Lehigh, regardless of the duties of his office, in violation of the constitution and laws of this commonwealth, and the sacred rights guaranteed to every citizen, to have justice administered without sale, denial or delay, the said Robert Porter, in the case of Jacob W. Seitzinger against Henry Zeller, a judgment entered in the common pleas of Berks county, on a warrant of attorney, some of the creditors of Zeller applied to the court to open the judgment and take defence to it. It was agreed by the counsel of Seitzinger, that the judgment should be considered as opened and all matters referred to Judge Porter, under the act of one thousand seven hundred and five; that Judge Porter proceeded in the business, and made a report reducing the amount of the judgment from eleven hundred dollars to five hundred and seventy-six dollars and sixty-three cents; to which exceptions were filed by the counsel of Seitzinger. When the exceptions came up for argument, the counsel for the creditors of Zeller moved to dismiss them, on the ground of their not being specific enough. Judge Porter, against the will of one of the parties, presided in the court, on the argument of the motion to dismiss the exceptions, and when called on to furnish a statement of the calculations and reasons upon which his report was made, he replied that he had none or kept none, and refused to give any statement, and finally dismissed the exceptions, for the reasons assigned by the counsel for the creditors. Thus wilfully and corruptly denying a citizen the right of having justice administered to him without sale, denial or delay.

ARTICLE II.

That the said Robert Porter, president judge as aforesaid, while holding a court in Allentown, in the county of Lehigh, about the year one thousand eight hundred and eighteen, the said judge Porter ordered a constable to bring into court Abraham Beidleman and John Young, innkeepers of the said town; that the said Judge Porter, sitting on the bench in court, did reprimand and insult the said Beidleman and Young, and accused them of suffering gaming in their houses and keeping disorderly houses, and threatened if they did so again, he would take away their licenses and punish them severely, or words to that effect; and said further to them, "Go home, you villains, and mind your business," or words to that effect. And also, that during the sitting of the court in Lehigh county, in May, one thousand eight hundred and twenty-four, Judge Porter sent a constable for George Haberacker, of Allentown, innkeeper, and in open court, from the bench reprimanded and in-

sulted the said Haberacker, by telling him that he understood that he, the said Haberacker, had suffered gambling in his house, and if ever he did so again, he would punish him severely for it, and called his attention to a rule of court on the subject of licensed innkeepers permitting gaming in their houses, and then told the said Haberacker to walk off and mind his business—although there was no oath, presentment or charge whatsoever against either of the said persons. By which outrageous, tyrannical and unlawful conduct, the personal liberty and constitutional rights of the said Beidleman, Young and Haberacker were violated, the character of the court degraded and the authority of the laws brought into contempt.

ARTICLE III.

That the said Robert Porter, president judge as aforesaid, in a case where a certain Mary Waltz, alias Mary Everhart, was bound over before Jacob Weygandt, jr. a justice of the peace of Northampton county, on a charge of larceny, endeavored to prevail upon Jacob Reese, jr. the prosecutor, to withdraw his prosecution, and wished him to sign an instrument of writing, certifying that the defendant was not guilty, and that it was not larceny but trespass; that the said Jacob Rees, jr. refused, and insisted that she was guilty, and that it had been proved before the justice. Judge Porter then accompanied Reese to the office of justice Weygandt, and told the justice he wished the case of Mary Waltz disposed of in some way without a return to court, and proposed to make it a case of trespass; the justice replied, that he Judge Porter knew that he could not avoid returning the recognizance to court, nor could he sanction the making up of such a case; that he had no objection to their settling the case in court, and that he would return the recognizance, which he did, and the defendant was tried and convicted in the court where Judge Porter presided. Thus unlawfully attempting to suppress and compound a felony, to screen the guilty from punishment, by endeavoring to induce a judicial officer to violate his duty, and thereby commit a misdemeanor in office, in contempt of the laws, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE IV.

That the said Robert Porter, president judge as aforesaid, in the case of the commonwealth *vs.* John Mills, on a charge of larceny, for stealing a bond or single bill, tried before the said judge Porter, at a court of quarter sessions, in and for the county of Northampton, at the January term one thousand eight hundred and nineteen, after the evidence had been gone through on both sides, Judge Porter urged the parties to compromise and settle the business, to which they agreed, and a bond was drawn up in court and signed by the prisoner Mills, with two sureties,

for one hundred and sixty or seventy dollars, and delivered it to George Levers, the prosecutor, being the amount of his claim against Mills; and the said Judge Porter then directed the jury to acquit the prisoner, which they according did—thus wilfully and unlawfully permitting a prisoner under a charge of larceny to purchase his acquittal, by executing a bond in open court, and delivering it to a prosecutor, in violation of the constitutional right of every citizen to have justice administered according to law, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE V.

That the said Robert Porter, president judge aforesaid, in a case of Wannemacher *vs.* Seckler, which was an action of trespass, assault and battery, tried before the said Judge Porter, at a court of common pleas, held in and for the county of Lehigh, the said Judge Porter charged the jury in favor of the plaintiff, the jury brought in a verdict for the defendant; that he Judge Porter, refused to receive the verdict, and told the jury that the plaintiff was entitled to a verdict by law, or words to that effect; that Henry King, the counsel for the defendant, told the jury that they had a right to persist in their verdict, if they thought proper. Judge Porter manifested strong symptoms of passion, and told the said counsel, in presence of the jury, and with a loud voice, that he the said counsel was endeavoring to make the jury perjure themselves, or words to that effect; intending thereby to intimidate and insult the said jury, by charging them with perjury in the verdict they had agreed on; that he the said Judge Porter, did require the jury to go out again and reconsider their verdict; that they did so, and again returned with the same verdict; he Judge Porter, immediately upon its being recorded, did order the verdict to be set aside, and directed a new trial, without motion or application being made by any person. By all which improper, unlawful and injurious conduct, did obstruct the administration of justice, infringe the constitutional right of trial by jury, insult a co-ordinate branch of the court, in the proper discharge of their duty, evincing disgraceful passions and partialities, thereby denying justice and bringing the administration of it into contempt.

ARTICLE VI.

That in the case of James Hays *vs.* Hugh Bellas, November term, one thousand eight hundred and fifteen, number twenty-three, tried in Northampton county, at the April term, one thousand eight hundred and eighteen, before the said Judge Porter, exceptions were taken to testimony received, and likewise to the opinion of the court delivered by Judge Porter, upon which the cause was finally carried by writ of error to the supreme court; that in the mean time, before the record of the proceedings in the

case was taken from the court below, Judge Porter altered and falsified said record in two particulars, to wit: after his opinion was signed and filed according to law, he, Judge Porter, added by interlineation, as appears by said record, the following words: "a man may, if he pleases, buy an imperfect right, and if he is not imposed upon, but buys with the knowledge of the imperfections, he shall, in law, be held to the performance of his contract." And likewise, upon one of the bills of exceptions in the above named case, as appears by the record, he Judge Porter wrote along the margin, the following words: "and the same papers were objected to for want of proof of the hand writing of the said Henry L. Clark, and for other causes, but it was finally and mutually agreed that the whole correspondence between the parties should be given in evidence, and that the third exception before mentioned be therefore withdrawn, and the last mentioned papers were read in evidence accordingly," which interpolation was untrue, unauthorised and unwarrantable; thus wilfully and illegally, obstructing and violating the legal rights of the parties.

ARTICLE VII.

That the said Robert Porter, president judge as aforesaid, disregarding the duties of his office, and the positive provisions of the twenty-fifth section of the act, entitled "An act to alter the judiciary system of this commonwealth," passed the twenty-fourth of February, one thousand eight hundred and six, by refusing or neglecting to reduce his opinions to writing, in the cases of Elizabeth Swenk, widow of Mathias Swenk, *vs.* Daniel Ebert.

Same *vs.* same. Appeals from the judgment of a justice of the peace to the court of common pleas of Northampton county.

Also, in the cases of

Grim and Helfrick *vs.* Seip's administrators.

Same *vs.* same, in the court of common pleas of Lehigh county, though required so to do, contrary to the provision of said act, and the legal rights of the parties.

ARTICLE VIII.

That, that the said Robert Porter, president judge as aforesaid, in the matter of the appeal of James Greenleaf, from the assessment of the supervisors of the public roads and highways of the township of Northampton, in the county of Lehigh, determined at a general court of quarter sessions, of the peace held in and for the said county, at the September session, one thousand eight hundred and twenty-four, unlawfully altered the valuation on which the assessment of the said road tax for the year one thousand eight hundred and twenty-three, on the appellant's property in said township was made, and which had

been taken from the last return of taxable property, made in the township for the last county tax and in conformity with the provisons of the law—and in accepting an assessment made by the appellant himself, and reduced certain lots from one hundred and fifty dollars each to seventy five, and the total valuation of the appellant's property in the township of Northampton, from forty-six thousand five hundred and eighteen dollars, to twenty-four thousand one hundred and thirty-five dollars; thus reducing the appellant's road tax from two hundred and twenty-three dollars and twenty cents to one hundred and fifteen dollars and eighty cents. By all of which unlawful proceedings, the just rights of the inhabitants of the said township have been unlawfully and willfully disregarded; and the provisions of the acts, of assembly, in such cases made and provided, disregarded.

ARTICLE IX.

That the said Robert Porter, president judge as aforesaid, at a court held in Northampton county, did threaten, intimidate and insult, in open court, on the bench, John Cooper, Esquire, one of the judges of the court of common pleas of Northampton county, duly appointed and commissioned, to wit: Two boys of the names of Smith, sentenced by the court of quarter sessions of Northampton county, to give surety to keep the peace and also to pay the costs, were imprisoned until the sentence should be complied with. Some few days after, judge Cooper was informed that he was wanted in court; he immediately went, and found Judge Porter alone on the bench, who stated to Judge Cooper, that one of the boys was sick, and said they had better discharge both of them, and direct the county to pay the costs. The boys were both in court, and Judge Cooper expressing some doubts as to the sickness of the boy, and his dissent to liberating both of them on that account, Judge Porter got into a violent passion, and in a loud voice, with a violent and rude manner, in the presence of a number of persons in court, said to Judge Cooper, "If the boy dies in jail, his blood be on your head," which expressions, with other rudeness and violence then exhibited by Judge Porter, caused Judge Cooper to leave the bench. Thus illegally and unconstitutionally usurping an authority not delegated by the constitution and laws; by endeavoring by coercion and threats to deprive the said Judge Cooper from exercising his right as a judge of the said court, thereby corruptly abusing and degrading the high office of president and judge.

ARTICLE X.

That the said Robert Porter, president judge aforesaid, in the case of Witchell *vs.* German, an action of ejectment tried before the said Robert Porter and John Cooper, in the com-

mon pleas of Northampton county, the said Judge Porter charged the jury in favor of the defendant, the jury found a verdict for the plaintiff. A motion was made for a new trial; Judge Cooper told Judge Porter that the verdict was according to the evidence, and that he approved of it; and supposing it a clear case of right, he was not willing to disturb the verdict. Judge Porter struck his fist on the desk, in a violent manner, and with great displeasure said, if ever there was a case where a new trial ought to be granted, this was the case, and in a great hurry and anger sent for Judge Wagner; Judge Wagner soon came to the court, and appeared disposed not to interfere, as he had not heard the case; Judge Porter exhibited great violence and talked loudly, with great gesticulation and anger; the counsel on both sides addressed the court in a rapid manner, and there was great confusion and disorder in the court; Judge Wagner finally said if he must decide, he would agree with the president, and a rule to shew cause was finally granted.

Also, in another instance, while the trial list was before the court, the jury unemployed, Judge Cooper invited the attention of Judge Porter to the trial list. Judge Porter turned round in a violent and exceedingly rude manner, and said "he would thank him for less of his dictation; Judge Cooper replied he did not intend any thing like dictation, when Judge Porter rose from his seat in a great passion, and rapidly went out of the court house, and left Judge Cooper alone on the bench. Thus illegally and unconstitutionally, usurping an authority not delegated; endeavouring by violence and passion, to prevent the said Judge Cooper from exercising his legal and constitutional rights as a judge of the said court, exhibiting unbecoming passions and prejudice on the bench, and thereby degrading the high office of president and judge, and bringing the court and the laws into contempt.

ARTICLE XI.

That the said Robert Porter, president judge as aforesaid, in the case of Reese vs. Sickman, tried in the court of common pleas of Northampton county, during the argument of the counsel, the said Judge Porter stood at some distance from his seat; and immediately at the close of the argument, he the said Judge Porter, returned to his seat and commenced charging the jury. The said Judge Cooper made several efforts to speak with Judge Porter, but his conduct was so abashing and his movements so rapid, that he the said Judge Cooper, was prevented from expressing his opinion to, or consulting with the said Judge Porter; that the charge of the said Judge Porter, to the jury was against the opinion of Judge Cooper, and when he had finished his charge, the said Judge Cooper was about addressing the jury, and had proceeded to say, "that he was of a different opinion," when the said Judge Porter turned round to him, and with an angry countenance and loud voice, said " it is

the opinion of the court, sir;" and thereby prevented the said Judge Cooperf rom proceeding in his address to the jury; thus illegally and unconstitutionally did stop, threaten and prevent the said Judge Cooper from addressing a jury, as of right he might do; abusing and attempting to degrade the high offices of president and judge as aforesaid to the denial and prevention of public right and due administration of justice, and to the evil example of all others in like case offending, and against the peace and dignity of the commonwealth of Pennsylvania.

ARTICLE XII.

That the said Robert Porter, president judge as aforesaid, has on frequent occasions treated the said Judge Cooper in a rude insolent and contemptuous manner, while holding the courts in Northampton county by neglecting and refusing to consult him; by paying no regard to his opinion; and when papers were handed to the court, which it was necessary for the said judges to sign or examine, he the said Judge Porter, would either throw or push such paper towards Judge Cooper in a rude, insolent and contemptuous manner. Thus by his violent, wilful and arbitrary conduct, obstructing the due admistration of justice; usurping and exercising an authority not delegated to him; attempting to degrade one of the judges of the court, in which he the said Robert Porter presides, and thereby degrading the court of justice, and bringing the law into contempt, in violation of the constitution and against the peace and dignity of the commonwealth.

And the said House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any other accusation or impeachment against the said Robert Porter, president judge aforesaid, and also of replying to the answers which he the said Robert Porter shall make unto the said articles, or to any or either of them, and of offering proof of the said premises, or of any of them, or of any other accusation or impeachment, which shall or may be exhibited by them, as the case shall require, do demand that the said Robert Porter, president as aforesaid, may be put to answer all and every of the premises, and that such proceedings, examintion, trial and judgment, may be against and upon him had, as are agreeable to the constitution and laws of this commonwealth, and the said House of Representatives are ready to offer proof of the premises, at such time as the Senate of the said commonwealth of Pennsylvania shall appoint.

JOEL B. SUTHERLAND, *Speaker*
of the House of Representatives.

The president then required of Robert Porter, Esqr. what answer if any, he had to make in his behalf, to the articles of impeachment, preferred against him.

The respondent thereupon desired that his answers might be read by his brother, James M. Porter, Esq., and they were accordingly read by him, as follows:

The respondent in his proper person comes here into court, and protesting that there is no crime or misdemeanor laid to his charge, or particularly set forth in the said articles of impeachment, or any of them, to which he is or ought to be bound by law to answer, and saving and reserving to himself now and at all times hereafter, all and every benefit and advantage of exception to the said articles and every of them, for the insufficiency thereof, and the defects and imperfections, both as to matter of form and matter of substance, therein appearing in point of law or otherwise; and protesting that he ought not to be injured by any expressions, or terms, or want of form in these his answers; he begs leave to submit in detail the following facts and observations, by way of answer to the said articles of impeachment.

The respondent begs leave to premise that it behoves him for the legal justification of his conduct, and for the vindication of his character, which to him is particularly dear, to meet each charge with as full and particular an answer, as the circumstances of his case will admit.

The charges which have been preferred against him, are grounded upon exparte evidence; they have for months been spread before the public; and he deems it but right, that the facts and circumstances of each case referred to, should be fully detailed, as well to correct the false impression which the exhibition of the articles of impeachmeet was calculated to make, as to apprize this honorable court of the course and nature of his defence, so that his judges having the whole ground of his defence before them, will be enabled to understand, and apply the testimony and the arguments.

The facts on which the impeachment is said to rest are various, embracing a period of nearly eight years of the respondent's official conduct in three of the counties, which have at different times composed the judicial district, in which it has been his lot to preside. These facts are numerous, many of them of such a nature as to depend, for their criminality or innocence, on minute circumstances or slight shades of difference, and often on the different manner in which the same circumstances may have affected different auditors and spectators, all equally disposed to tell the truth. Where, however, the minds of the witnesses may be so prejudiced, or their views and feelings at the times or since, may have been such as to cause them to imbibe improper ideas, and to give a criminal aspect to that which was innocent in itself, your respondent enters the list with a vast preponderance against him, for it can scarcely be expected that his own recollection at this distant day will furnish him with all the minutiæ of facts and circumstances,

which may have made little impression at the time, or that he can obtain witnesses, who watched all the transactions of the court with so much particularity, as now to give in detail so many of its transactions for nearly eight years past.

ARTICLE I.

The first article relates to the circumstances attending the submission of the case of Jacob W. Seitzinger vs. Henry Zeller to the respondent as a referee, and the subsequent dismission of the exceptions filed to his report.

The circumstances attending upon that case, are so different in point of fact from those stated in the article of accusation and impeachment, as to require the following correct detail.

Upon the 12th day of July, eighteen hundred and twenty-three, a judgment was entered in the court of common pleas of Berks county, at the suit of Jacob W. Seitzinger vs. Henry Zeller, upon a bond and warrant of attorney to confess judgment, of the same date, in the penalty of $2,200, conditioned for the payment, by the defendant to the plaintiff of $1100 on demand, with interest. Upon the same day the plaintiff issued a writ of fieri facias upon the said judgment, returnable to August term, 1823, upon which the sheriff levied and sold the personal property of the defendant. Upon the 11th day of August, 1823, the creditors of Henry Zeller, upon the allegation that the said judgment was fraudulently and collusively obtained, for a much larger sum than was due, applied to be let into a defence, to which the plaintiff and his counsel assented, the judgment, execution and levy, remaining as a security. Both parties professed to be desirous of a speedy determination of the matter, and consented to a reference, but there was difficulty in agreeing upon referees. At length the counsel of the plaintiff proposed to refer the matter to this respondent, to which the counsel for the creditors of the defendant assented. This respondent perceiving the difficulty in fixing upon referees, and being ever willing to obligehis fellow citizens, and believing that there would be no impropriety in his acting as a referee, was after some solicitation induced to serve. The case was thereupon referred to the respondent, under the act of 1705, and he spent several days during the vacation, in hearing the evidence and arguments of counsel, without fee or reward. The evidence was very contradictory; after full deliberation the respondent found that the amount due to the plaintiff, was only $576 63, and in forming that opinion, he relied on the testimony of major Daniel Graeff, in connection with other evidence. The report was filed upon the 15th day of November, 1823, and upon the 17th day of the same month, the plaintiff filed exceptions to the report. After they had been filed, William Witman, jr. Esquire, one of the associate judges of the court, mentioned to the respondent that he could not sit upon the argument of the

case, as his son-in-law, Daniel H. Otto, was one of the creditors of Henry Zeller; accordingly, when it was called up for argument, judge Witman withdrew from the bench. Jacob Schneder, Esq. the other associate judge, could not hold the court alone, and this respondent had to remain on the bench to constitute a court; and he solemnly declares that he did not hear any objection to his sitting, and was not aware of any such objection. This respondent recollects, that Marks John Biddle, Esquire, one of the counsel for the plaintiff, about the commencement of the argument asked him for his calculation; the respondent replied that he had not kept it, but was willing to explain the grounds of his report. This respondent had not stated an account, but had made calculations upon a piece of paper which he had not preserved. He had reported the full amount due to the plaintiff, as he then believed, and still believes. During the argument, judge Witman returned to the bench, but why he did so, was not communicated to this respondent at the time. In fact, this respondent did not know the cause until several weeks after the final decision of the case; when judge Witman informed this respondent that the counsel of Jacob W. Seitzinger, the plaintiff, had requested him to resume his seat and take part in the decision.

The court finally dismissed the exceptions for want of sufficient particularity in specifying the alledged error in the report; the reasons for the opinion of the court were reduced to writing, at the request of the plaintiff's consel, and signed by all the judges of the court and are now subject to the revision of the supreme court of Pennsylvania.

And the said Robert Porter, for plea to the said first article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged in manner and form as it is therein alleged against him.

ARTICLE II.

The second article of impeachment charges the respondent with alleged tyranny and oppression, and the use of indecorous language towards Abraham Beidleman and John Young, two tavern keepers of the borough of Northampton, about the year one thousand eight hundred and eighteen, and with similar tyranny and oppression in regard to George Haberacker, another tavern keeper of the said borough, at May session, 1824, whereby "the personal liberty and constitutional rights of the said Beidleman, Young and Haberacker were violated, the character of the court degraded, and the authority of the laws brought into contempt."

The respondents recollects, that many years since, it was a constant source of complaint among the moral part of the community in Allentown or Northampton, that the vice of gambling prevailed to an alarming extent; that the fact of its prevalence was one of general public notoriety; that helpless

families were suffering for want, while those, who should and ought to have provided for them, were spending their time and their money at the gambling table, in houses licensed by the court as taverns. These general complaints were often heard and reached the ears of the respondent and his associates, judges of the courts of Lehigh county; and upon one occasion the late judge Hartzel, who is now deceased, stated to the respondent while on the bench at Allentown or Northampton, that information had been given to him, that Abraham Beidleman and John Young, two of the tavernkeepers of the borough had the evening before, openly suffered gambling in their houses. Upon consultation, it was believed by the respondent and judge Hartzel, (respondent rather thinks the other associate, judge Fogel, was not on the bench) that a lecture in open court would have a better effect in preventing a repetition of the offence, than a prosecution and conviction under the act of assembly. Under this view of the subject, one of the officers attendant on the court, was directed to go to the houses of Abraham Beidleman and John Young, and desire them to come to court. In pursuance of this notice, they voluntarily appeared before the court, and the respondent then, as the organ of the court, stated to them the complaint that had been made; they did not attempt to deny the charges, but admitting that they had offended, endeavored to palliate and excuse their conduct. The respondent then stated to them, that their conduct was a violation of law and morality; that they had been licensed by the court to keep houses of public entertainment, and not sinks for the corruption of public morals; that the court were disposed to look over the offence, which they had then committed, if ther future conduct gave no cause for complaint; but that if they did not desist from tolerating and encouraging gaming, the consequence would be prosecution and punishment by fine and the forfeiture of their licenses; and advised them to pursue the legitimate purposes of their occupations to gain a livelihood by honest industry and not by the violation of the law, or in language of that purport. The respondent does most unequivocally deny that he used the word "villains" in any part of his address to the said Young and Beidleman, or that his language or manner was either indecorous or improper.

For some time this lecture produced the desired effect. The court heard no more complaints for some years; but in the years 1822, 1823 and 1824, the practice had again become so prevalent, as not only to be a subject of general complaint among the reflecting part of the community, but also to be a disgrace to the borough, and a reflection on the laws of the county; still no person was willing to encounter the animosity of the persons engaged in this practice, by being the instrument of a prosecution against them, and the court were again compelled to interfere, and for that purpose, and with the sole view

of enforcing the laws against gambling, at the May sessions, 1824, of the court in Lehigh county, the court adopted the following rule, and directed the clerk to endorse it on each license issued.

Notice to Tavern-keepers.

The judges of the court of quarter sessions, in and for the county of Lehigh, have determined not to renew at the May sessions next, the license of any tavern-keeper in the said county, who permits or suffers gambling of any description, or other disorder, and in the mean time to enforce the acts of assembly, made for the punishment of such offences.

By order of the court,

FREDERICK HYNEMAN, *Clerk.*

That George Haberaeker, who was at the same sessions licensed to keep a house of public entertainment in the borough of Northampton, was, as the respondent understood, present in the court house when the above rule was adopted and publicly read; that immediately after the same was read, he, Haberacker, walked up to the desk of the clerk, and asked him to read the order to him again, so that he might understand it, which Mr. Hyneman, the clerk, did. And then Mr. Haberacker remarked to Mr. Hyneman, "You need not put that on my license, I am fully acquainted with it," or words to that effect. The order was, however, printed on all the licenses issued. Some time in the course of the following week, the respondent was informed, that George Haberacker had suffered gambling in his house nearly the whole night previous, and that a young man, a stranger from Philadelphia, had lost all his money there at play. That upon this information, when the court met in the afternoon, the respondent, satisfied in his own mind, that something should be done to stop the practice of gambling, which was then openly prevailing to a very great extent, sent a messenger to tell Mr. Haberacker that the court wished to see him. The messenger, who was one of the attending constables, went, and in a few minutes returned—stating that Mr. Haberacker would be in court in a short time. Mr. Haberacker came in shortly afterwards, and was called up by the side of the clerk's desk, between the counsel table and the bench, the respondent then read the order of the court above mentioned to him, and asked him if he had known of that order, to which Mr. Haberacker *replied he had not.* The respondent then told Mr. Haberacker, that he had understood, he had suffered gambling in his house the night previous, and that a young man from Philadelphia, a stranger, had lost all the money he had with him. To this Mr. Haberacker made no reply, but from his conduct admitted the truth of the charge. The respondent then went on to tell him that it was

against the law, and that he (Haberacker) knew it, and that the court would let him know also, that he was not above the law, but that the law was above him. The respondent cannot recollect all that was said, but true it is, he did tell Mr. Haberacker to go home and attend to his business, and not to let the court hear of his behaving in that manner any more, or they certainly would have him punished; but in so doing, the respondent denies that he was influenced by any inclination to violate the liberty and constitutional rights of any person, and protests, that his only motive in so doing, was a wish to stop the outrageous course of conduct, which for years had been pursued by the licensed tavern-keepers in Allentown or Northampton, only because no person was willing to institute a public prosecution against them.

The respondent would here beg leave to add, that since the admonitions thus given to the said Beidelman, Young and Haberacker, have become an article of accusation and impeachment against him, to such extent had gambling again progressed in the borough of Northampton, that at May sessions, 1825, the constable of that borough, made return of no less than six tavern-keepers, for openly and publicly suffering gambling in their houses. Upon this return, the attorney general deemed it his duty to send bills to the grand jury, which were found true as it regards this very same Abraham Beidleman, and against John Hill, Wm. Kinkinger and Philip Sellers. Upon arraignment Beidleman pleaded not guilty, and Hill, Kinkinger and Sellers pleaded guilty. Beidleman was subsequently tried, and on his trial, the defence set up was, that the prosecution had not been instituted within the period limited by the act of assembly, and that sometime in the month of April, 1825, having been complained of before justice Saeger, of Northamton, for suffering gambling in his house, which was alleged by him to be the same gambling charged against him in the indictment, he had compromised with the prosecutor, paid the justice the moiety of the fine, directed to be paid to the overseers of the poor, and the costs of prosecution, and that the prosecutor had exonerated him from the payment of the part of the fine directed to be paid to him, which he contended was equivalent to a former conviction for the same offence: and that he could not legally and constitutionally be again tried for the same offence. The jury under all the circumstances acquitted the defendant, but directed him to pay the costs, which he was sentenced to do. Hill and Kinkinger were both sentenced as directed by law, and Sellers applied for leave to withdraw his plea of guilty and plead not guilty, grounded upon an affidavit, that the plea of guilty was entered under a misapprehension, or mistake of his rights and liabilities. He was permitted to withdraw bis plea of guilty, and plead not guilty, and his case was continued until the next sessions, at which he was

acquitted, because the gambling had been more than thirty days before the commencement of the prosecution, but the jury directed him to pay the costs, which he was sentenced to do.

And the said Robert Porter for plea to the said second article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE III.

The third article of impeachment charges the respondent with attempting to suppress, and compound a felony, to screen the guilty from punishment, by endeavoring to induce a judicial officer to violate his duty, and commit a misdemeanor in office, in the case of the commonwealth vs. Mary Waltz alias Mary Everhart.

According to the respondent's best recollection, aided by reference to the records of the court, the circumstances of that case, were as follows: On or about the 6th day of June, 1822, a quarrel took place between Jacob Rees, jr. and Mary Everhart, who lived near neighbours to each other in the borough of Easton, in the course of which, the former charged the latter with having stolen some meal from him. She immediately applied to counsel, who instituted an action of slander for her against him. As soon as Jacob Rees, jr. discovered this, he proceeded to the office of justice Weygandt, who issued a warrant against Mary Everhart, for the alleged larceny, upon which she and some of the witnesses were recognized for their appearance at court. When court was coming on, both parties appeared to have gotten over their passion, and they mutually agreed, the one to discontinue her action, the other, his prosecution. In pursuance of this agreement, Mary Everhart went to the prothonotary's office on the 19th day of August, 1822, being the first day of the court, paid off the costs and discontinued the action of slander. And Jacob Rees, jr. went to the office of justice Weygandt, to put an end to the prosecution. Justice Weygandt doubting his authority, as it was a case of felony, declined doing any thing in the matter without the sanction of the court. All this had happened before the respondent's arrival in Easton. Shortly after his arrival, he was told by William White, Esp. at whose house the respondent has put up for many years, in the presence of Jacob Reese, jr. that Mary Everhart and Jacob Rees, jr. had had a quarrel about a little meal. That it was a trifling matter, and they had agreed to settle it, but that justice Weygandt declined doing any thing without the respondent's sanction, and was desirous of seeing the respondent. Respondent walked up street with Jacob Rees, jr., he does not recollect having much, if any conversation with him going up, but he thinks that at Mr. White's, he observed to them both, that if Mr. Rees could with truth say, that on reflection, he considered the

taking of the flour a mere trespass, and not a larceny, that the justice would be justified in making an end of the matter. And he thinks that when they arrived at the justice's office, he made the same observation to Justice Weygandt, but that justice Weygandt said he could not permit it to be so done, as in his opinion, it was a clear case of larceny. Respondent said nothing more to him on the subject, but left the office, as the information given by justice Weygandt placed the matter in a different light from that in which it had been represented to the respondent. The recognizance was returned to court, a bill of indictment was sent, and found, and she was convicted of larceny in "stealing twelve pounds weight of wheat flour, and one earthen pot of the value of fifty cents." She was thereupon sentenced to restore the property, pay a fine of fifty cents, and undergo an imprisonment for ten days in the jail of Northampton county. The costs it appears amounted to $37 11½ which she paid, as respondent has been informed, before her discharge from prison.

In this transaction the respondent does most unequivocally deny, that he had any desire, or design to compound a felony, to screen the guilty, or to induce justice Weygandt to violate his duty. Justice Weygandt is honorably known, as an upright, independent, and valuable officer, and above the suspicion of being unduly influenced in office by any man. In the conduct of the respondent, he was governed by a sense of duty, growing out of the representations made to him by the prosecutor and the bail of the defendant, and a desire, if the case were a trifling one, growing out of a bickering between neighbours, to put an end to a prosecution in the institution of which, passion, not public justice, was consulted.

And the said Robert Porter, for the plea to the said third article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE IV.

The fourth article of impeachment, charges the respondent with urging the parties to compromise, and settle a prosecution for larceny, in the case of the commonwealth vs. John Mills, and when they had done so, directing the jury to acquit the defendant. "Thus wilfully and unlawfully permitting a prisoner under a charge of larceny to purchase his acquittal by executing a bond in open court, and delivering it to a prosecutor in violation of the constitutional right of every citizen, to have justice administered according to law, and against the peace and dignity of the commonwealth of Pennsylvania."

If the facts stated in the premises were true, they would by no means warrant the conclusion thus drawn from them. But

the circumstances of the case, as they occurred, and as represented in this article, differ most widely. It is true that at the January sessions, 1819, of the court of quarter sessions of Northampton county, a person named John Mills, was indicted for larceny of a bill obligatory, alleged to be the property of George Levers. But the defendant was not a prisoner, he was under recognizance of bail for his appearance at court. On the trial of the indictment, after the testimony on both sides was concluded, it appeared to the whole court, manifestly, that it was not a case of larceny; that the defendant had taken the bill in question, which was payable to himself, from a third person, and had never been assigned by him to Mr. Levers, under an express claim of property. Under these circumstances the court believed, and that correctly too, that no larceny had been committed, but they thought the defendant ought in justice to secure Mr. Levers the amount of the debt, which had given rise to the controversy. They so stated their opinion to the prosecuting counsel, and the counsel for the defendant, who assented to it, and a bond with surety was executed to Mr. Levers for the amount due him from the defendant, in open court; and the defendant was thereupon acquitted, as he necessarily must have been, had no bond been executed.

And the said Robert Porter, for plea to the said fourth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE V.

The fifth article of impeachment, charges the respondent with having been guilty of harsh, tyrannical, and partial conduct and the indulgence of intemperate feelings and language, in refusing to receive a verdict, and granting a new trial in the case of Wannemacher vs. Sechler. "Thereby obstructing the administration of justice, infringing the constitutional right of trial by jury, insulting a co-ordinate branch of the court in the proper discharge of their duty, evincing disgraceful passions and partialities, thereby denying justice and bringing the administration of it into contempt."

The circumstances attending the case of Wannemacher *vs.* Sechler, are as follows: It was an action of trespass for an assault and battery, instituted by Casper Wannemachr *vs.* Joseph Sechler, in the common pleas of Lehigh county, to December term, 1820. The cause came on for trial on the fourth day of May, 1821, when the following facts appeared in evidence: the battery complained of took place in the public road; that Wannemacher was knocked down by Sechler, wounded in the head, so that he considered his hearing was affected; that Wannemacher did not strike Sechler, nor offer to strike him, but on the contrary warned Sechler not to strike him. It further ap-

peared in evidence, that to September sessions, 1820, in the quarter sessions of Lehigh county, a bill of indictment was presented, and found "*true*" by the grand jury, against Sechler for the same assault and battery, to which on the fifth of September, 1820, the defendant pleaded guilty, and submitted to the court. Whereupon he was sentenced to pay a fine of $10, and the costs of prosecution, which he accordingly did. The charge of the court was decidedly in favor of the plaintiff, upon the point of law in the case, but they submitted the amount of damages exclusively to the jury, as a matter of their consideration. The respondent considers the rule of law to be unbending; that where an indictment for an assault and battery is preferred against a person, to which he pleads guilty, and a subsequent civil action is instituted to recover damages for the personal injury, the record of the indictment being given in evidence on the trial of the civil action is conclusive, so as to entitle the plaintiff to damages, although it is for the jury to say under all the circumstances of the case, what amount of damages would compensate him for the injury he may have sustained, and so he expounded the law to the jury, who from what motives the respondent cannot say, unless that influence was exerted with them out of court, disregarding the settled law of the land as laid down to them by the court, returned a verdict for the defendant. The respondent upon consultation with the other members of the court, recommended to the jury to reconsider their verdict, and to retire again to their room: This the jury agreed to do, and they did not make any objection to the recommendation of the court. As the jury were going out of the box, for the purpose of so retiring, Mr. King, the defendant's counsel, observed to them, that if they saw proper, they might return the same verdict, or words to that effect. Whereupon the respondent replied to Mr. King, not to endeavor to make the jury do that which would be improper and contrary to the law and evidence in the cause, that the jury had sworn to decide the cause according to the evidence, and that he should let them do so, or words to that import. The jury then withdrew to their room, and after some time, returned with a verdict for the defendant, which Frederick Smith, Esq. the counsel for the plaintiff, moved to set aside, and the court believing as they then did, and still do, that the verdict was contrary to law, granted the motion, and ordered a new trial.

This exhibits a plain and unvarnished history of the case as it occurred; and the respondent thinks that there was nothing improper, harsh, tyrannical or partial in his conduct. He was actuated by but one motive, and that was a wish to administer justice to his fellow men according to the law of the land.

The respondent denies having manifested strong symptoms of passion, or using improper and insulting language to Mr. King. He most positively denies any intention to intimidate or insult the

jury, or having used any language, which could be so construed, and never charged, or intended to charge the jury with perjury.

And the said Robert Porter for plea to the said fifth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VI.

The sixth article of impeachment, charges the respondent with having altered and falsified the record, in the case of James Hays vs. Hugh Bellas, in two particulars—the first, in interlining in the charge of the court after it was filed, the following words, "a man may, if he pleases, buy an imperfect right, and if he is not imposed upon, but buys with a knowledge of the imperfections, he shall, in law, be held to the performance of his contract." And of having written along the margin of one of the bills of exception in that case, the following words: "and the same papers were objected to for want of proof of the hand writing of the said Henry L. Clark, and for other causes; but it was finally and mutually agreed, that the whole correspondence between the parties should be given in evidence, and that the third exception before mentioned be therefore withdrawn, and the last mentioned papers were read in evidence accordingly," which interpolation, as it is called, is stated in the article of impeachment to be untrue, unauthorised and unwarrantable, "thus wilfully and illegally obstructing and violating the legal rights of the parties."

This serious charge requires nothing but a correct statement of the facts of the case, to shew its falsity. Those facts are as follows:

Hugh Bellas, Esq. had purchased from major James Hays, the right of making, using, and vending to others to be used, within the former county of Northumberland, an alleged new and useful invention in distillation, called the "Steam Still and Water Boiler," for which, a patent had been granted to one Phares Barnard, who had transferred the patent right for a certain district of country, (including that sold to Mr. Bellas,) to major Hays. The consideration expressed in the sale to Mr. Bellas, was $ 1,000, of which $ 100 were paid down, and the remaining $ 900 to be paid, as stipulated in the articles of agreement. Mr. Bellas not paying the consideration money, a suit was instituted in the common pleas of Northampton county, by James Hays against him for the same; the case being put to issue, came on for trial before your respondent and his associates, at April term 1818. The counsel for the plaintiff were George Wolf and Samuel Sitgreaves, Esquires. For the defendant John M. Scott and James M. Porter, Esquires. During the progress of the trial, which was conducted with great zeal and earnestness by the counsel, several objections were made by the counsel for the defendant to the admission of evidence, and exceptions to the decision of the court taken, in overruling those objections. In the course of the trial, the plaintiff offered in evi-

dence, as rebutting testimony, a letter from Hugh Bellas, the defendant, to Henry L. Clark, the agent of the plaintiff, dated 10th December, 1813. The admission of this letter was objected to, solely on the ground of its being only "*a part of the correspondence.*" The objection was overruled, and the letter received in evidence. The defendant subsequently offered in evidence the following papers:

Letter from Henry L. Clark to Hugh Bellas, dated 2d Dec. 1813.
Do. do. do. do. 15th & 23d Aug. 1814.
Do. do. do. do. 2d November, 1815.

To the admission of which in evidence, the plaintiff's counsel objected for several reasons, but more particularly, on account of the defect of proof of the hand writing. The court observed to the counsel on both sides, that perhaps it would be better to waive all captious objections, and let the whole correspondence go to the jury; this the respondent understood to be assented to, on both sides and the letters were read to the jury. Subsequently, the defendant gave in evidence, a letter from Hugh Bellas to Henry L. Clark, dated the 12th August, 1814, which the plaintiff produced, on request, without notice and a copy of a letter from Hugh Bellas to H. L. Clark, dated 9th September, 1814, both of which were admitted by consent, and without any proof, under the foregoing agreement. After the arguments of the counsel were closed, the court charged the jury; the charge was a verbal one, not having been previously reduced to writing; notes of it were taken by James M. Porter, who from them, wrote out a charge, and on its being submitted to the respondent the next morning he thinks, he looked over it, signed it, and handed it again to Mr. Porter, who, at that time, or subsequently, was directed to prepare the bills of exception in form, and have them ready by the next court, as those which had been prepared by Mr. Bellas himself during the trial, were so informal and imperfect, that the plaintiff's counsel and the court, objected to their being signed. At the next term, Mr. Porter submitted to the respondent a set of bills of exceptions, to which was affixed the charge of the court, previously signed as before stated. Respondent examined them, as did also Mr. Sitgreaves, who was counsel for the plaintiff, and before the respondent signed the bill of exceptions he interlined in the charge of the court, these words, "a man may, if he pleases, buy an imperfect right, and if he is not imposed on, but buys with a knowledge of the imperfections, he shall, in law, be held to the performance of his contract;" which words he had used in his charge to the jury, but, in the hurry of taking down the charge, had been omitted by Mr. Porter. He also corrected the bills of exceptions before signing, by stating the fact of the withdrawal of the third bill of exceptions by consent. He then signed the bills, and handed them to general Spering, the prothonotary. At the time of making the interlineation in the charge, the respondent did not know that the same had been filed, but believed it had remained in Mr. Porter's

possession, more especially as it had been made by a pro ut, a part of the bills of exceptions.

The respondent presumes he was not obliged to sign any thing which might be presented to him in the shape of bills of exceptions, and that he had a right to correct them, according to the truth of the case, as he did in the present instance. The charge of the court was corrected under a similar impression and similar views, and without any knowledge of its having been previously filed. The bill of exceptions as corrected, contains the truth, as it took place in relation to the third exception, and the charge of the court as corrected, contains nothing but what was addressed to the jury, in the charge actually delivered to them.

And the said Robert Porter, for plea to the said sixth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VII.

The seventh article of accusation and impeachment, charges the respondent with a disregard of the duties of his office, by refusing, or neglecting to reduce his opinion to writing in the cases, Elizabeth Swenck, widow of Matthias Swenck vs. Daniel Ebert. Same vs. same; appeals from a justice of the peace to the common pleas of Northampton county; and in the cases of Grim & Helfrich vs. Seip's administrators, and same vs. same, in the court of common pleas of Lehigh county, though required so to do, contrary to the provision of the act of assembly and the legal rights of the parties. The respondent knows of but one case in the common pleas of Northampton county, wherein Elizabeth Swenk, widow and relict of Matthias Swenk was plaintiff, and Daniel Ebert, defendant, which is to be found, of April term 1822, No. 92. That was an appeal from the judgment of justice Horn, in which judgment was rendered before the justice, on the 7th day of March, 1822, for $ 28 50 and costs. The defendant on the same day appealed. The cause was tried in court, on the first day of May, 1823, when a verdict was rendered for plaintiff for $ 27 05 damages, and six cents costs; the defendant offering no evidence whatever on the trial. On the 3d of May, 1823, a rule was taken to shew cause why the judgment should not be entered without costs. On the 20th of November, 1823, after argument, this rule was made absolute and the judgment entered without costs. The respondent has no recollection of being required to reduce his opinion to writing, or file the same, nor could such a course have been necessary to obtain a revision of the judgment, because all the necessary facts appear by the record.

It appears that there were two actions of debt instituted in the common pleas of Lehigh county, by Jonathan Grim and Daniel Helfrich against Peter Seip, administrator of John Seip, deceased, to May term 1819. The suits were founded on joint bonds, executed by Abraham Knerr and by the defendant's intestate, as his surety; and the cases were first tried at February term 1820, when

the plaintiffs suffered a non-suit in each case. Rules were obtained to shew cause why these non-suits should not be stricken off, which on the 4th of September, 1820, were made absolute and leave was granted in each case to amend the narr. by filing a statement agreeably to the act of assembly. On the 7th day of December, 1820, the causes were again tried, and verdicts were rendered for the defendant. The respondent has no recollection of being called upon to reduce his charge to writing, and file the same, until some terms afterwards, when the matter was mentioned by the plaintiff's counsel, who alleged such a request had been made on the trial, which was denied by the defendant's counsel; the respondent observed, that he had not recollection upon the subject, and after such a lapse of time, could not file the charge without consent; which consent defendant's counsel refused to give.

And the said Robert Porter for plea to the said seventh article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE VIII.

In regard to the eighth article of accusation and impeachment, the said Robert Porter respectfully submits to the honorable court, whether from the circumstances under which this article of accusation and impeachment was preferred against him, he is bound in law or in justice to answer to it. The circumstances alluded to, are as follows: Mr Charles Davis, who, with Mr. Sitgreaves, had been counsel for the appellees in the said matter of James Greenleaf's appeal, having been examined before the committee of the House of Representatives as to the facts, which preceded the decision of the cause, mentioned in the eighth article, stated that he was not in court at the time the final decree was made, and that he did not know how the case was ended until he saw the decree in the clerk's office. He was then asked, whether that decree, which he saw in the clerk's office, was not in the hand writing of his colleague, Saml. Sitgreaves, Esqr. and having answered that question in the affirmative, a consultation took place among the members of the said committee, and the chairman then announced to the respondent and his counsel, as well as to the prosecutor, that they would hear no further testimony on the subject of the said charge, in consequence of which, the respondent was prevented from further cross examining the said Charles Davis, in relation to the said matter; and when Henry King, Esqr. was subsequently examined before the committee, on the part of the prosecution, the respondent's counsel, when proceeding to the cross examination of the said Henry King, Esqr. who had been of counsel with the appellant, James Greenleaf, enquired of the said committee, whether they might be permitted to examine Mr. King, relative to the circumstances, which took place in the court of quarter sessions of Lehigh county, on the hearing

and determination of the said case of Greanleaf's appeal; when Mr. J. A. Mahany, chairman of the said committee, informed the respondent and his counsel, that that case no longer constituted one of the charges against the respondent, and no other testimony in relation to the said matter was afterwards adduced, to the knowledge of the respondent. Under these circumstances, the said respondent submits to the court whether he ought to be bound to answer the said charge contained in the said eighth article of accusation and impeachment.

Should this honorable court however think, that under these circumstances, he is still bound to answer, he then submits the following facts in relation to the said charge in the said article contained. The record of the court in the case of Greenleaf's appeal is in the following words:

In the court of general quarter sessions of the peace, for the county of Lehigh.

It is thus contained

FEBRUARY SESSIONS, 1824.

Sitgreaves, Davis.	The supervisors of the public roads & highways of the township of Northampton, *vs.*	Appeal, entered Feb. 2d, 1824 Feb. 3d, 1824, continued at the instance of the appellees, until the second day of the next sessions at 10 o'clock, A. M.
Porter, J. Evans.	James Greenleaf. (Affidavit filed.)	

And now, September 2, 1824, the said appeal being duly heard and considered, it is ordered and decreed, that the assessment from which the appeal has been made, be rectified so as to stand as follows, that is to say:

Trout Hall buildings,	$4,000
208¾ acres of land, at 40	8,350
169 town lots, at 75,	11,675
2 horses,	100
A cow,	10
	$24,135

And that the tax thereon, according to the rate at which the same was levied, be reduced to the sum of $115 80, for which amount the collection of the said tax may proceed, and that each party pay his, or their own costs, (signed by the three judges)

Copy of the appeal.

To the honorable the judges of the court of common pleas of the county of Lehigh, now composing the court of quarter sessions of the peace, in and for the said county.

The petition of Jas. Greenleaf of the borough of Northampton, in the said county, respectfully represents. That your petitioner finds himself aggrieved with the assesment made of the real es-

tate of Ann P. Greenleaf, his wife, for road taxes, for the year 1823 in the borough and township of Northampton, in the said county. That in pursuance of the said assessment, which your petitioner believes to have been illegally and unjustly made, Jacob Bishop and John Keiper, styling themselves supervisors of the public roads and highways of the township of Northampton, applied on the eighth day of December last, to Charles Deshler, Esq. one of the justices of the peace, in and for the said county, and obtained from him a warrant for the distraining of the goods and chattles of your petitioner, in order to compel the payment of the two hundred and twenty-three dollars and twenty cents, the amount claimed to have been assessed as aforesaid for road tax; that in virtue of the said warrant of seizure, the said Jacob Bishop and John Keiper, on the day and year last aforesaid, did levy on the goods and chattles of your petitioner; and your petitioner has appealed from the said assesment to this court.

Your petitioner therefore prays the court that his appeal may be received and entered, and that the court will take such order hereon, as to justice and law shall appertain.

JAMES GREENLEAF.

Feb. 2d. 1824.

Endorsed.

"February Sessions, 1824.

The supervisors of the public roads and highways of the wnship of Northampton, *vs.* James Greenleaf.

Appeal from the assessment of road tax, &c.

February 2d. 1824, read and filed, and the court order the appeal to be entered."

Copy of the exceptions.

The supervisors of the public roads and highways of the township of Northampton, *vs.* James Greenleaf. } Appeal from the assessment of road tax.

Exceptions to the proceedings.

1. That the assessment of the county tax, on which the road tax is predicated, is illegal, and consequently, the road tax is also illegal.

1. The oaths of office of the commissioners do not appear to have been duly taken and filed.

2. The return of the election of the assessors, was not made, as required by law.

3. But one assessor and two assistant assessors, appear to have been elected for, and but one joint assessment made for the borough and township of Northampton.

4. The assessors were not duly sworn, and their oaths of office filed, as directed by law.

5. There was no meeting of the commissioners within 30 days after the general election, to make an estimate of the probable expense of the county, for the year ensuing, nor any precept issued to the assessors, to make return of all taxable persons, and property, or any such return made, in the time or manner directed by law.

6. The commissioners did not proceed to quota the several townships, or send accurate transcripts of the assessments to the assessors, in the time or manner prescribed by law.

7. The assessor or collector did notify the inhabitants of the sum at which they were rated, and the rate per cent. and amount of tax, and the time and place of appeal, in the time or manner prescribed by law.

8. The property of the appellant was rated higher than the assessors thought it would bona fide sell for, in ready money.

9. The appellant is rated for property which he did not own, to wit: 214 town lots in the borough of Northampton, rated at $150 each; Whereas in truth, he owned but one hundred and seventy lots making and overcharge of $6,600, in that item of the assessment. Also 43 acres in the township of Northampton, rated at $1958 which should have been rated and assessed in the name of the Messrs. Saeger's.

2. That the road tax was illegally laid.

1. That by the act incorporating the borough of Northampton, the roads and highways within the borough, are placed under the direction of the corporation, who may assess taxes not exceeding ¼ of a cent in the dollar.

2. That the supervisors who have presumed to lay the road tax, were elected at a joint election by the inhabitants of the borough of Northampton, and the township of Northampton, whereas there should have been supervisors only elected by the inhabitants of the township, for the township alone, excluding the limits of the borough.

3. That the supervisors were not legally elected, and the certificate of their election filed before the 25th of March.

4. In laying the road tax, the supervisors did not take the assessors to their assistance.

5. The road tax was not apportioned from the last corrected apportionment of county tax, put into the hands of the township collector.

3. The supervisors did not give notice to the inhabitants, to attend and work out their tax.

4. The seizure was illegal, because the goods and chattels of the appellant, in the borough of Northampton, were seized for tax, assessed on property in the township of Northampton.

5. That no tax to the amount, or at the rate that the tax complained of, could be assessed within the borough of Northampton.

6. That the supervisor of the township of Northampton, have no authority to levy and collect taxes in the borough of Northampton, or in any way to intermeddle with the making or repairing the streets and public highways in said borough. The town council and the street commissoiners, being by the act incorporating said borough, invested by said act, with the legal powers for said purposes.

J. M. PORTER, } For the appellant.
H. KING, }

Endorsed, "filed May 4. 1824."

Copy of the order of the court.

In the matter of James Greenleaf's appeal from the assessment of his property in the borough and township of Northampton, for the road tax of 1823

And now September 2, 1824, the said appeal being duly heard and considered, it is ordered and decreed that the assessment from which the appeal has been made, be rectified so as to stand as follows, that is to say:

Trout Hall buildings,		$4,000
208¾ acres of land at	$40,	8,350
169 town lots, at	$75,	11,679
2 horses,		100
A cow		10
		$24,135

And that the tax thereon, according to the rate at which the same was levied, be reduced to the sum of $115 80, for which amount the collection of the said tax may proceed, *and that each party pay his or their own costs.*

R. PORTER,
President of the third judicial district of Pennsylvania.

Endorsed in the matter of James Greenleaf's appeal. }
JOHN FOGEL,
A judge of Lehigh county, Pennsylvania.
JACOB STEIN,
Judge of Lehigh county, Pennsylvania.

Lehigh county, ss.

I Frederick Hyneman, clerk of the court of general quarter sessions of the peace for Lehigh county, do hereby certify, that the foregoing is a true and perfect copy of the record of said court, in the matter of the appeal of James Greenleaf, from the assessment of his property, for road tax, for the year 1823, so full and entire as in the said court it remains.

In testimony whereof, I have hereunto set my hand and the [L. S.] seal of the said court, this sixteenth day of September, 1825.

FRED'K. HYNEMAN, Clerk.

The appeal being entered to February sessions, 1824, was called up for hearing on the 3rd day of that month, and the appellees, in order to shew to the court the correctness of the proceeding on their part, offered evidence to prove the assessment of county tax deposited in the commissioners' office, on which the road tax appealed from was predicated; to the admission of which in evidence, the counsel for the appellant objected, on the ground that it was incumbent on the appellees, to shew that all the requisites of the acts of assembly, regulating county rates and levies previous -o the assessment, had been complied with. Whereupon Mr. Sitgreaves, counsel for the appellees, stated to the court, that if they were required so to do by the opposite counsel, he would have to ask the indulgence of the court, till the next sessions, which was acceded to, and the hearing was continued until the second day of May sessions. As May sessions, the cause came on for hearing again, and the appellees were unable to prove all the preparatory steps previous to the assessment. On the part of the appellant, it was proved that he did not own 43 acres of land, charged to him and rated at $1958, he having conveyed it away some years previous to the assessment; and it was also proved, that he owned only 169 town lots, when he was charged in the assessment with 214. Evidence was also adduced to show, that the town lots, which consisted each of about one third of an acre, were valued at $150, when they were not worth more than $75. Some discussion was gone into, but the argument in chief upon the whole case was not. The counsel for the appellant had filed, as will be seen by reference to therecord, upwards of twenty exceptions to the proceedings; and as the tax was not proved to have been regularly laid, and both parties disclaimed a wish to have more than justice, the respondent, together with the associates, who were both on the bench at the time, suggested to the counsel, whether the parties could not compromise the matter upon fair and equitable terms. The counsel appeared to acquiesce, but as the appellant, Mr. Greenleaf was absent, no arrangement could be entered into, and on the 2d day of September, eighteen hundred and twenty-four, and the case was then continued until the August sessions, 1824, the counsel for the appellees, Mr. Sitgreaves, presented to the court a formal order, drawn out by him and in his hand writing, for the signatures of the court, agreeably (as respondent understood and believed, and yet believes) to the terms of compromise entered into between the parties. To the end of that paper so presented by Mr. Sitgreaves, the respondent added the words "and that each party pay his or their own costs" and then the said paper was signed by the respondent and his associates. The respondent and the other members of the court, took no part in reducing the valuation; but it was understood by the court, that the same was reduced by compromise between the parties.

The respondent denies, that he unlawfully altered the valuation on which the assessment was founded, and he also denies, that he accepted an assessment made by the appellant himself, but declares that with his associates, he acted with a due regard to the rights of both parties, by giving effect to a compromise entered into between them.

And the said Robert Porter, saving and reserving to himself, the right of objecting to the said eighth article of accusation and impeachment, for plea to the said eighth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE IX.

The ninth, tenth, eleventh, and twelfth articles of impeachment, all relate to alleged maltreatment by the respondent, of John Cooper, Esquire, one of the associate judges of Northampton county.

As to the subject matter of complaint, alleged in the said ninth article, the following will be found to be a history of the facts of that case.

To August sessions, 1823, a recognizance for surety of the peace, on the complaint of Susanna Spangenburg, was returned against Charles Smith. On the hearing of the case, on the 19th of August, 1823, it appeared that a very aged woman who was the mother of one of the defendants and grand mother of the other, was picking some blackberries along the fence of a lot occupied by the husband of the prosecutrix, when the prosecutrix came out and ordered the old woman away, and some words passed between them; about this time, the defendants came up, and took the old woman's part, as the prosecutrix was endeavouring to throw her over the fence; and if the respondent recollects aright, the prosecutrix swore, that one of them said, he would shoot her, if she did not let the old woman alone. Upon the hearing, the court thought that the defendants could pay the costs, and as they had used improper language, although they had not so offended as to induce the court to continue the recognizance, they orderd them to pay the costs; being unable to comply with the sentence, they were committed to prison. On the 21st day of August, 1823, just as the respondent was going to court, the sister of one of the defendants, and mother of the other, informed him, that her son was very sick, and in all probability would die, if continued in jail; the respondent went into court, sent for the jailor, and inquired of him, as to the situation of the prisoner; finding that he corroborated the statement made by the mother, the respondent directed some one of the persons in attendance on the court, to go for one or both of the associate judges, in order to constitute a court of quarter sessions, and directed

the jailor to bring the boy into court; the boy being brought, in a short time judge Cooper came into court; the respondent stated the circumstances to him, and as he, judge Cooper, was a physician, requested him to examine the boy and ascertain his situation, this judge Cooper, in a very rude and unfeeling manner, refused; adding something about the general bad behaviour of the Smiths, and the respectability of the prosecutrix's family. The respondent expostulated mildly with him for some time, and desired to be informed as to the real state of the health of the prisoner, who appeared very sick, but finding it in vain, he at length, provoked by the conduct of judge Cooper, which appeared to the respondent to be inhuman in the extreme, did say to judge Cooper, that "if the boy dies in jail, his blood will not be on my head." The respondent had despatched a messenger also for judge Wagener, the other associate, and as judge Cooper saw him coming down street, he left the bench and went in a direction to meet judge Wagener, did meet him, and endeavoured, out of the court house, to dissuade him from joining the respondent, in making any alteration in the sentence of the Smiths. Judge Wagener came into court, and, on hearing and being satisfied that the boy was really sick, and that the defendants were unable to pay the costs, the court believed it better to change the sentence and direct the county to pay the costs, which was accordingly done: and both the defendants were discharged, the court believing that the complaint and proceedings against them being joint, the determination ought to be joint also.

The respondent neither threatened, intimidated, nor insulted the said judge Cooper, nor did he cause him to leave the bench, nor did exert any authority not delegated him, or endeavour, by coercion and threats, to prevent the said judge Cooper from exercising his right as a judge of the court, nor did the respondent corruptly abuse and degrade the office of president judge, which he fills.

And the said Robert Porter, for plea to the said ninth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE X.

The tenth article of impeachment, charges the respondent with somewhat similar maltreatment of judge Cooper, in two instances therein alleged.

In the case of Witchell vs. German, the cause of action had once been tried, and a verdict and jugdment rendered in favor of defendants, to the satisfaction of the court. The plaintiff brought a new ejectment, and on the trial of this second action, a verdict was rendered in favor of the plaintiff contrary to the charge of the court. A motion was made to set the verdict aside; the respondent was in fa-

vor of granting the rule, and judge Cooper was opposed to it; judge Wagener was sent for, and on coming into court, he expressed his reluctance to decide upon a case, the trial of which he had not heard, but finally joined in granting the rule to shew cause why a new trial should not be granted. And it is also true, that subsequently, the respondent, judge Cooper and judge Wagener agreed in granting the new trial. It is possible that the respondent may have said, earnestly, that if there ever was a case in which a new trial ought to be granted, that was such a case; for he honestly thought so then, and honestly thinks so still. But he denies, that while that case was before the court, his conduct was such, as is alleged in the article of impeachment.

To the other instance alleged in the said article, as neither time nor circumstances are mentioned, from which, if it did take place, the respondent could have his recollection referred to the transaction, he does not conceive that he ought to be bound to answer; nor has he any recollection of any such occurrence having taken place, unless the following incident be the matter alluded to. Many years since, while the gentlemen of the bar were engaged profitably for the public, in adjusting a case depending in the court of common pleas of Northampton county, judge Cooper came into court, took his seat upon the bench, and in a very rude and dictatorial manner, addressed this respondent as follows, "why don't you attend to the trial list," this respondent replied to him "that he would thank him for less of his dictation," and he believes that there was much more courteousness in his reply, than in judge Cooper's address. Judge Cooper apologized for his rudeness, and the respondent supposed that this affair was thus consigned to oblivion between them. But he knows of no rule of law, reason, or mere common courtesy, which should prevent him from repelling dictation attempted to be exercised over him by any other, not having the right to control him.

And the said Robert Porter for plea to the said tenth article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

ARTICLE XI.

The eleventh article of impeachment accuses the respondent with charging the jury, in the case of Rees vs. Sigman, without consulting judge Cooper, or giving him an opportunity of expressing his opinion, and when he had finished charging the jury and judge Cooper was proceeding to address them, preventing the said judge Cooper from so doing.

All the allegations in this article, are contrary to the facts as they occurred.

Jacob Rees, jun. brought an action before justice Able against Elizabeth Sigman, as executrix in her own wrong of Jacob Sigman, deceased, for a debt amounting to between ten and eleven dollars.

The justice on a hearing, gave judgment in favour of the defendant, from which the plaintiff appealed; and the matter came on for trial at January term, 1822, of the common pleas of Northampton county. In the trial, it very clearly appeared to judge Wagener and the respondent, that the plaintiff had no claim, either in law or justice, upon the defendant. Judge Cooper had, during the trial expressed a different opinion. When the testimony and arguments were closed, the respondent, as usual, addressed the jury, expecting, as a matter of course, that if judge Cooper continued to dissent, he would express his sentiments to the jury. The respondent has no recollection of judge Cooper's attempting to charge the jury, and is very certain, there was nothing, either in the manner or expressions of the respondent, which prevented him from so doing.

And the said Robert Porter for plea to the said eleventh article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged againt him.

ARTICLE XII.

The twelfth article of impeachment, charges the respondent with having, on frequent occasions, treated the said judge Cooper in a rude, insolent and contemptuous manner, while holding courts, by neglecting and refusing to consult him, paying no regard to his opinion, and when papers were handed to the court, which it was necessary for the judges to sign or examine, moving or pushing them to judge Cooper, in a rude, insolent and contemptuous manner. Thus obstructing the due administration of justice, usurping and exercising powers not delegated to him, attempting to degrade one of the judges of the court in which he presides; and thereby degrading the courts of justice, and bringing the law into contempt.

The respondent deems it right to protest against answering this charge, inasmuch as the principles of law and justice require, that every charge of an offence, should be made in such precise and definite terms, as that it may be met by precise and definite proof. The law expects no man to come into a court of justice, prepared to answer for every act of his life, and therefore requires such certainty of description as to time, place and offence, as will put the party on his guard, and enable him to meet the accusation with proof. The accusation is so general, vague and uncertain, as to render it almost impossible to meet it. He therefore respectfully submits to the court, whether he ought to be called on to answer to the said charges, in the said article contained.

Should this honorable court, however, think that he is still bound to answer, he then for answer says, that he has not on frequent occasions, nor on any occasion, treated the said judge Cooper in a rude, insolent and contemptuous manner, while holding court with him, by neglecting or refusing to consult

with him, nor by treating his opinions with disregard, nor has he ever, in the manner stated in the said twelfth article, thrown or pushed a paper or papers towards judge Cooper in a rude, insolent and contemptuous manner; nor has he ever, by violent, wilful and arbitrary conduct, obstructed the due administration of justice, nor usurped and exercised authority, not delegated to him; nor has he ever attempted to degrade any of the judges of the court, in which he presides, nor did he ever degrade the court of justice, and bring the law into contempt, in violation of the constitution, or against the peace and dignity of the commonwealth of Pennsylvania.

This respondent has been president judge of the 3d judicial district for upwards of 16 years, in which time he has had on the bench with him in the various counties of his district, no less than eighteen associate judges, to wit: Seven in Berks county, of whom five are yet living; two in Schuylkill county, both of whom are yet living; four in Lehigh county, two of whom are yet living; four in Northampton county, two of whom are yet living; and two in Wayne county, both of whom are yet living. From no one of this number, has any complaint been preferred, except by Dr. John Cooper, although it may have been the respondent's lot, at one time or another, to have differed in opinion with some of them.

And the said Robert Porter for plea to the said twelfth article of accusation and impeachment, (saving and reserving to himself the right of objecting to the said article for the insufficiency thereof,) saith, that he is not guilty of the misdemeanor in the said article alleged, in manner and form, as it is therein alleged against him.

Conscious of the uniform rectitude of his intentions, the respondent feels no fears as to the result before this court. Because he is confident, that in every instance since his appointment to the station which he holds, he has acted according to the honest dictates of his conscience, and with a sole view to the administration of justice according to law, without fear, favor or affection. He has not the vanity to believe, that he has been always right, for that would be arrogating to himself more than belongs to humanity. He will not even say, that he has, upon every occasion, been able to command his feelings, as fully as upon subsequent reflection, he could have wished he had done; but this much he does know, and he saith it with a full conviction of its truth, that whatever errors he may have committed in the course of his judicial career, have been "errors of the head and not of the heart."

The respondent is one of the few surviving officers of the army of the revolution; he saw his country rise into political existence, and aided in the struggle for her emancipation; he has seen the generation of that period nearly all pass from the stage of human action, and their decendants rise and take

their places; he would be destitute of feeling, were he to be insensible to charges, which, if well founded, would go to consign his old age to ignominy, and his character to disgrace. He only asks that he may, and expects that he will receive, at the hands of his judges, that which he has always endeavoured to administer to his fellow men, "equal and impartial justice."

R. PORTER.

December 13, 1825.

The respondent then handed to the president of the court, the pleas and answers which had been read.

Seats were then assigned to the respondent and his counsel.

The president of the court then demanded of the gentlemen, managers of the House of Representatives, what reply they had to make to the said pleas and answers of the respondent.

Mr. Maclean on behalf of the managers, requested time until eleven o'clock, on Monday morning next, to consult the House of Representatives, as to such replication as will be proper to make to the respondents answers and pleas.

Which the court granted. And,

On motion,

Of Mr. Burnside and Mr. Kerlin,

The president ordered the court to be adjourned until eleven o'clock, on Monday morning next.

MONDAY, December 19, 1825.

The court was opened precisely at eleven o'clock, A. M. by proclamation, the members of the court were all present, and answered to their respective names.

The managers, viz: Messrs. F. Smith, Petrikin, Heston, Beeson, Thomas, W. B. Foster, and M'Reynolds.

The respondent attended with his brother, James M. Porter, Esq and his counsel, David Paul Brown, Esq.

Mr. F. Smith, on behalf of the managers, read the replication of the House of Representatives, to the answers and pleas of Robert Porter, Esq. as follows:

In the House of Representatives,

December 17, 1825.

The House of Representatives of the Commonwealth of Pennsylvania, prosecutors on behalf of themselves, and the people

of Pennsylvania, against Robert Porter, Esq. president of the third judicial district of the commonwealth of Pennsylvania, reply to the plea or answer of the said Robert Porter, Esq. and aver that the charges against the said Robert Porter, Esq. are true, and that the said Robert Porter, Esq. is guilty of all and every the matters contained in the articles of accusation and impeachment, by the late House of Representatives, exhibited against him, in manner and form as they are therein charged, and this the present House of Representatives, are ready to prove against him at such convenient time and place as the Senate shall appoint for that purpose.

(Signed) JOSEPH RITNER, Speaker
of the House of Representatives.

Attest,

FRANCIS R. SHUNK, Clerk.

And informed that Samuel Douglass, Esq. would act as counsel on their behalf, to whom a seat was assigned.

The president inquired whether the parties were ready to proceed.

Mr. F. Smith, on behalf of the managers, begged the indulgence of the court, until to-morrow afternoon, at 3 o'clock.

Which the court granted.

On motion of Mr. Kerlin and Mr. Garber,

The witnesses on the part of the commonwealth, were called by the clerk to the number of 22.

The following persons answered to their names, viz:

Marks J. Biddle, Jacob W. Seitzinger, Geo. Haveracker, Chas. Davis, John Seip, Geo M. Stroud, Henry King, 7.

On motion of Mr. Garber and Mr. Ryon,

The witnesses on the part of the respondent, were called by the clerk, to the number of 34.

The following persons answered to their names, viz:

Fredk. Hyneman, Chas L. Hutter, Wm. Witman, jr. John Fogel, Gabriel Hiester, Robert M. Brooke, James M. Porter, Jacob Stein, Abrm. Sigman and Henry King, 10.

On motion of Mr. Burnside and Mr. Power,

The president ordered the court to be adjourned until 11 o'clock, to-morrow morning.

TUESDAY, December 20, 1825.

The court was opened precisely at eleven o'clock, A. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers, Messrs. F. Smith, Petrikin, Heston, Beeson, Thomas. W. B. Foster and M'Reynolds, with their counsel Samuel Douglass, Esq

The respondent, attended by his brother, Jas. M. Porter, Esq. and his counsel, David Paul Brown, Esq.

The counsel on the part of the commonwealth, requested that the names of the witnesses on the part of the prosecution, might be called to ascertain who were present.

They were accordingly called to the number of twenty-two, as follows, viz:

Hugh Bellas, Marks J Biddle, Samuel Baird, Henry Betz, Jacob W. Seitzinger, George Haveracker, John Young, Cha's. Davis, Jacob Bishop, John Seip, Henry Jarrett, Abraham Beidleman, Jacob Rees, jr. Jacob Weygandt, jr. George Levers, Hugh Ross, John Cooper, Samuel Shouse, Josiah Davis, Thomas Sebring, Henry King, George M. Stroud.—22.

It appeared that the following named were the only ones present, who answered to their names, viz.

Marks J. Biddle, George Haveracker, Charles Davis, Jacob Bishop, John Seip, Henry Jarrett, Abm. Beidleman, Jacob Reese, jr. Hugh Ross, John Cooper, George M. Stroud, Thomas Sebring, Henry King.—13.

The counsel on the part of the commonwealth requested that the return of the subpoena for Hugh Bellas, Esq. should be made by the sergeant-at-arms, which being done, Hugh Bellas, Esq not attending, the counsel requested an attachment to be issued against him.

Which the court granted, and an attachment was accordingly issued.

The counsel on the part of the commonwealth requested the court to direct subpoena's for Samuel Sitgreaves, Jefferson K. Heckman, Hopewell Hepburn, Daniel Helfrich, Christian F. Beitel and John M. Scott, which was granted.

And subpoenas were accordingly issued

On motion of Mr. Dunlop and Mr. Kitchin,

The following resolution was read, viz.

Resolved, That the article of impeachment, exhibited by the House of Representatives against Robert Porter, Esq. does not contain a charge of an impeachable nature, that the court would not be justified in hearing evidence to support it, and

that the managers therefore proceed to the establishment of the article of impeachment.

The same being under consideration,

A motion was made by Mr. Dunlop and Mr. Kitchin, to fill the first blank with the word *first*.

Which was not agreed to.

A motion was then made, by Mr. Dunlop and Mr. Kitchin, to fill the first blank with the word *second*.

A motion was then made by Mr. Emlen and Mr. Kerlin, to postpone the question, together with the resolution for the present. When

A motion was made by Ogle and Mr. Ritscher, to amend the motion by making it read *indefinitely*.

Which was agreed to.

And the question, together with the resolution, were indefinitely postponed.

Mr. Douglass, counsel on the part of the commonwealth, requested the court to issue a commission to take the testimony of Samuel Baird, Esq.

To the granting of which the counsel on the part of the respondent, objected.

On the question,

Will the court direct a commission to issue to take the depotion of Samuel Baird, Esquire?

On this question a discussion arose.

A motion was made by Mr. Ogle and Mr. Hawkins, that the court adjourn until 3 o'clock, P. M.

Which was agreed to,

And the president ordered the court to be adjourned until that hour.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, P. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

The question recurring,

Will the court direct a commission to issue to take the deposition of Samuel Baird, Esquire?

The yeas and nays were required by Mr. Burnside and Mr. Sutherland, and were as follow.

YEAS		YEAS	
Messrs.	Allshouse,	Messrs.	Ryon,
	Groves,		St. Clair,
	Leech,		Sutherland,
	M'Ilvain,		Winter,
	Power,		9.

NAYS.		NAYS.	
Messrs.	Audenried,	Messrs.	Kelton,
	Burnside,		Kerlin,
	Dewart,		Kitchin,
	Duncan,		Knight,
	Dunlop,		Mann,
	Emlen,		Moore,
	Garber,		Ogle,
	Hamilton,		Ritscher,
	Hawkins,		Schall,
	Henderson,		Sullivan,
	Herbert,		Mahon, president 22.

So it was determined in the negative.

A motion was made by Mr. Dunlop and Mr. Ogle, that the court adjourn until 11 o'clock, Friday morning next.

Which was not agreed to.

On motion of Mr. Duncan and Mr. Kitchin,

The president ordered the court to be adjourned until eleven o'clock, to-morrow morning.

WEDNESDAY, December 21, 1825.

The court was opened precisely at eleven o'clock, by proclamation. The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

On motion of Mr. Garber and Mr. Moore,

Ordered, That the names of the witnesses be called over every morning, and that the absentees be noted.

The names of the witnesses were accordingly called to the number of 62.

The following named persons did not answer to their names, Hugh Bellas, Samuel Baird, John Young, George Levers,

Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Daniel Helfrick, Christian F. Beitel, John M. Scott, John R. Lattimore, Gabriel Hiester, William White, Frederick Smith, James Hays, James Greenleaf, Peter Ihrie, jr. M Robert Butz, John Coolbaugh, William P. Spering, William Stroud, William Lattimore—22.

The counsel on the part of the commonwealth, requested that the return of the subpœna for Saml. Baird, should be made by the sergeant-at-arms, which being done and he not attending, the counsel requested an attachment to be issued against Samuel Baird, Esquire, which the court granted, and an attachment was accordingly issued.

On motion and with the consent of the respondent,

Thomas Sebring and John Seip, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth,

At half past eleven o'clock, Mr. Douglass, counsel on the part of the commonwealth, opened the impeachment and concluded at half past twelve o'clock, and proceeded to the examination of witnesses in support of the charge contained in the second article, and called

Abraham Beidleman who was sworn and examined.

On the cross examination of the above named witness, the counsel for the respondent proposed to put the following question to the witness.

"Did you, at the time when you were required to appear before the court, knowingly permit gambling in your house."

Which was objected to by the counsel on behalf of the managers.

On the question,

Shall the question as proposed, be permitted to be put to the witness?

It was determined in the negative.

On motion of Mr. Kitchin and Mr. Ogle,

Ordered, That when the court adjourns, it will adjourn to meet at 3 o'clock, in the afternoon, and that that be the standing hour of meeting until otherwise ordered.

On motion of Mr. Burnside and Mr. Ogle,

The president ordered the court to be adjourned until three o'clock, in the afternoon.

SAME DAY—IN THE AFTERNOON.

The court was opened at 3 o'clock, precisely, by proclamation.

The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent with his counsel.

The counsel on the part of the commonwealth, resumed the examination of witnesses, in support of the charges contained in the second article.

George Haveracker, sworn and examined.

The counsel on the part of the commonwealth proceeded to the examination of witnesses, in support of the charge contained in the third article, and called

Jacob Reese, jr. who was sworn and examined.

Jacob Weygandt, jr. who was sworn and examined.

On motion of Mr. Burnside and Mr. St. Clair,

Ordered, That when the court adjourn it will adjourn to meet at ten o'clock, to-morrow morning, and that that be the standing hour of meeting until otherwise ordered.

A motion was made by Mr. Dunlop and Mr. Duncan, that the court adjourn.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Hawkins, and Mr. Burnside, and were as follow.

YEAS		YEAS	
Messrs.	Dewart,	Messrs. Mann,	
	Duncan,	Moore,	
	Dunlop,	Ogle,	
	Groves,	Ryon,	
	Hawkins,	Sullivan,	
	Herbert,	Winter,	13.
	Kelton,		

NAYS.		NAYS.	
Messrs.	Allshouse,	Messrs. Knight,	
	Audenried,	Leech,	
	Burnside,	M'Ilvain,	
	Emlen,	Power,	
	Garber,	Ritscher,	
	Hamilton,	Schall,	
	Henderson,	St. Clair,	
	Kerlin,	Sutherland,	
	Kitchin,	Mahon, president	18.

So it was determined in the negative.

At the request of the counsel for the respondent, the names of the witnesses who did not answer to their names when called in the morning, were again called, when John Coolbaugh, M. Robert Buttz and William Sroud answered.

On motion of Mr. Groves and Mr. Kelton,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

THURSDAY, December 22, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation. The members of the court were all present, and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called by the clerk, to the number of 62, the following named did not answer, viz.

Samuel Baird, John Young, George Levers, Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Daniel Helfrick, Christian F. Beitel, John M. Scott, John R. Lattimore, Gabriel Hiester, William White, Frederick Smith, Jas. Hays, James Greenleaf, William P. Spering, William Lattimore.—17.

The witnesses on the part of the commonwealth, to testify on the 4th, 5th, 6th, 7th and 8th articles not being in attendance,

The counsel on the part of the commonwealth proceeded to the examination of witnesses in support of the charge contained in the ninth article.

Hugh Ross, Esq. was sworn and examined.
Henry Jarret Esq. " "
Hon. John Cooper " "
Samuel Strouse " "
George M. Stroud affirmed and examined.

The counsel on the part of the commonwealth, having gone through with the examination of all the witnesses present, on the ninth article of impeachment, then proceeded to the examination of witnesses in support of the charges contained in the first clause of the tenth article, and

Henry Jarret, Esquire, was examined.

On motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until three o'clock, in the afternoon.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel on the part of the commonwealth resumed the examination of witnesses in support of the charge contained in the first clause of the tenth article; and

George M. Stroud, Esq was examined.
Hon. John Cooper "
Hugh Ross, Esquire "

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the first clause of the tenth article then proceeded to the examination of witnesses in support of the charge contained in the second clause of the tenth article.

Henry Jarret, Esq. was examined.
Hugh Ross, "
Hon. John Cooper, "

The counsel on the part of the commonwealth having gone through with the examination of witness on the second clause of the tenth article, then proceeded to the examination of witnesses in support of the charge contained in the eleventh article of impeachment.

Hugh Ross, Esq. was examined.
Henry Jarret "
Hon. John Cooper "

On motion of Mr. Kitchin and Mr. Mann,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

FRIDAY, December 23, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation, the members of the court were all present, and answered to their respective names.

The counsel on the part of the commonwealth, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called by the clerk: the following named did not answer, viz.

Samuel Baird, Samuel Sitgreaves, Daniel Helfrich, Frederick Smith, William Lattimore, John Young, Hopewell Hepburn, Christian F. Beitel, James Greenleaf, George Levers, Jefferson K. Heckman, John M. Scott, William P. Spering—13.

At this time the managers came into the court and presented to the president an extract from the journal of the House of Representatives, which was read as follows, viz.

In the House of Representatives,
December 23, 1825.

Whereas, the House of Representatives, on a resolution offered by Mr. Dillinger, on the 12th of December instant, proceeded to the appointment of managers on the part of the said house to prosecute the articles of impeachment against Robert Porter, Esq. president and judge of the 3d judicial district of Pennsylva ia, to wit. Messrs. Maclean, Irwin, Cunningham, Farrel, Thomas, W. B. Foster and M'Reynolds, who were accompanied by the said house, in committee of the whole, on the 13th December, to the bar of the Senate, to hear the answers, if any, which the said Robert Porter had to make in his behalf to the articles of impeachment thus preferred against him. And whereas, Mr. Maclean, on behalf of the managers, requested and obtained time until 11 o'clock on Monday, the 19th December then next, to consult the House of Representatives as to such replication as would be proper to make to the answers and pleas of the respondent. On the 17th of December instant, four of the said managers, to wit: Messrs. Maclean, Irwin, Cunningham and Farrel asked and obtained leave from the House of Representatives to withdraw from the committee of managers aforesaid, in the room of whom were appointed Messrs. Heston, F. Smith, Beeson and Petrikin. And whereas, from the shortness of the time allowed to the said managers to prepare for the trial of the said Robert Porter, Esq. and the want of knowledge on their part, of the witnesses to be produced, or the preparation to be made, it will be necessary to ask the honorable the Senate to continue the trial now pending, until such time as the attendance of witnessses already subpœnaed on the part of the commonwealth can be compelled, or take such other order as the said court in its wisdom shall think expedient, to secure justice to the commonwealth: Therefore,

Resolved, That the honorable court of impeachment now holding, for the trial of Robert Porter, Esq, president judge of the third judicial district of Pennsylvania, be and they are hereby respectfully requested to continue the said trial until Monday the 26th inst. at 10 o'clock, or take such other order as will effect the purposes above mentioned.

Extract from the journal.
FRANCIS R. SHUNK, Clerk.

Laid on the table.

The counsel on the part of the commonwealth, having gone through with the examination of witnesses on the second clause of the tenth article, then proceeded to the examination of witnesses in support of the charges contained in the first

article of impeachment, and offered in evidence the records of the case of Jacob W. Seitzinger vs. Henry Zellers, in the court of common pleas of Berks county.

Marks J. Biddle was then sworn and examined.

On motion, and with the consent of the respondent,

Marks J. Biddle and George M. Stroud, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the first article, then proceeded to the examination of witnesses in support of the charges contained in the fourth article of impeachment.

When Hugh Ross, Esq. was called, and on his examination the counsel on the part of the commonwealth proposed to ask the witness the following question:

"State what evidence was given of a larceny before the judgment bond was given by Mills and his two sureties to the prosecutor, Levers."

Which being objected to by the counsel for the respondent.

On the question being put to the court,

Shall the question be put to the witness as proposed?

It was determined in the affirmative.

When a discussion arose among the members of the court, on the propriety of the question being put to the witness at the present time.

A motion was made by Mr. Duncan and Mr. Henderson,

To reconsider the vote just given,

Which was agreed to, and

The question then recurring,

Shall the question be put to the witness as proposed?

It was at the request of the counsel with the unanimous consent of the court, withdrawn for the present.

When on motion of Mr. M'Ilvain and Mr. Power,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock precisely, by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent with his counsel.

On motion, and with the consent of the respondent,

George Haveracker and Abraham Beidleman, witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

The counsel for the commonwealth requested that the return of the subpoena for George Levers, should be made by the sergeant at-arms.

The service of the subpoena being proved to the satisfaction of the court, and Mr. Levers being absent, the counsel then requested that an attachment might be granted by the court against the said George Levers.

Which was granted, and

An attachment was accordingly issued.

The counsel for the commonwealth then resumed the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Hugh Ross was again examined.

Mr. Jacob Reese, jun. one of the witnesses on the part of the commonwealth, at his request was permitted to explain part of his testimony which he gave on the third article, which being done,

On motion, and with the consent of the respondent,

Jacob Reese, jr. was discharged at the request of the counsel on the part of the commonwealth.

The managers having gone through with the examination of witnesses on the fourth article, then proceeded to the examination of witnesses in support of the charge contained in the fifth article of impeachment.

Henry King, Esq. was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in the fifth article, then proceeded to the examination of witnesses in support of the charges contained in the sixth article of impeachment, and at the same time offered in evidence the record of the case of James Hays vs. Hugh Bellas, in the court of common pleas of Northampton county.

Hugh Bellas, Esq. was then sworn and examined.

On motion of Mr. Dewart and Mr. Ryon,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, December 24, 1825.

The court was opened precisely at ten o'clock, A. M. by proclamation. The members of the court were all present and answered to their respective names.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk, the following named did not answer: Samuel Baird, Jno. Young, George Levers, Samuel Sitgreaves, Hopewell Hepburn, Jefferson K. Heckman, Danl. Helfrich, Christian P. Beitel, Jno. M. Scott, Gabriel Hiester, Fredk. Smith, James Greenleaf, Christopher Meixsell, Wm. P. Spering, Wm. Lattimore, 15.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the charge contained in the sixth article of impeachment, then proceeded to the examination of witnesses, in support of the charge contained in the seventh article, and

Henry King, was examined.

Chas, Davis, was sworn and examined.

Hugh Ross, "

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the seventh article, then proceeded to the examination of witnesses in support of the charge contained in the eighth article of impeachment.

Jacob Bishop was sworn and examined.

The counsel on the part of the commonwealth, then submitted in evidence the record of the case of the supervisors of the public roads and highways of the township of Northampton vs. James Greenleaf.

Charles Davis, was then examined.

Henry Jarret, " "

The counsel on the part of the commonwealth having gone through with the examination of witnesses, in support of the charge contained in the eighth article of impeachment,

On motion, and with the consent of the respondent,

Saml. Shouse, Jacob Weygandt, jr. and Josiah Davis, Esqrs. witnesses on the part of the commonwealth, were discharged at the request of the counsel on the part of the commonwealth.

On motion of Mr. Hawkins and Mr. Ritscher,

The president ordered the court to be adjourned until ten o'clock, on Monday morning next.

MONDAY, December 26, 1825.

The court was opened pecisely at ten o'clock, A. M. by proclamation. The members of the court were all present except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk; the following named did not answer, viz:

Hugh Bellas, Saml. Sitgreaves Jno. M. Scott, Fredk. Smith, Wm. P. Spering, Saml. Baird, Danl. Helfrick, Alex. L. Hays, James Greenleaf, Wm. Lattimore, John Young, Christian F. Beitel, Robert M. Brooke, Peter Ihrie, jr.—14.

A motion was made by Mr. Dewart and Mr. Mann,

That the court proceed with the trial, in the absence of Mr. Sutherland.

When Mr. Douglas, counsel on the part of the commonwealth, submitted to the court the following:

The managers on behalf of themselves and the House of Representatives, conducting the impeachment now pending before the honorable the Senate, against Robert Porter, Esq. believing that it is the just, legal and constitutional right, both of the commonwealth and the respondent, to have each and every member of the court who have been sworn or affirmed to try said impeachment, present during the whole of the trial thereof, unless in the case of the death or sickness of any of the said members; and as all of the members of the court are not now present, they respectfully object against proceeding on said trial at this time. By

SAMUEL DOUGLAS,
Their Attorney.

December 26, 1825.

On the question,

Will the court proceed with the trial in the absence of Mr. Sutherland?

A motion was made by Mr. Groves and Mr. Allshouse,

That the court adjourn until eleven o'clock, to-morrow morning.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Kitchin and Mr. Ritscher, and were as follow:

YEAS.		YEAS.	
Messrs.	Allshouse,	Messrs.	Ogle,
	Dewart,		Power,
	Dunlop,		Ritscher,
	Groves,		Ryon,
	Hawkins,		St. Clair,
	Herbert,		Sullivan,
	Mann,		Mahon, president, 15.
	Moore,		

NAYS.		NAYS.	
Messrs.	Audenried,	Messrs.	Kerlin,
	Burnside.		Kitchin,
	Duncan,		Knight,
	Emlen,		Leech,
	Garber,		M'Ilvain,
	Hamilton		Schall,
	Henderson,		Winter, 15.
	Kelton,		

So it was determined in the negative.

The question recurring,

Will the court proceed with the trial in the absence of Mr. Sutherland?

It was determined in the affirmative.

On motion of Mr. Sullivan and Mr. Emlen,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

TUESDAY, December 27, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation. The members of the court were all present, except Mr. Ryon and Mr. Sutherland.

Mr. Ogle informed the court that the indisposition of Mr. Ryon was such as to prevent his attendance.

The managers attended with their counsel, and the respondent with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk. The following named did not answer:

Hugh Bellas, John Young, Samuel Sitgreaves, Christian F. Beitel, John M. Scott, Robert M. Brooke, James Greenleaf, William P. Spering, William Lattimore.

On motion of Mr. Emlen and Mr. Garber,

The president ordered the court to be adjourned for one hour.

SAME DAY—IN THE FORENOON.

The court was opened precisely at 20 minutes before 11 o'clock, by proclamation. The members of the court were all present except Mr. Ryon and Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

A motion was made by Mr. Mann and Mr. Allshouse, that the court adjourn.

Which was agreed to, and

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at 3 o'clock, by proclamation. The members of the court were all present except Mr. Ryon and Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

On the question being put,

Will the court proceed with the trial?

It was determined in the affirmative.

The counsel on the part of the commonwealth then proceeded in the examination of witnesses in support of the charges contained in the first article of impeachment.

Saml. Baird, Esq. was sworn and examined.

The counsel on the part of the commonwealth submitted to the court the following question, which they proposed to put to the witness:

"State whether any evidence of defalcation on the part of the defendant in the suit, was given to the referee at the trial of he cause."

Which was objected to by the counsel for the respondent,

On the question,

Shall the question proposed be put to the witness?

It was determined in the negative.

The counsel on the part of the commonwealth having gone through with the examination of the witnesses in support of the charge contained in the first article, proceeded to the examination of witnesses in support of the charges contained in the fifth article.

Christian F. Beitel, was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the fifth article, proceeded to the examination of witnesses in support of the charge contained in the seventh article.

Daniel Helfrick, was sworn and examined.

A motion was made by Mr. Ogle and Mr. Hawkins, that the court adjourn.

Which was not agreed to.

The counsel on the part of the commonwealth having gone through with the examination of witnesses on the seventh article, and stated to the court that the Hon. John Cooper and Hugh Ross, Esq. were desirous to explain to the court, part of their testimony which they had given on the eleventh article, which was allowed, and the

Hon. John Cooper and Hugh Ross, Esq. were called in, and gave their explanation.

The counsel on the part of the commonwealth proceeded to the examination of witnesses, in support of the charge contained in the fourth article of impeachment.

George Levers, was sworn and examined.

On motion of Mr. Kitchin and Mr. M'Ilvain,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

WEDNESDAY, December 28, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation.

The members of the court were all present, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

Agreeably to order,

The names of the witnesses were called over by the clerk, the following named did not answer, viz:

John Young, Samuel Sitgreaves, Robert M. Brooke, James Greenleaf, Christopher Meixsell, Wm. P. Spering, and Wm. Lattimore.

The counsel on the part of the commonwealth, stated to the court that George Levers was desirous to explain to the court part of his testimony which he had given on the fourth article.

Which was allowed, and

Geo. Levers was then called in—he explained.

The counsel on the part of the commonwealth, continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

John. M. Scott, was sworn and examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses in support of the charge contained in the fourth article, and proceeded to the examination of witnesses in support of the charge contained in the sixth article, and offered in evidence the record of the cause, Hays, vs. Bellas, in the supreme court of Pennsylvania.

John M. Scott, was then examined.

The counsel on the part of the commonwealth having gone through with the examination of witnesses, in support of the charge contained in the sixth article, proceeded to the examination of witnesses in support of the charges contained in the ninth article.

Peter Ihrie, jr. Esq. sworn and examined
Jefferson K. Heckman, Esq. " "
Hopewell Hepburn, " "

On motion, and with the consent of the respondent,

The following named witnesses, on the part of the commonwealth, viz:

Samuel Baird, Henry Betz, John M. Scott and Hopewell Hepburn, Esquires, were discharged at the request of the counsel on the part of the commonwealth.

The evidence being closed on the part of the prosecution,

At twenty minutes before eleven o'clock, David Paul Brown, Esq. counsel for the respondent, commenced addressing the court in behalf of the accused, and concluded at twenty minutes after eleven o'clock.

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the first article of impeachment.

Alexander L. Hays, was sworn and examined.
Hon. William Witman, jr. " "

The counsel for the respondent proposed to put the following question to the last named witness.

"Did you, sir, hear Mr. Biddle request judge Porter to retire or withdraw from the bench, at or about the time of the argument, upon the exceptions."

Which was objected to by the managers.

On the question,

Shall the question be put to the witness as proposed?

It was determined in the affirmative.

Hon. Jacob Schneider, affirmed and examined.

On motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court being all present, except Mr. Suthland.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel on the part of the commonwealth desired to cross examine two of the witnesses adduced by the counsel for the respondent this morning, on the first article of impeachment.

Which was allowed, and the

Hon. Wm. Witman, jr. and

Hon. Jacob Schneider, were then cross examined.

The counsel for the respondent continued to adduce testimony against the charges contained in the first article.

John Addams, Esq. was sworn and examined.

The counsel for the respondent then adduced testimony against the charges contained in the second article of impeachment.

Chas. L. Hutter, Esq. was sworn and examined.

Hon. Jno. Fogel " "

Fredk. Hyneman, " "

Abm. Rinker, " "

Nicholas Saeger was called.

The counsel for the respondent proposed to prove by the last named witness that Abraham Beidleman was convicted for permitting gambling in his house.

Which was objected to by the counsel for the managers, and overuled by the court.

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the third article of impeachment.

Wm. White, Esq. was sworn and examined.
John. R. Lattimore, Esq. " "

The counsel for the respondent then proceeded to adduce testimony against the charges contained in the fourth article of impeachment.

James M. Porter, affirmed and examined.
Hon Danl Wagener. " "

The counsel for the respondent passed over the fifth article for the present, and adduced testimony againt the charges contained in the sixth article of impeachment.

David D. Wagener, sworn and examined.
James Hays, Esq. " "
James M. Porter, Esq. examined.

On motion of Mr. Mann and Mr. Hamilton,

The president ordered the court to be adjourned until half past nine o'clock, to-morrow morning.

THURSDAY, December 29, 1825.

The court was opened precisely at half past nine o'clock, A. M. by proclamation.

The members of the court were all present, except Mr. Sutherland, and answered to their names

The managers attended with their counsel, and the respondent attended with his counsel.

The names of the witnesses were called over by the clerk. The following named did not answer:

John Young, Saml. Sitgreaves, Robt. M. Brooke, James Greenleaf, Wm. P. Spering and William Lattimore.

The counsel for the respondent adduced testimony against the charges contained in the fifth article of impeachment.

Fredk. Smith, Esq. (of Reading) was sworn and examined.

The counsel for the respondent adduced testimony against the charges contained in the seventh article.

Fredk. Smith, Esq. (of Reading) was examined.
James M. Porter, Esq. "

The counsel for the respondent proceeded to adduce testimony against the charges contained in the eighth article of impeachment.

When the counsel for the managers stated to the court, that owing to the non-attendance of Mr. Sitgreaves, they had abandoned the eighth article of impeachment.

The counsel for the respondent then adduced testimony against the charges contained in the ninth article of impeachment.

Hon. Daniel Wagener, was examined.
Doct. Jno. O. Wagener, affirmed and examined.
Christopher Meixsell, sworn and examined.

The counsel for the respondent then adduced testimony against the charges contained in the tenth article of impeachment.

Mathias Gress, Esq. was sworn and examined.
Hon. Daniel Wagener, examined.
Wm. Stroud, sworn and examined.
Peter Ihrie, jr. examined.
Abrm. Sigman, sworn and examined.
Hon. Daniel Wagener, again examined.

On motion of Mr. Ogle and Mr. Garber,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation. The members of the court were all present, except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

The counsel for the respondent continued to adduce testimony against the charges contained in the tenth article.

Danl. Wagener, was examined.

The counsel for the respondent proposed to prove by the last named witness, the general character of judge Porter, and proposed to the witness the following question.

"You state, sir, that you have been associate judge of the court of common pleas for Northampton county, of which judge Porter is president, for upwards of fourteen years, I will ask you, what has been his general character for honesty during that time."

Which was objected to by the counsel for the managers.

The question was put to the court.

When a discussion arose among the members, and at the request of one of them, it was withdrawn by the counsel, by the unanimous consent of the court.

The counsel for the respondent stated to the court that he would now close with adducing testimony.

The counsel for the commonwealth then called the following witness to explain parts of his testimony, and to rebut testimony of other witnesses.

Hugh Bellas, Esq. examined.

The testimony was closed on the part of the commonwealth; and

On motion of Mr. Garber, and Mr. Dewart,

The witnesses were then discharged with the consent of both parties.

A motion was made by Mr. Dunlop and Mr. Power, that the court adjourn.

On the question,

Will the court adjourn?

The yeas and nays were required by Mr. Kitchin, and Mr. Burnside, and were as follow:

YEAS		YEAS	
Messrs.	Allshouse,	Messrs.	Ogle,
	Audenried,		Power,
	Dunlop,		Ritscher,
	Emlen,		Ryon,
	Groves,		St. Clair,
	Hawkins,		Sullivan,
	Herbert,		Winter,
	Mann,		Mahon, president 16.

NAYS.		NAYS.	
Messrs.	Burnside,	Messrs.	Kerlin,
	Dewart,		Kitchin,
	Duncan,		Knight,
	Garber,		Leech,
	Hamilton,		M'Ilvain,
	Henderson,		Moore,
	Kelton,		Schall, 14.

So it was determined in the affirmative.

And the president ordered the court to be adjourned until ten o'clock, to-morrow morning.

FRIDAY, December 30, 1825.

On motion of Mr. Burnside and Mr. Hawkins,

The court was opened precisely at fifteen minutes before ten o'clock, A. M. by proclamation.

The members of the court were all present and answered to their respective names, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

Mr. Douglas, counsel on behalf of the managers, commenced his argument at ten minutes before ten o'clock, and concluded at five minutes after eleven o'clock.

When, David Paul Brown, Esq. commenced his argument on the part of the respondent and continued until ten minutes after one o'clock.

When, on motion of Mr. Ogle and Mr. Ritscher,

The president ordered the court to be adjourned until nine o'clock, to-morrow morning.

SATURDAY, December 31, 1825.

The court was opened precisely at nine o'clock, A. M. by proclamation.

The members of the court were all present and answered to their respective names except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Mr. Brown, counsel for the respondent, continued his argument, and concluded at ten minutes past eleven.

When Mr. Douglas commenced his reply on behalf of the commonwealth, and continued until ten minutes after one o'clock.

When, on motion of Mr. Ritscher and Mr. Allshouse,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present and answered to their names respectively, except Mr. Sutherland.

The managers attended with their counsel, and the respondent attended with his counsel.

Mr. Douglas resumed his reply on behalf of the commonwealth at five minutes after three o'clock, and concluded at twenty-five minutes after four.

The president then inquired whether the court were ready to proceed to give their judgment; when

Mr. Ogle rose and stated that he was not prepared, and asked the indulgence of the court until seven o'clock, in the evening.

Whereupon,

On motion of Mr. Hawkins and Mr. St. Clair,

The president ordered the court to be adjourned until seven o'clock, in the evening.

IN THE EVENING.

The court was opened precisely at seven o'clock, by proclamation.

The members of the court were all present and answered to their respective names, except Mr. Sutherland.

The managers attended with their counsel, and the respondent with his counsel.

The president then addressed the court as follows:

Gentlemen,—You have heard the evidence and arguments adduced on the trial of Robert Porter, Esq. president and judge of the third judicial district of Pennsylvania, impeached for misdemeanors in office.

The first article was then read by the clerk. After which

The president stated that the members would, as their names were called, pronounce their judgment on the following question.

Is the respondent Robert Porter, guilty or not guilty of the misdemeanor in office as charged in the first article of impeachment exhibited against him by the House of Representatives, just read;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The second article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Audenried, Hawkins, Knight, Leech and St. Clair 5, said guilty.

Messrs. Allshouse, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Henderson, Herbert, Kelton, Kerlin, Kitchin, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, Sullivan, Winter and Mahon, president, 25, said not guilty.

The third article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The fourth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Leech, Power, Ritscher, Ryon, St. Clair and Winter, 7, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Mann M'Ilvain, Moore, Ogle, Schall, Sullivan and Mahon, president, 23, said not guilty.

The fifth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members, answered as follow, viz:

Messrs. Allshouse, Power and Ritscher, 3, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 27, said not guilty.

The sixth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members voted as follow, viz:

Messrs. Allshouse, Hamilton, Hawkins, Knight, Leech, Mann, Power, Ritscher, Ryon, St. Clair and Winter, 11, said guilty.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Henderson, Herbert, Kelton, Kerlin, Kitchin, M'Ilvain, Moore, Ogle, Schall, Sullivan and Mahon, president, 19, said not guilty.

The seventh article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members voted as follow, viz:

Mersrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The eighth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Messrs, Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The ninth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The tenth article of impeachment was then read, and the like question being stated by the president;
Whereupon, the members answered as follow, viz:

Mr. Leech, 1, said guilty.
Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 29, said not guilty.

The eleventh article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

The twelfth article of impeachment was then read, and the like question being stated by the president;

Whereupon, the members answered as follow, viz:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Winter and Mahon, president, 30, said not guilty.

Whereupon, the president declared that on the

1st Article, none have said guilty, and thirty have said not guilty

2d Article, five have said guilty, and twenty-five have said not guilty.

3d Article, none have said guilty, and thirty have said not guilty.

4th Article, seven have said guilty, and twenty-three have said not guilty.

5th Article, three have said guilty, and twenty-seven have said not guilty.

6th Article, eleven have said guilty, and nineteen have said not guilty.

7th Article, none have said guilty, and thirty have said not guilty.

8th Article, none have said guilty, and thirty have said not uilty.

9th Article, none have said guilty, and thirty have said not guilty.

10th Article, one has said guilty, and twenty-nine have said not guilty.

11th Article, none have said guilty, and thirty have said not guilty.

12th Article, none have said guilty, and thirty have said not guilty.

Hence it appears, that there is not a constitutional majority of votes finding Robert Porter, Esquire, guilty on any one article; it therefore became his duty to declare that Robert Porter, Esquire, stands acquitted of all the articles of accusation and impeachment, exhibited against him by the House of Representatives.

On motion of Mr. Duncan and Mr. Knight,

The president ordered the court to be adjourned *sine die.*

JOHN DE PUI, *Clerk.*

Exhibit D

JOURNAL

OF THE

COURT OF IMPEACHMENT

FOR THE TRIAL OF

SETH CHAPMAN, ESQUIRE,

President Judge of the eighth Judicial District of Pennsylvania-

FOR

MISDEMEANORS IN OFFICE,

BEFORE

THE SENATE

OF THE

COMMONWEALTH OF PENNSYLVANIA

HARRISBURG

PRINTED BY CAMERON & KRAUSE

1826.

TUESDAY. February 7, 1826.

At eleven o'clock, A.M. precisely the Senate proceeded to organise itself into a court of impeachment. The following members present.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Leech, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter, Mahon, president.—32.

Mr. Leech asked and was excused from serving as a member of the court, on account of being indisposed.

The oath prescribed by the constitution, and in the form required by the resolution of the Senate, adopted on the 26th ult. was administered to the president by Mr. Hawkins.

The president administered the oath required, and prescribed to the following named members, viz.

Messrs. Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Hamilton, Hawkins, Henderson, Kelton, Kitchin, M'Ilvain, Moore, Ogle, Ryon, Sutherland, Winter, Herbert, Kelley, Mann, Power, St. Clair.

And the affirmation to

Messrs. Allshouse, Garber, Groves, Kerlin, Knight, Ritscher, Schall and Sullivan.

On motion of Mr. Hawkins and Mr. Burnside,

Ordered, That the Clerk give notice to the House of Representatives that the Senate are now organised as a court of impeachment, for the trial of Seth Chapman, Esquire, president judge of the eighth judicial district of this commonwealth.

In a few minutes the managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger, accompanied by the House of Representatives, in committee of the whole, entered and took their seats assigned them respectively.

The president ordered Seth Chapman, Esquire, president judge of the courts of common pleas of the eighth judicial district of this commonwealth, to be called, and on his appearance at the bar, the president directed the clerk to read the articles of accusation and impeachment, preferred by the House of Representatives, in their own name and in the name of the people of Pennsylvania, a copy of which is as follows:

ARTICLES, exhibited by the House of Representatives of the commonwealth of Pennsylvania, in their name and in the name of the people of Pennsylvania, against Seth Chapman, Esquire, president of the eighth judicial district of the said commonwealth, in support of their impeachment against him for misdemeanors in office.

ARTICLE I.

That in direct violation and contempt of the constitution of this commonwealth, the said Seth Chapman, Esquire, being duly appointed and commissioned president of the eighth judicial district, composed of the counties of Northumberland, Columbia, Union and Lycoming, when presiding as judge, has oppressively and tyrannically caused a citizen of this commonwealth to be arrested and imprisoned, without reasonable cause shown, and without lawful warrant supported by oath or affirmation, viz: At the court of general quarter sessions of the peace for the county of Northumberland, at August sessions, one thousand eight hundred and twenty-four, the said Seth Chapman, Esquire, presiding as judge, did direct a certain Jacob Farrow, a citizen of this commonwealth, to be arrested and imprisoned without any complaint against him, supported by oath or affirmation and without lawful cause.

ARTICLE II.

That notwithstanding the provisions of the twenty-first section of an act of the general assembly of this commonwealth, passed the twentieth day of March, one thousand eight hundred and ten, which provides that no judgment shall be set aside in pursuance of a writ of certiorari to remove the proceeding had in any trial before a justice of the peace, unless the same is issued within twenty days after judgment was rendered and served within five days thereafter, and that no execution shall be set aside in pursuance of the writ aforesaid unless the said writ is issued and served within twenty days after the execution issued, yet the said Seth Chapman, Esquire, being duly appointed and commissioned president judge as aforesaid, and acting in his official capacity, regardless of the provisions of the said act of assembly, did at a court of common pleas in and for Union county, whereat the said Seth Chapman, Esquire, presided in a certain writ of certiorari issued out of the court of common pleas of said county, to September term, one thousand eight hundred and twenty-two, at the suit of Stephen Hughes for the use of Daniel Kline, vs. John Karner, and directed to Christian Miller, Esq. a justice of the peace for said county, upon which the proceedings of the said justice had been returned to said court, set aside and reverse the judgment of the said justice and did set aside an execution thereon issued although said judgment was rendered more than twenty days before the issuing of said certiorari, the said Seth Chapman, Esquire, at

the time well knowing the reversal thereof to be contrary to the provisions of the said act of assembly.

ARTICLE III.

That notwithstanding the provisions of the twenty-fifth section of the act of the twenty-fourth of February, one thousand eight hundred and six, which secure to every suitor in this commonwealth the benefit of a revision of the opinions of the presidents of the courts of common pleas in the supreme court of this commonwealth, by making it the duty of the said judges if either party, by himself or counsel, require it, to reduce the opinion given with their reasons therefor to writing, and file the same of record in the cause, the said Seth Chapman, Esquire, in violation of the salutary provisions of the said act and for the purpose of preventing a revision of his opinion in the supreme court and to obstruct the administration of justice, did in the case of the lessee of Wistar vs. Clark, Madden et al. in the court of common pleas of Northumberland county, of June term, one thousand eight hundred and thirteen, on the trial of said action as president of the said court, deliver to the jury then impannelled and sworn or affirmed to try the issue joined in said case, his charge and opinion, which opinionwas required by the counsel for defendants to be reduced to writing and filed of record in the cause, and the counsel for defendants then tendered his bill of exceptions to said opinion which was allowed by the said court, and the said Seth Chapman, Esquire, for the purpose of preventing the said defendants from obtaining the benefit of a revision of his said opinion in the supreme court according to the laws and constitution of this commonwealth, did file of record in said cause a paper purporting to be the opinion and charge delivered by him to said jury and excepted to as aforesaid, which was not in fact the opinion and charge delivered by him to said jury, and which said paper purporting to be the charge and opinion as aforesaid was returned to the supreme court on a writ of error which issued in said cause from the said supreme court and the said Seth Chapman, Esquire, for the purpose of preventing the due administration of justice and to deprive the plantiff in error in the suit aforesaid of his constitutional and legal right to a revision of the opinion of the said Seth Chapman, Esquire, in the supreme court of this commonwealth, falsified, added to and altered the record of the said court of common pleas, in the manner aforesaid.

ARTICLE IV.

The said Seth Chapman, Esquire, duly appointed and commisioned president as aforesaid, not regarding the duties of said office by freely, fully and impartially administering the laws of this commonwealth, and deciding in all cases tried before him as president judge without fear, favor or affection, has

which he the said Seth Chapman, president as aforesaid, shall make unto the said articles or to any or either of them, and of offering proof of the said premises or of any of them or of any other accusation or impeachment which shall or may be exhibited by them as the case shall require, do demand that the said Seth Chapman, president as aforesaid, may be put to answer all and every of the premises and that such proceedings, examination, trial and judgment may be against and upon him had as are agreeably to the constitution and laws of this commonwealth, and the said House of Representatives are ready to offer proof of the premises at such times as the Senate of the said commonwealth of Pennsylvania shall appoint.

(Signed,) JOSEPH RITNER, Speaker
of the House of Representatives.

The president then required of Seth Chapman, Esquire, what answer he had to make in his behalf, to the articles of impeachment preferred against him as just read.

Seth Chapman, Esquire, stated to the court that Samuel Douglas and George Fisher, Esquires, would act as counsel on his behalf, and desired that Mr. Douglas be permitted to read his answers and pleas.

Which was allowed, and,

They were accordingly read by him, as follow:

The answers and pleas of Seth Chapman, president judge of the eighth judicial district of the commonwealth of Pennsylvania, to the articles and accusations preferred against him by the honorable the House of Representatives of said commonwealth for misdemeanors in office.

The respondent, with willing obedience, appears in his proper person, at the bar of this honorable court, to answer and to defend his reputation against articles of accusation and impeachment, preferred against him by the honorable House of Representatives of the commonwealth of Pennsylvania, for misdemeanors in office. And as your respondent is not conscious of ever having, knowingly, offended against the constitution and laws of his country, he with more alacrity avails himself of the earliest opportunity to answer those charges, as they have been for a long time before the public, much to his prejudice, both as an officer and a man.

Therefore, saving all exception, both now and at any time hereafter, to the insufficiency both in substance and form of said articles of impeachment, and of each and every of them, and averring that he is not bound by any law of the land to answer, them as they do not contain, either in substance or form, any impeachable offence; yet, ever anxious to lay before this honorable body and the public his official conduct in its true

and proper light, he will plead to each and every article preferred against him, after he shall have first briefly detailed the circumstances of each case.

ARTICLE I.

By the first article of impeachment respondent is charged with oppressively and tyrannically causing Jacob Farrow, a citizen of this commonwealth, to be arrested and imprisoned without reasonable cause shown, and without any lawful warrant issued on oath or affirmation, in direct violation and contempt of the constitution of this commonwealth. The facts of this transaction will clearly show that respondent and the other members of the court, acted on the occasion in perfect accordance with the spirit and principles of the constitution and laws of this commonwealth. The case was briefly this: As Alem Marr, Esq. then prosecuting attorney for Northumberland county, was about entering the court house door, which was open and in view of the court, at August sessions, eighteen hundred and twenty-four. a violent assault was made upon him by said Farrow, who also greatly interrupted the business of the court in which it was then engaged. Mr. Marr came forward and complained to the court, who directed Jacob Farrow; then in court, to be brought before them. He resisted the constable, but was after a few minutes brought before the court, who having stated to him the complaint against him and the breach of the peace committed in their presence, which he did not deny, directed him to give security to answer said complaint, and also, to answer for a contempt of the court, by breaking the peace in their presence, and that upon his neglect and refusal to give security, the court ordered him to be committed, and John Weast, the constable, to be bound over to give evidence, all which the record of the court will fully show. That the conduct of the court was not only, it is firmly believed, justified by the constitution and laws of the land, but was unavoidable, and that certainly there is no warrant required by the constitution to arrest for a breach of the peace committed in the presence of a court; and respondent avers that neither oppression nor tyranny had any hand in the order of the court that Jacob Farrow should give security, that the father of the said Jacob was offered and accepted by the court as his surety, on the afternoon of the said day on which he was committed, but that in consideration of the said Jacob's conduct, his father preferred his confinement in jail for a few days, after which he became his surety, and that the said Farrow never made any complaint of oppression or tyranny, nor had he any cause so to do.

And the said Seth Chapman, for answer and plea to the said first article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as it is therein charged against him.

ARTICLE II.

By the second article of impeachment, your respondent is charged with reversing a judgment and setting aside an execution on certiorari, in the case of Stephen Hughes, for the use of Daniel Kline against John Karner, although the certiorari had issued more than twenty days after the judgment was given, and execution issued by the justice upon it. The record of the justice sets forth that the defendant, although an apprentice and minor at the time, was sued personally on a note without joining his guardian, and consequently as the justice had not authority to sustain the suit consistently with the truth of the defendant's plea, there was no legal judgment to support the execution which had issued on it nine days before the allowance of the certiorari, all of which proceedings by the said record fully appears, and which together with the record of the cause in the court of common pleas, respondent tenders as a part of his answer and plea. And would farther state, that as the act of assembly contemplates only the protection of a lawful judgment, after the lapse of twenty days, the proceedings of the justice were therefore properly reversed by the court. And this is believed to be not only the practice but the construction of the act throughout the state. Your respondent therefore feels assured upon the most deliberate reflection that the court acted in perfect obedience to the requisitions both of law and duty: And declares that no complaint was ever made to his knowledge against the proceedings of the court, by either plaintiff or defendant.

And the said Seth Chapman, for answer and plea to the said second article of accusation and impeachment, saith, that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

ARTICLE III.

Your respondent is charged by the third article of impeachment with a violation of the salutary provisions of the twenty-fifth section of the act of the twenty-fourth February, one thousand eight hundred and six, and that for the purpose of preventing a revision of his opinion in the supreme court, and to obstruct the administration of justice, he did in the case of the lessee of Wistar, against Clark, Madden et al, in the common pleas of Northumberland county, of June term one thousand eight hundred and thirteen, on the trial of said case, although required by the counsel for the defendants to reduce his opinion to writing and file it of record and after the counsel for defendants had tendered his bill of exceptions to said opinion, for the purpose of preventing said defendants from obtaining the benefit of a revision of his said opinion in the supreme court on a writ of error, file of record in said cause a paper

purporting to be the opinion delivered by him to the jury, which was in fact not the opinion so delivered, and that your respondent falsified, added to, and altered the records of the common pleas in said cause.

To this accusation and charge your respondent answers, that although true it is such cause was pending, and tried before him in the year one thousand eight hundred and twelve, as by the record of said cause, which he offers as part of his answer, will appear: Yet that no writ of error was ever taken out by the defendants or any person for them, and that no request was ever made by them, or their counsel to reduce his opinion delivered to the jury to writing and file it of record, and that no bill of exceptions was ever tendered by them or their counsel to said opinion, and was not necessary to be tendered as the verdict of the jury in that case, and the judgment of the court thereon were in favor of the defendants. Your respondent farther states, that although two writs of error were taken out in that case by the plaintiff, yet that no request was made to reduce the opinion delivered by him to the jury to writing and to file it of record, nor no bill of exceptions tendered by the plaintiff, or her counsel before the verdict of the jury was delivered and recorded, nor at any time afterwards, and that respondent never filed more than one opinion in the cause, which was in substance the same he delivered to the jury, as taken from his notes. Respondent recollects that Mr. Hall obtained a copy of the charge for his own use as he was counsel for the plaintiff, yet it is denied that any complaint was ever made by either party against the proceedings of the court in that case, or that your respondent ever falsified, added to, or altered any record of this or any other cause; but that he has at all times freely offered and given his notes and opinions in every cause for the use of the supreme court, or the counsel concerned, when requested, and has always facilitated a revision of the causes tried before him as far as in his power, and acted consistently with a conscientious discharge of his duty.

And the said Seth Chapman, for answer and plea to the said third article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

ARTICLE IV.

The fourth article of impeachment charges your respondent with acts of partiality and favoritism towards the defendents in the case of the lessee of Philip Maus against John Montgomery and others, instituted to April term one thousand eight hundred, because as stated in the first specification he ordered the decree of the court extending the demise, which had expired in one thousand eight hundred and ten, to thirty years, to be rescinded. Your respondent conceiving that the first specification in

this article contains four distinct accusations, begs leave to answer each of them particularly and separately.

In answer to the first he would therefore state, that this ejectment was instituted in Northumberland county, to April term one thousand eight hundred, that the plaintiff's demise, which was laid for ten years, expired in one thousand eight hundred and ten, that the county of Columbia was divided from Northumberland, and organised for judicial purposes in one thousand eight hundred and fourteen, when said ejectment, with other causes, was transferred to it for trial, the said demise having expired four years prior to the transfer of said ejectment, and whilst it was remaining in the said county of Northumberland, that at August term one thousand eight hundred and twenty-two, in Columbia county when the court was about to rise, the plaintiff's counsel moved to enlarge the demise to thirty years, without notice to the defendants, when they were not in court and had no counsel; the court not being apprised of the situation of the action, and that the rights of other persons not parties to the suit had attached to the lands in controversy, granted the motion. At November term one thousand eight hundred and twenty-two, the defendants and those who had purchased the land in dispute after the expiration of said demise, having had information of the enlargment of the term at August court, appeared by their counsel in court and complained of the extension of the demise to thirty years without notice to them, and claiming it as a matter of right to be heard, moved the court to rescind their order: whereupon the court granted them a hearing as they believed they were bound to do, upon which hearing satisfactory proof was adduced to the court that the defendants and those under whom they claimed had been in quiet possession from one thousand seven hundred and seventy two, that the term had been expired for more than twelve years and that the cause had slept for upwards of twenty two years before that time, that they would be protected by the statute of limitations, that a purchaser for a valuable consideration had obtained possession of a part of the lands in dispute, and neither had notice of the motion made at August term one thousand eight hundred and twenty-two, nor was he party to the suit, nor could his title be tried in that ejectment, and that under those circumstances your respondent believed the extension of the term not a matter of course, but that it would tend to disturb vested rights and would be subversive of the law and justice of the country, as by the opinion filed of record in the cause, which he asks to be admitted as part of his answer, will more fully appear.

To the second accusation contained in said first specification charging respondent with continuing the cause at November term one thousand eight and twenty-two, when regularly reached, without any of the usual grounds being laid before the

court to authorise a continuance on the pretended ground, that should the order of the court extending the demise, be rescinded, there would remain nothing to try, he would answer that at this time the cause could not be tried, as the counsel for the defendants, and the purchaser who was no party to the record, had made at that term the motion to rescind the order of the court enlarging the demise, and that until the determination of said motion there could be no trial of the cause, which was then argued and held under advisement until next January term, when the court for the reasons before stated, granted the motion and rescinded their order

To the third accusation in said specification, charging respondent at said January term, with endeavoring out of favor to the defendents to compel the plaintiff to bring a new suit that his claim might be defeated, and with preventing him then from trying his cause by a jury of his country, by ordering a judgment to be entered in favor of plaintiff for nominal damages and costs only against defendants. Your respondent would answer that the demise having expired and not being extended there could be nothing to try but the question of damages and costs, that a jury at the recommendation of the court was then called and in the box for the purpose of trying said question, when the plaintiff's counsel objected to the jury's being sworn unless to try the title and merits of the cause, which the defendants' counsel resisted, and offered to give a judgment for nominal damages and costs, that the cause might be taken to the supreme court, whereupon the court, after full argument, decided that the title could not be tried, and so the supreme court have since decided in this very cause, and desirous that the question as to the enlargement of the demise might come before the supreme court, ordered a judgment to be entered in favor of the plaintiff against the defendants for nominal damages and costs, without which judgment the cause could not be removed by a writ of error, all of which, their said decision filed of record and here produced, and which respondent requests, may be received as part of his answer, will fully inform this honorable court. The last accusation stated in said specification charges respondent that at November term one thousand eight hundred and twenty-three in Columbia county, a jury having been sworn to try the issue, the defendants on the trial offered in evidence an article of agreement between the said Philip Maus and David Petrikin, which defendants alleged to be a deed, by which the said Philip Maus had conveyed his interest in the said land to the said David Petrikin, and thereby divested himself of the right to recover in said ejectment and that so he instucted the jury, with intent to favor the defendants, although he well knew that the said article was not a deed and that it did not divest the plaintiff of his right to recover in the action. To all which your respondent respectfully answers, that every instrument to

pass lands, and which is signed, sealed and delivered, is a deed, and that by the laws of this commonwealth, every deed whereby any estate of inheritance in fee simple is limited to the grantee and his heirs, the words *grant, bargain and sell*, shall be adjudged an express covenant to the grantee his heirs and assigns. That the deed under consideration did contain the words *grant, bargain and sell*, and when presented in evidence it became the duty of the court to give it a legal construction, your respondent with the rest of the court, after argument, delivered their opinion that said deed did divest the plaintiff of his right to recover the lands in controversy, as it vested the title in fee in the said Petrikin the grantee for a valuable consideration, and was not affected by the covenant which is contained therein of farther assurance And of the three points decided by the court of common pleas, first whether the deed was admissible in evidence; secondly, its legal import and operation from the contents, and thirdly whether the court had the right to compel the defendants to join in the plaintiff's demurrer to evidence, the supreme court on a writ of error affirmed the decision of the said court of common pleas on the first and third points, and differed in opinion on the second point. Your respondent would farther observe that if this cause has excited the sympathy of any person, it must arise from a want of knowledge of the facts and will cease to exist when it is found that it was tried on its merits before the late chief justice M'Kean in one thousand seven hundred and ninety-nine, when the plaintiff voluntarily suffered a nonsuit, the jury being at the bar ready to give their verdict. That a new suit was instituted in the common pleas of Northumberland county to April term one thousand eight hundred, which, in one thousand eight hundred and twenty-four, was referred to arbitrators, who reported in favor of the defendants, from which the plaintiff appealed. It has again been tried at last November court at the special instance of the plaintiff's counsel and a verdict and judgment given for the defendants.

To the second specification in said article, charging respondent that at a court of quarter sessions for Northumberland county in January term, one thousand eight hundred and twenty, a certain William A. Lloyd and others were indicted for an assault and battery on a certain John Frick, that during the trial a witness for the commonwealth testified that he had seen the said Lloyd strike the said Frick with a cane; whereupon the said Lloyd rose up in court and said what the witness had stated was false, that if he had so struck the said Frick, he would not then be in court to testify, for he could kill him with his fist, whereupon the respondent with intent to prevent the due administration of justice, to favor the said Lloyd, and to procure his acquittal contrary to the duties of his office, charged the jury to take notice of what the said William A. Lloyd

had said as to not having struck the said Frick, that his assertions, as he was a respectable man, were entitled to some weight in making up their minds. Your respondent answers, that the indictment set forth was tried before him and his associates, that the said William A. Lloyd did use the language charged in this specification, for which respondent immediately ordered him to sit down and severely reprimanded him for his conduct, that the trial then proceeded, then without interruption and terminated in the conviction of the defendants, who were each fined in twenty dollars and sentenced to pay the costs. But your respondent positively denies that any such language was ever used by him in his charge to the jury as stated in said specification, or that he ever exercised any partiality or favoritism whatever, in this or any other cause, and appeals to a true and faithful report of the whole case published immediately after the trial in the Miltonian, at the instance of the prosecutor and his friends, and James Carson, Esq. the then deputy attorney general for Columbia county, and who prosecuted in and reported this cause; which publication your respondent requests may be received as part of his answer and plea to this specification.

In conclusion of these your respondent's answers and pleas, he will readily admit that the history of human nature proves error to be incident to it, from which no individual can claim exemption; but that your respondent has ever erred knowingly, intentionally or wilfully, he most positively and solemnly denies.

And the said Seth Chapman, for answer and plea to the said fourth article of accusation and impeachment, saith that he is not guilty of the misdemeanor in said article alleged, in manner and form as therein charged against him.

The counsel for the respondent then handed to the president the pleas and answers which he had read.

Seats were then assigned to the respondent and his counsel.

The president then demanded of the gentlemen managers of the House of Representatives, what reply they had, (if any) to make to the said pleas and answers of the respondent.

Mr. Hutter, on behalf of the managers, requested time until half past ten o'clock, on Thursday morning next, to consult the House of Representatives, as to such replication as will be proper to make to the respondent's answers and pleas.

Which the court granted.

On motion of Mr. Garber and Mr. Ryon,

Ordered, That the names of the witnesses be called over, and that on the morning of each day, and that the absentees be noted.

The names of the witnesses were accordingly called,

The following named did not answer, viz.

Thomas Duncan, George A. Frick, John Russel, Samuel Bond, John Hanna, John Lashells, Daniel Montgomery, John Montgomery, John Murry, Leonard Rupert and Christian Heck. H.

The managers requested that the service of the subpoenas for the witnesses on the part of the commonwealth be proved, which being done by the sergeant-at-arms,

At the request of the managers

Ordered, That attachments be awarded against John Russel and George A. Frick.

On motion of Mr. Dewart and Mr. Moore,

The president ordered the court to be adjourned until half past ten o'clock, on Thursday morning next.

THURSDAY, February 9, 1826.

The court was opened precisely at half past ten o'clock, A M. by proclamation, the members of the court were all present and answered to their respective names.

Present—The managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott and Dillinger.

The respondent attended by his counsels agreeably to order.

The names of the witnesses were called—the following named did not answer, viz.

Thomas Duncan, Wm. Cox Ellis, John Hanna, John Lashells, and Christian Heck.—5.

The president inquired whether the parties were ready to proceed.

Mr. Wise on behalf of the managers, stated that owing to the length of the answer, as well as the shortness of time allowed them, the House of Representatives were not ready to make their replication, and begged the indulgence of the court to grant until to-morrow morning to file their replication.

Which the court granted; and

On motion of Mr. Burnside and Mr. Ogle,

The president ordered the court to be adjourned until half past ten o'clock to-morrow morning.

FRIDAY, February 10, 1826.

The court was opened precisely at half past ten o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers, viz.

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger.

The respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

Mr. Champneys, on behalf of the managers, requested that the court would amend the third article of impeachment, as the House of Representatives had directed, agreeably to the extract of the journal from that House, presented to the Senate this morning, in words following.

In the House of Representatives,
February 10th, 1826.

On motion,

Resolved, That the third article of impeachment against Seth Chapman, Esq. be amended by striking therefrom in the sixteenth, seventeenth, and nineteenth lines, the word "defendant" and inserting in each of the said lines in lieu thereof, the word "plaintiff."

Extract from the journal.

NATHL. P. HOBART, Assistant Clerk.

Which was objected to by the counsel for the respondent.

On the question,

Will the court agree that the articles of impeachment be so amended, as directed by the House of Representatives,

It was determined in the affirmative.

Mr. Hutter, on behalf of the managers, read the replication of the House of Representatives to the answers and pleas of Seth Chapman, Esq. as follows, viz.

In the House of Representatives,
February 8, 1826.

On motion.

Resolved, That the following replication be made to the plea or answer of Seth Chapman, Esq. president judge of the eighth judi-

cial district of the commonwealth of Pennsylvania, to the articles of accusation and impeachment now pending in the Senate against him, to wit:

The House of Representatives of the commonwealth of Pennsylvania, prosecutors on behalf of themselves and the people of Pennsylvania, against Seth Chapman, Esq. president of the eighth judicial district of the commonwealth of Pennsylvania, reply to the plea or answer of the said Seth Chapman, and aver that the charges against him the said Seth Chapman, are true, and that the said Seth Chapman is guilty of all and every the matters contained in the articles of accusation and impeachment by the House of Representatives, exhibited against him in manner and form as they are therein charged, and this the House of Representatives are ready to prove against him, at such convenient time and place as the Senate shall appoint for that purpose.

JOSEPH RITNER,

Speaker of the House of Representatives.

The parties being ready to proceed,

Mr. Wise on behalf of the managers, opened the impeachment at half past eleven and concluded at half past twelve o'clock, and proceeded to the examination of witnesses in support of the charge contained in the first article, and called

Samuel J. Packer, Esq. who was sworn.

The managers on behalf of the House of Representatives, proposed to prove by Samuel J. Packer, the complaint made by Mr. Marr to the court of the assault committed upon him by Jacob Farrow, and the direction of the court to the constable, ordering said Farrow to be arrested; and that said assault was not committed in the presence of the court nor was the court disturbed by it.

The counsel for the respondent objected to that part of the proposition respecting the complaint made by Mr. Marr to the court.

The question being put to the court,

Shall the managers be permitted to examine the witness on what they have proposed?

It was determined in the affirmative.

And the witness was then examined.

On motion of Mr. Groves and Mr. Dewart,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present and answered to their names.

Present the managers, and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charge contained in the first article.

George A. Frick, was sworn and examined.
Jacob Gearhart, Esq. do. do.
Alem Marr, " " "
Legrand Bancroft, " " "
Hugh Bellas, " " "
Ebenezer Greenough " " "
Samuel J. Packer, " examined, and submitted in evidence the minutes of the court of quarter sessions of Northumberland county, for August term, 1824.

The managers having gone through with the examination of witnesses in the first article, proceeded to the examination of witnesses in support of the charge contained in the second article of impeachment.

And Submitted in evidence the record in the case of Hughes for Kline vs. Korner, in the common pleas of Columbia county.

George A. Snyder Esq. sworn and examined.
James Merrill, do. do.
Charles Maus, do. do.

The managers stated that they had gone through with the examination of witnesses in support of the charge contained in the second article.

When on motion of Mr. Dewart and Mr. Garber,

Ordered, That when the court adjourns, it will adjourn to meet at ten oclock, A. M. each day, until otherwise ordered.

On motion,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, February 11, 1826.

The court was opened precisely at ten o'clock, A. M. by proclamation.

Present the managers,

Messrs. Hutter, Wise, Blythe, Champneys, Brown, Scott, and Dillinger.

The respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, Daniel Montgomery, and Christian Heck.

The managers proceeded to examine witnesses in support of the charge contained in the third article, and submitted in evidence the record of the case of the lessee of Sarah Wistar versus Clark Madden, et al, in the supreme court of Pennsylvania.

Ebenezer Greenough, Esq. examined
George A. Frick, " "
Hugh Bellas, " "
Hon. Thomas Duncan, sworn and examined.

The managers having gone through with the examination of witnesses in support of the third article, proceeded to examine witnesses on the fourth article, and submitted in evidence the records of the case of the lessee of Philip Maus vs. John Montgomery, in the court of common pleas of Columbia county.

Hugh Bellas examined.

On motion of Mr. Sutherland and Mr. Winter,

Ordered, That when the court adjourns, it will adjourn to meet at three o'clock, P. M. and that that be the standing hour of meeting in the afternoon, until otherwise ordered.

On motion,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened precisely at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charge contained in the fourth article of impeachment,

Hugh Bellas, Esq. examined.
Ebenezer Greenough, Esq. "
Doct. David Petrikin, sworn and examined.

On motion, and with the consent of the respondent,

Doct David Petrikin, a witness on the part of the commonwealth, was discharged.

On motion of Mr. Sutherland and Mr. M'Ilvain,

The president ordered the court to be adjourned until ten o'clock, on Monday morning next.

MONDAY, February 13, 1826.

The court was opened at ten o'clock, A. M precisely, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers, and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called. The following named did not answer, viz. William Cox Ellis, John Hanna, John Lashells and Christian Heck.

The managers continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Ebenezer Greenough, Esq examined.
George A. Frick, " "
Hugh Bellas, " "
George A. Snyder, " "
Joseph R. Priestley, sworn and examined.
Jacob Gearhart, Esq. "

The managers also submitted in evidence the record of the case of the Commonwealth vs. Lloyd et al, in the court of quarter sessions of Northumberland county, and an article of agreement between Philip Maus and David Petrikin.

The counsel for the respondent at this time concluded the cross examination of the honorable Thomas Duncan on the third article.

On motion of Mr. St. Clair and Mr. Kerlin,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The managers continued the examination of witnesses in support of the charges contained in the fourth article of impeachment.

Ebenezer Greenough examined.

And submitted in evidence the docket entries of the case of the lessee of Wistar vs. Clark, Madden, and Stackhouse, in the supreme court of Pennsylvania, and the docket entries of the same case in the court of common pleas of Northumberland county, and also in the circuit court.

Mr. Champneys, on behalf of the managers, stated that they had examined all their witnesses in support of the charges contained in the articles of impeachment, except such witnesses as they consider necessary to rebut the testimony offered on behalf of the respondent.

The evidence being closed on behalf of the commonwealth.

On motion of Mr. Kitchin and Mr. Sutherland,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

TUESDAY, February 14, 1826.

The court was opened at twelve o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following named did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

At twenty minutes after twelve o'clock, Mr. Fisher, one of the counsel for the respondent, commenced addressing the court on behalf of the accused, and continued until twenty minutes after one o'clock; when

On motion of Mr. Sutherland and Mr. Audenried,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Fisher, counsel for the respondent, continued his address to the court on behalf of the respondent and concluded at four o'clock.

The counsel for the respondent then proceeded to adduce testimony against charges contained in the first article of impeachment.

Martin Weaver, sworn and examined.

The counsel for the respondent proposed the following question to the witness, viz:

Respondent's counsel offer to ask the witness the behaviour of Jacob Farrow, and to prove that he was a turbulent, insolent, vagabond and a pest and nuisance in society?

Which being objected to by the managers, and overuled by the court.

Henry Shaeffer, sworn and examined.
John Weast, " "
John Conrad, " "
James Lee, " "

On motion of Mr. Mann and Mr. Kerlin,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

WEDNESDAY, February 15, 1826.

The court was opened at ten o'clock, A. M. by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Agreeably to order,

The names of the witnesses were called. The following named did not answer. William Cox Ellis, John Hanna, John Lashells and Christian Heck.

The counsel for the respondent continued to adduce testimony against the charges contained in the first article of impeachment.

William A. Lloyd, sworn and examined.
Frederick Lazarus, " "
Solomon Schaffer, " "

The counsel for the respondent having gone through with the examination of witnesses against the charges contained in the first article, the managers having submitted in evidence all the records of the case of Hughes for Kline vs. John Korner, they proceeded to adduce testimony against the third article of impeachment.

Alexander Jordan, sworn and examined.
Samuel J. Packer, do.

The counsel for the respondent proceeded to adduce testimony against the fourth article of impeachment.

Samuel Hepburn, sworn and examined.
Alem Marr, do.

On motion of Mr. Kitchin and Mr. Hamilton,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers; and the respondent attended by his counsel.

The counsel for the respondent continued to adduce testimony against the charges contained in the fourth article of impeachment.

Alem Marr again, examined.
Daniel Montgomery, sworn and examined.
John Montgomery, sworn and examined.
William Montgomery, affirmed and examined.
Leonard Rupert, sworn and examined.
John Taggart, " "

On motion of Mr. Mann and Mr. Power,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

THURSDAY, February 16, 1826.

The court was opened at ten o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present the managers and respondent, attended by his counsel.

Agreeably to order,

The names of the witnesses were called: the following did not answer, viz.

William Cox Ellis, John Hanna, John Lashells, and Christian Heck.

The counsel for the respondent continued to adduce testimony against the charges contained in the fourth article of impeachment.

Robert C. Grier sworn and examined.

The counsel for the respondent offer to prove by the witness that Dr. Petriken is the only person who originated the inquiry into the judge's conduct; and his declarations as to his having procured his impeachment and threats that he would prosecute him in future for his opinions in the case of Maus vs. Montgomery. The respondent will follow this up with other testimony to prove that after the first trial in 1823. Dr. Petriken declared that he had lost $8,000 by the charge of the court, and he would be d——d but he would have him impeached for it, and break him or bead him;

Which was objected to by the managers, and overruled by the court.

John H. Brautigam, sworn and examined.

The counsel for the respondent offered in evidence the original charge, as written and delivered by the respondent to the jury, in the case of the Commonwealth vs. Lloyd, et al, verified by the oath of the judge, and that it was published as delivered, in the Miltonian, at the instance of the prosecution;

Which was objected to by the managers, and overruled by the court.

John Porter, sworn and examined.
John Taggert, examined.
Ephraim Shannon, sworn and examined.
Jacob Hoffman, " "
Wm. A. Lloyd, "

On motion of Mr. Groves and Mr. Power,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

The counsel for the respondent continued to adduce testimony against the fourth article of impeachment.

Adam Light, sworn and examined.

James Lee, examined.

The counsel for the respondent stated to the court, that they would now close with adducing testimony.

The managers then called the following witnesses, to rebut testimony of other witnesses.

Ebenezer Greenough, examined.

Hugh Bellas, "

Charles Maus, "

The counsel for the respondent called the following named witnesses, to rebut the testimony of other witnesses.

Alem Marr, examined.

Robert Grier. "

Saml. Hepburn, "

On motion,

And by consent of both parties, the witnesses were then discharged.

On motion of Mr. Power and Mr. Ogle,

The president ordered the court to be adjourned until ten o'clock to-morrow morning.

FRIDAY, February 17, 1826.

The court was opened at ten o'clock, A. M. by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

Mr. Champneys, on behalf of the managers, commenced his argument on behalf of the commonwealth, and continued until one o'clock. When,

On motion of Mr. M'Ilvain and Mr. Winter,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock, by proclamation.

The members of the court were all present, and answered to their respective names.

Present, the managers; and respondent attended by his counsel.

Mr. Champneys continued his argument on behalf of the commonwealth, and concluded at half past three o'clock; when

Mr. Douglas commenced his argument on behalf of the respondent, and continued until six o'clock; when

On motion of Mr. Ogle and Mr. Moore,

The president ordered the court to be adjourned until ten o'clock, to-morrow morning.

SATURDAY, February 18, 1826.

The court was opened at ten o'olock, A. M. by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Douglas continued his argument on behalf of the respondent until eleven o'clock; when

Mr. Fisher commenced and concluded at one o'clock; when

On motion of Mr. Hamilton and Mr. M'Ilvain,

The president ordered the court to be adjourned until three o'clock, P. M.

SAME DAY—IN THE AFTERNOON.

The court was opened at three o'clock by proclamation.

The members of the court were all present and answered to their respective names.

Present, the managers; and the respondent attended by his counsel.

Mr. Blythe, on behalf of the managers, commenced his reply and concluded at half past five o'clock; when

The president rose and addressed the court as follows:

Gentlemen—You have heard the evidence and arguments adduced on the trial of Seth Chapman, Esquire, president and judge of the eighth judicial district of Pennsylvania, impeached for misdemeanors in office. Are you now ready to pronounce your judgment?

Which was unanimously answered in the affirmative.

The first article of impeachment was then read by the clerk.

The president then stated that the members would, as their names were called by the clerk, pronounce their judgment on the following question:

Is the respondent, Seth Chapman, guilty or not guilty of the misdemeanor in office as charged in the first article of impeachment, exhibited again him by the House of Representatives, just read.

Whereupon, the members answered as follow:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter and Mahon, president, 31, said not guilty.

The second article of impeachment was then read, and the like question being stated by the president.

Whereupon, the members answered as follow:

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Herbert, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryon, Schall, St. Clair, Sullivan, Sutherland, Winter and Mahon, president, 31, said not guilty.

The third article of impeachment was then read, and the like question being stated by the president.

Whereupon, the members answered as follow:

Messrs. Herbert, Mann, Power, Ritscher, St. Clair and Winter, 6, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, M'Ilvain, Moore, Ogle, Ryon, Schall, Sullivan, Sutherland, and Mahon, president, 25, said not guilty.

The fourth article of impeachment was then read; when

On motion,

It was agreed that the question be put on each specification separately.

The president then stated,

Is the respondent, Seth Chapman, guilty or not guilty of the misdemeanor in office as charged in the first specification of the fourth article of impeachment, exhibited against him by the House of Re presentatives, as read?

Whereupon, the members answered as follow:

Messrs. Herbert, Power, Ritscher, St. Clair and Winter, 5, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Ryon, Schall, Sullivan, Sutherland and Mahon, president, 26, said not guilty.

The president then stated,

Is the respondent, Seth Chapman, guilty or not guilty of a misdemeanor in office, as charged in the second specification of the fourth article of impeachment, exhibited against him by the House of Representatives, as read?

Whereupon, the members answered as follow.

Messrs. Herbert and St. Clair, 2, said guilty.

Messrs. Allshouse, Audenried, Burnside, Dewart, Duncan, Dunlop, Emlen, Garber, Groves, Hamilton, Hawkins, Henderson, Kelley, Kelton, Kerlin, Kitchin, Knight, Mann, M'Ilvain, Moore, Ogle, Power, Ritscher, Ryson, Schall, Sullivan, Sutherl and, Winter and Mahon, president, 29, said not guilty.

Whereupon, the president declared, that on the

1st article,	none	have said guilty, and	31	have said not guilty.
2d do.	none	do.	31	do.
3d do.	six	do.	25	do.
1st specification. 4th do.	five	do.	26	do.
2d specification. 4th do.	two	do.	29	do.

Hence, it appears, that there is not a constitutional majority of votes finding Seth Chapman guilty on any one article or specification. It therefore became his duty to declare that Seth Chapman stands acquitted of all the articles of accusation and impeachment exhibited against him by the House of Representatives.

On motion of Mr. Duncan and Mr. Knight,

The president ordered the court to be adjourned, *sine die*.

JOHN DE PUI, *Clerk*.

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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

PETITIONER'S BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS OF RESPONDENTS BONNER AND WILLIAMS TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioner Larry Krasner asks this Court to declare that the impeachment proceedings against him are unlawful. *See generally* Pet. for Review in the Nature of a Compl. for Declaratory J. ("Petition"), *Krasner v. Ward*, No. 563 MD 2022 (Pa. Commw. Ct. filed Dec. 2, 2022). Pursuant to Article II, §§ 2, 3, and 4 of the Constitution of the Commonwealth of Pennsylvania, and 101 Pa. Code § 7.21(a), the Amended Articles of Impeachment (the "Articles of Impeachment" or "Articles") against him are dead and cannot be carried over from the 206th General Assembly to the 207th General Assembly. Under the terms of Article VI, § 6 of the Pennsylvania Constitution, he is not subject to impeachment by the General Assembly in the first place. And, in any event, pursuant to Article VI, § 6 of the Constitution, the Articles of Impeachment do not allege conduct that would constitute "any misbehavior in office."

Respondents claim that the Court should not concern itself with these significant questions of constitutional law. Because *they* believe the proceedings against District Attorney Krasner were "lawfully initiated" as part of what *they* consider to be the "legitimate business of the legislative . . . branch," they say the Court has no place in this dispute. *See* Br. in Supp. of Respondents' Prelim. Objections ("Respondents' Br.") at 1-2. In short, because *Respondents* believe their actions were taken "'within constitutional lines,'" *id.* at 2 (quoting *Larsen v.*

Senate of Pennsylvania, 646 A.2d 694, 699 (Pa. Commw. 1994)), they urge this Court to abstain from exercising the judicial function that it is obligated to perform as a co-equal branch of government.

Yet "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). And that is exactly what District Attorney Krasner has asked the Court to do: decide whether the legislature's actions are "constitutionally permissible." *I.N.S. v. Chadha*, 462 U.S. 919, 941 (1983). This Court should reject Respondents' efforts to shield their constitutional violations from judicial review and the Court should overrule their Preliminary Objections in their entirety.[1]

II. COUNTER-STATEMENT OF JURISDICTION

This Court has original jurisdiction over the Petition pursuant to 42 Pa.C.S. § 761(a)(1), which provides that the Commonwealth Court shall have original

[1] In his Petition, District Attorney Krasner named as Respondents all three House impeachment managers: Representative Timothy R. Bonner, Representative Craig Williams, and Representative Jared Solomon. This brief responds to the Preliminary Objections filed on December 12, 2022 by Representatives Bonner and Williams ("Respondents") and to their Opposition to District Attorney Krasner's Application for Summary Relief, also filed on December 12, 2022. That same day, Representative Solomon filed a Notice of Intent Not to Defend, in which he stated that he had "voted against final passage of the Articles of Impeachment that are the subject of this proceeding," and that he "does not wish to dispute the legal claims raised by" District Attorney Krasner in his Petition. Respondent Jared Solomon's Notice of Intent Not to Defend in Lieu of An Answer, *Krasner v. Ward et al.*, No. 563 MD 2022 at 2 (Pa. Commw. Ct. filed Dec. 12, 2022).

jurisdiction over "all civil actions or proceedings . . . [a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity." The Court, "as ultimate interpreter of the Constitution," also has jurisdiction to decide issues of justiciability, *Baker v. Carr*, 369 U.S. 186, 211 (1962), especially when, as Respondents appear to concede, the question is whether the General Assembly's actions were "'taken . . . within constitutional lines.'" *See* Respondents' Br. at 2 (quoting *Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 699 (Pa. Commw. 1994)).

III. COUNTER-STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

District Attorney Krasner challenges, in part, Respondents' statement of the scope and standard of review. He agrees that the Court's review is limited to the pleadings, *Pa. State Lodge, FOP v. Pa. Dep't of Conservation & Nat. Res.*, 909 A.2d 413, 415 (Pa. Commw. Ct. 2006), and that the Court must "accept as true all well-pleaded material allegations in the petition for review and any reasonable inferences that . . . may [be] draw[n] from the averments." *Highley v. Dep't of Transportation*, 195 A.3d 1078, 1082 (Pa. Commw. Ct. 2018). Respondents' recitation of the standard of review is otherwise materially incomplete. The Court "*may* sustain preliminary objections *only* when the law makes clear that the petitioner cannot succeed on his claim, and [the Court] *must resolve any doubt in*

favor of the petitioner." *Id.* (emphasis added to terms and phrases omitted by Respondents).

IV. COUNTER-STATEMENT OF QUESTIONS PRESENTED BY RESPONDENTS' PRELIMINARY OBJECTIONS

1. Do Claims I and III of the Petition present non-justiciable political questions precluding the Court's consideration of whether the Amended Articles of Impeachment survive the adjournment *sine die* of the General Assembly's 206th legislative session and whether the conduct alleged in the Amended Articles constitutes an impeachable offense. *Suggested answer: No*.

2. Does Petitioner have standing to raise Claims I, II, and III? *Suggested answer: Yes*.

3. Are Claims II and III ripe for judicial review? *Suggested answer: Yes*.

V. RESPONSE TO RESPONDENTS' STATEMENT OF FACTS

District Attorney Krasner incorporates herein the Statement of Facts set forth in his Petition. Again, the Court must "accept as true all well-pleaded material allegations" in the Petition, as well as "any reasonable inferences that . . . may [be] draw[n] from the averments." *Highley*, 195 A.3d at 1082. District Attorney Krasner opposes all legal conclusions asserted by Respondents in their Statement of Facts.

VI. SUMMARY OF ARGUMENT

The Court should overrule Preliminary Objection I because Claims I and III of the Petition do not present non-justiciable political questions. Whether impeachment proceedings are continuing in nature is not a "procedural matter" for the General Assembly to decide, but a question of law for this Court to resolve. And it is well established that the Court may decide, in the first instance, what conduct rises to the level of "misbehavior in office."

The Court should overrule Preliminary Objection II because District Attorney Krasner has standing to challenge the impeachment proceedings against him. He already has been injured by the Amended Articles of Impeachment and imminently faces further injury if subjected to a trial based on the null and void and otherwise unconstitutional Amended Articles of Impeachment.

The Court should also overrule Preliminary Objection III. District Attorney Krasner has been impeached by the House, and the constitutionality of the Amended Articles is therefore ripe for review. Claims II and III of the Petition are properly before the Court.

VII. ARGUMENT

A. DISTRICT ATTORNEY KRASNER'S CLAIMS THAT THE AMENDED ARTICLES OF IMPEACHMENT DID NOT SURVIVE THE ADJOURNMENT OF THE LEGISLATIVE SESSION *SINE DIE* (CLAIM I) AND THAT THE AMENDED ARTICLES FAIL TO ALLEGE ANY "MISBEHAVIOR IN OFFICE" (CLAIM III) ARE JUSTICIABLE

1. A Nonjusticiable Political Question Arises When There Is a Textually Demonstrable Constitutional Commitment of the Issue to a Coordinate Political Department

"[T]he mere fact that [a] suit seeks protection of a political right does not mean it presents a political question." *Baker v. Carr*, 369 U.S. 186, 209 (1962). And the "[r]esolution of litigation challenging the constitutional authority of one of the three branches cannot be evaded . . . because the issues have political implications." *Chadha*, 462 U.S. at 943. The "legitimacy of [judicial] abstention" is context-specific, and it is the Court's mandate "to insure that government functions within the bounds of constitutional prescription." *Consumer Party of Pa. v. Commonwealth*, 507 A.2d 323, 333 (Pa. 1986). "Indeed . . . the exercise of the judiciary's power to review the constitutionality of legislative action does not offend the principle of separation of powers, and *abstention under the political-question doctrine is implicated in limited settings*." *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 927-28 (Pa. 2013) (emphasis added).[2]

[2] Between 1962 and 2003, the U.S. Supreme Court "found a case nonjusticiable on the basis of the political question doctrine only twice." *See Doe v. Bush*, 323 F.3d

One of the limited settings in which a non-justiciable political question might arise is when there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Baker*, 369 U.S. at 217; *see Sweeney v. Tucker*, 375 A.2d 698, 706-07 (Pa. 1977) (adopting *Baker*'s standards).[3] Respondents direct their assertion of non-justiciability of Claims I and III of the Petition to this factor, claiming that the General Assembly has plenary power over "[i]mpeachment proceedings" writ large. Respondents' Br. at 13.

But determining "whether a complaint involves a non-justiciable political question requires making an inquiry into the precise facts and posture of that complaint, since such a determination cannot be made merely by semantic cataloguing." *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996). What District Attorney Krasner has challenged here is whether the General Assembly "has chosen a constitutionally permissible means of implementing" its impeachment power, which is a matter of constitutional interpretation for the

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133, 140 (1st Cir. 2003). In 2019, the Supreme Court added a third case to the list. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2496 (2019).

[3] Following its adoption of *Baker*'s textual inquiry, the Pennsylvania Supreme Court has regularly cited justiciability decisions of the United States Supreme Court. *See*, *e.g.*, *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 437 (Pa. 2017) (citing *Nixon v. United States*, 506 U.S. 224 (1993); *Powell v. McCormack*, 395 U.S. 486 (1969); *Baker*, 369 U.S. at 213); *Zemprelli v. Daniels*, 436 A.2d 1165, 1169 (Pa. 1981); *Sweeney v. Tucker*, 375 A.2d 698, 706 (Pa. 1977) (similar).

courts. *See Chadha*, 462 U.S. at 941-43. The Court must therefore examine the constitutional text in question "and determine whether and to what extent the issue is textually committed." *Nixon v. United States*, 506 U.S. 224, 228 (1993). In other words, the Court must look to the specific constitutional provision invoked and "determine what power the Constitution confers upon [the legislature], before [the court] can determine to what extent, if any, the exercise of that power is subject to judicial review." *Powell v. McCormack*, 395 U.S. 486, 519 (1969).

In *Powell*, for example, the petitioner was duly elected to the U.S. House of Representatives, but pursuant to a House resolution, he was not permitted to take his seat. *Id.* at 489. Powell brought suit in federal court. *Id*. The respondents in that case (the Speaker of the House and others) claimed that Article I, § 5 of the U.S. Constitution, which states that "Each House shall be the Judge of the . . . Qualifications of its own Members," gave them broad power to determine which qualifications were necessary for membership. 395 U.S. at 519-20. Powell countered that the Constitution provides that an elected representative may be denied his seat only if the House finds he does not meet the standing requirements of age, citizenship, and residence contained in Article I, § 2. *Id.* at 520.

The United States Supreme Court agreed with Powell. The court examined Article I, § 5 of the U.S. Constitution, and concluded that the provision did not give the House authority "to exclude any person, duly elected by his constituents,

who meets all the requirements for membership expressly prescribed in the Constitution." *Id.* at 522 (emphasis omitted). At most, Article I, § 5 textually committed to Congress the power to "judge only the qualifications expressly set forth in the Constitution." *Id.* at 548. In other words, "[t]he decision as to whether a Member *satisfied* the[] qualifications was placed with the House, but the decision as to *what these qualifications consisted of* was not." *Nixon*, 506 U.S. at 237 (explaining *Powell*, emphasis added). As a result, the "'textual commitment' formulation of the political question doctrine d[id] not bar [the] federal courts from adjudicating [Powell's] claims." *Powell*, 395 U.S. at 548.

In contrast, *Nixon* involved a political question that could not be resolved by the courts. Nixon was a federal judge who had been convicted of federal crimes and sentenced to prison. 506 U.S. at 226. The U.S. House of Representatives subsequently adopted articles of impeachment against him and presented the articles to the Senate. *Id.* at 226-27. Nixon then asked the federal courts to determine the constitutionality of a U.S. Senate Rule, pursuant to which a committee of Senators, not the Senate as a whole, would receive impeachment evidence and report that evidence to the full Senate. *Id*.

There, too, the Supreme Court began its analysis with the text of the constitutional provision in question, Article I, § 3, cl. 6, which grants authority to the Senate to "try" all impeachments. *Id.* at 228. The court carefully reviewed the

three sentences of clause 6, and, based on their "language and structure," rejected Nixon's argument that the word "try" required the Senate proceedings to be "in the nature of a judicial trial." *Id.* at 229. The court concluded that Nixon's petition was non-justiciable because "opening the door of judicial review *to the procedures used by the Senate in trying impeachments* would 'expose the political life of the country to months, or perhaps years, of chaos.'" *Id.* at 236 (quoting Court of Appeals) (emphasis added). The court distinguished its decision in *Powell*, which "was based on the fixed meaning of 'qualifications' set forth in Article I, § 2," and held that, by contrast, the word "try" in Article I, § 3, cl. 6 "does not provide an identifiable textual limit on the authority which is committed to the Senate." *Id.* at 237-38.

Nixon's scope is extremely narrow, in that it hinged on the non-justiciability of the Senate's impeachment *procedures* and nothing more. Indeed, over the last 30 years, the courts have made clear time and time again *Nixon*'s limited reach. *See*, *e.g.*, *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004) (*Nixon* involved a challenge to "procedures" used in Senate impeachment proceedings); *Doe v. Bush*, 323 F.3d 133, 140 (1st Cir. 2003) (Nixon implicated Senate "procedures" for impeachment of a federal judge); *Barasich v. Columbia Gulf Transmission Co.*, 467 F. Supp. 2d 676, 681 (E.D. La. 2006) (in *Nixon*, the court found constitutional commitment of impeachment "procedures" to the legislative branch); *In re Lupron Mktg. & Sales*

Pracs. Litig., 295 F. Supp. 2d 148, 162 (D. Mass. 2003) (*Nixon* involved a challenge to the Senate's authority to determine impeachment "trial procedures"); *Mesnard v. Campagnolo*, 489 P.3d 1189, 1199 (Ariz. 2021) ("in *Nixon*, the Court held that the Constitution vested sole authority in the Senate to choose impeachment procedures").

2. Claims I and III Do Not Present Non-Justiciable Political Questions

In this case, Respondents seek to avoid a "bona fide controversy as to whether some action . . . exceeds constitutional authority" by labeling the action "political." *Chadha*, 462 U.S. at 943; *see* Respondents' Br. at 15 ("Simply put, impeachment is a political process constitutionally committed to the General Assembly, which the courts should not review."). *Baker*, *Powell*, and *Nixon* require much more than that, however. The long-standing text-based inquiry established by that line of cases shows that the Pennsylvania Constitution does not affirmatively commit to the General Assembly the power to carry over impeachment proceedings "from one General Assembly to the next." *Cf.* Respondents' Br. at 13. And the Constitution does not demonstrably commit to the General Assembly the power to decide what conduct constitutes "any misbehavior in office." *Cf. id.* at 16. Claims I and III of the Petition are therefore properly before the Court.

(a) The Pennsylvania Constitution does not textually commit to the General Assembly the power to carry over business from the second session of one General Assembly to the first session of an entirely different General Assembly.

Respondents claim that the General Assembly has the unreviewable authority not only to "prescribe how [impeachment] proceedings are carried out," but also to decide, supposedly as a "procedural matter," whether impeachment proceedings "are continuing in nature." Respondents' Br. at 12-13. Respondents' arguments (which Respondent Ward does not even raise in her opposition to District Attorney Krasner's Application for Summary Relief) are not persuasive.

In their attempt to establish that the General Assembly's actions are unassailable, Respondents point to Article VI, §§ 4-5 of the Pennsylvania Constitution. *See id.* at 13. Article VI, § 4 states in full: "The House of Representatives shall have the sole power of impeachment." Pa. Const. Art. VI § 4. And section 5 states in full: "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." *Id.* § 5. Respondents assert that these constitutional provisions mean that "[i]mpeachment proceedings," in their entirety, are the "domain of the General Assembly" and that, as a result, all impeachment-related decisions are judicially unreviewable. Respondents' Br. at 13.

In no way do these provisions actually establish that this Court is barred from adjudicating District Attorney Krasner's claim that the Amended Articles of Impeachment are dead. Other than a brief nod to *Nixon*, *see id.* at 15, Respondents make no attempt to grapple with the text of Article VI, § 4 or § 5. As a result, Respondents have identified nothing that textually commits to the General Assembly the power to carry over impeachment proceedings from one General Assembly to the next — because there is no such textually demonstrable constitutional commitment.

At most, Section 4's reference to the House's "sole power of impeachment" is "a grant of authority" to the House, indicating that the authority to impeach "is reposed in the [House] and nowhere else." *See Nixon*, 506 U.S. at 229. Similarly, Section 5's use of the phrase "shall be tried by the Senate" reflects that it is the Senate's job to "determine whether an individual should be acquitted or convicted," to the exclusion of the House or any other body. *Id.* at 231. Neither Section 4 nor 5 demonstrably commits to either the House or the Senate, through text, the power to carry over an impeachment from one General Assembly to another.

Sidestepping the textual analysis altogether, Respondents assert that "*absent any provision* in our Constitution *prohibiting* such proceedings from carrying over from one General Assembly to the next . . . , it is within the rulemaking power of

the House and Senate to prescribe how such proceedings are to be carried out." Respondents' Br. at 13 (emphasis added). Respondents' position turns U.S. Supreme Court precedent and Pennsylvania Supreme Court precedent on its collective head. Together, those authorities demand that, for a claim to be non-justiciable, the particular "issue" in dispute must be affirmatively textually committed to a coordinate political department. *Baker*, 369 U.S. at 217. The broad *absence* of a provision *prohibiting* an action does not suffice.

As the Pennsylvania Supreme Court has explained, the judiciary may "abstain from reviewing cases only where the determination whether the action taken is within the power granted by the Constitution *has been entrusted exclusively and finally to the political branches of government for 'self-monitoring*.'" *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 170 A.3d 414, 439 (Pa. 2017). Stated differently, "the issue in the political question doctrine is not whether the constitutional text commits exclusive responsibility for a particular governmental function to one of the political branches. . . . Rather, the issue is whether the Constitution has given one of the political branches final responsibility for *interpreting the scope and nature of such a power*." *Nixon*, 506 U.S. at 240 (White, J., concurring) (emphasis added).

Having dodged *Baker*'s textual inquiry, Respondents claim that "Jefferson's Manual" purports to permit the impeachment proceedings against District Attorney

Krasner "to carry over from one General Assembly to the next." Respondents' Br. at 13-15. This argument is wholly misplaced.

First, although "[t]he constitution empowers each house to determine its rules of proceedings," neither house may "by its rules ignore constitutional restraints or violate fundamental rights." *United States v. Ballin*, 144 U.S. 1, 5 (1892). In other words, a procedural "Manual" adopted by the House and Senate cannot act as an "override" button on the Constitution, meaning that any such Manual is irrelevant to the constitutional question before the Court.

Second, Jefferson's Manual does not even govern parliamentary practice here — *Mason's* Manual of Legislative Procedure does.[4] Notably, Mason's Manual does not "unequivocally provide that impeachment proceedings are not discontinued by a recess." *Cf.* Respondents' Br. at 14 (citing Jefferson's Manual § 620). Instead, Mason's Manual provides that upon adjournment *sine die*, *all* business "expires with the session" — full stop. *See* Mason's Manual § 445.4 ("A motion to adjourn sine die has the effect of closing the session and *terminating all*

[4] *See* Pa. House Res. 243 (Nov 16, 2022), Rule 78 ("Mason's Manual supplemented by Jefferson's Manual of Legislative Procedure shall be the parliamentary authority of the House"); Pa. Sen. Res. 3 (Jan. 5, 2021), Rule 26 ("The Rules of Parliamentary Practice comprised in Mason's Manual of Legislative Procedure shall govern the Senate in all cases to which they are applicable").

unfinished business before the house, and all legislation pending upon adjournment sine die expires with the session.") (emphasis added).

Third, Respondents admit that the examples of impeachments listed in Jefferson's Manual are federal. Respondents' Br. at 14 n.8. As the American Civil Liberties Union of Pennsylvania and Power Interfaith have explained, the Pennsylvania Constitution's *sine die* adjournment principle has no analogue in the federal constitution, so it should come as no surprise that federal impeachments might carry over from one legislative session to another. Br. of [Proposed] Amici Curiae American Civil Liberties Union of Pennsylvania and Power Interfaith in Support of Petitioner at 8-9 (Dec. 16, 2022).

Fourth, should the Court entertain Respondents' invitation to review Jefferson's Manual, District Attorney Krasner respectfully points the Court to the very last sentence of the excerpt appended to Respondents' Preliminary Objections. There, the Manual states unambiguously: "Although impeachment proceedings may continue from one Congress to the next, ***the authority of the managers appointed by the House expires*** at the end of a Congress." *See* Exhibit 1 to Preliminary Objections at the page marked 342 (emphasis added). To the extent the Manual is of any relevance here, it obliterates the authority of Respondents Bonner and Williams, as the House impeachment managers, to proceed against District Attorney Krasner in any respect whatsoever.

Respondents' single-paragraph string cite to *Nixon*, *Dauphin*, and *Larsen* does not rehabilitate their position on the justiciability of Claim I. *Cf.* Respondents' Br. at 15. Those cases stand for the non-controversial idea that the courts have no control over the minutiae of impeachment proceedings — so long as the proceedings are conducted within constitutional bounds. *See*, *e.g.*, *Nixon*, 506 U.S. at 238 ("whether the action of [either the Legislative or Executive Branch] exceeds whatever authority has been committed, is itself *a delicate exercise in constitutional interpretation*, and is a responsibility of this Court as ultimate interpreter of the Constitution.") (emphasis added); *In re Investigation by Dauphin Cnty. Grand Jury*, 2 A.2d 802, 803 (Pa. 1938) ("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); *Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 703 (Pa. Commw. Ct. 1994) ("this court cannot declare to be unlawful a procedure which the Senate has constructed *within the borders of its constitutional discretion* to do so") (emphasis added).

Respondents' reliance on *Nixon*, and their related attempt to paint District Attorney Krasner's Petition as implicating nothing more than "procedural" matters, is particularly misplaced. Respondents' Br. at 12, 14-15, 25. Carrying over an impeachment from one legislative session to another is not a mere procedural issue. District Attorney Krasner is not asking the Court to "scrutinize a

legislature's choice of, or compliance with, internal rules and procedures," *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996), nor has he requested that the Court delve into "the procedures used by the Senate in trying impeachments," such as the selection of a subset of Senators to take evidence during his impeachment trial. *See Nixon*, 506 U.S. at 236. Instead, he has raised serious constitutional concerns with the purported effort to continue House Resolution 240 from the 206th General Assembly to the 207th, and he challenges whether an impeachment trial should take place at all. Application for Summary Relief at 8-16. When looking at the "precise facts and posture" of District Attorney Krasner's Petition, as opposed to "semantic cataloguing," *Blackwell*, 684 A.2d at 1071, it is clear that Claim I does not assert a non-justiciable political question.

(b) The Pennsylvania Constitution does not textually commit to the General Assembly the power to determine what conduct constitutes "any misbehavior in office."

Next, Respondents rather summarily claim that sections 4 and 5 of Article VI grant to the General Assembly the unfettered discretion to decide what *constitutes* "any misbehavior in office" *as well as* whether an individual has *committed* "any misbehavior in office." *See* Respondents' Br. at 16-17. They say that Claim III therefore presents a "political question that this Court . . . should decline to review." Respondents' Br. at 16. Respondents, however, spend little

time making their case, likely because a body of established caselaw forecloses their position.

Respondents first cite *Nixon*, *Dauphin*, and *Larsen* without explanation. *Id*. Respondents then baldly assert that "[d]etermining what conduct rises to the level of 'any misbehavior in office' warranting impeachment is a policy question that courts are ill-equipped to define." Respondents' Br. at 16-17. They fail to acknowledge, however, that the Supreme Court of Pennsylvania did precisely that, 30 years ago, in *In re Braig*. In that case, the Supreme Court interpreted "misbehavior in office" to mean conduct that would amount to the common law criminal offense of "misbehavior in office." *In re Braig*, 590 A.2d 284, 286 (Pa. 1991). And the Court held that a public official has engaged in "misbehavior in office" only if he "fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." *Id*. And *Braig* is not an isolated example; in several other cases, it has been "uniformly understood that the reference to 'misbehavior in office' was to the criminal offense as defined at common law." *Id*.; *see* Application for Summary Relief at 26-36 (citing cases). These decisions beg the question: if Respondents are right and the interpretation of constitutional provisions regarding "misbehavior in office" is non-justiciable, then how could the courts in seminal cases like *Braig* have possibly addressed these issues in the first place?

The United States Supreme Court's decision in *Powell* further forecloses Respondents' position. Respondents conflate the authority to decide whether an individual has *committed* "any misbehavior in office," with the authority to decide what *constitutes* "any misbehavior in office" in the first instance. In *Powell*, however, the court distinguished between "[t]he decision as to whether a Member *satisfied* the[] qualifications [for membership]" (which was "placed with the House"), and "the decision as to *what these qualifications consisted of*" (which was not). *Nixon*, 506 U.S. at 237 (explaining *Powell*, emphasis added). That distinction applies here: whether an individual has committed misbehavior could be for the Senate to decide in the appropriate circumstances; what constitutes misbehavior in the first instance is a question for the courts. Because Count III of the Petition raises the latter, it is properly before the Court.

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"[C]hallenges to . . . legislative wisdom" are not the same as "challenges asserting an abuse of legislative power," and the courts may not "ignore a clear violation because of a false sense of deference to the prerogatives of a sister branch of government." *Consumer Party of Pa. v. Commonwealth*, 510 Pa. 158, 179-80 (1986). This case asks whether a constitutional violation has occurred. Claims I and III are therefore justiciable, and the Court should overrule Respondents' Preliminary Objection I.

B. DISTRICT ATTORNEY KRASNER HAS STANDING TO CHALLENGE THE IMPEACHMENT PROCEEDINGS AGAINST HIM (ALL CLAIMS)

In his Petition, District Attorney Krasner seeks a declaratory judgment that the "Amended Articles [of Impeachment] are null and void, and that there is no authority to pursue them," Petition ¶ 4, and a declaration that he is not subject to impeachment, *id.* ¶ 9. Respondents, sued in their official capacities as the House impeachment managers, assert that District Attorney Krasner lacks standing to seek this declaratory relief. Respondents adopt the untenable position that District Attorney Krasner is not aggrieved by his impeachment by the House of Representatives simply because he has not already been subject to trial and removal in the Senate. As set forth below, District Attorney Krasner already has been injured by the Amended Articles of Impeachment and imminently faces further injury if subjected to a trial based on the null and void and otherwise unconstitutional Amended Articles of Impeachment.

Justiciability doctrines, such as standing and ripeness, ensure that courts do not issue inappropriate advisory opinions. *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021) (citing *Stuckley v. Zoning Hearing Bd. of Newtown Twp.*, 621 Pa. 509, 79 A.3d 510, 516 (Pa. 2013)). Here, District Attorney Krasner seeks a declaration that the Amended Articles of Impeachment became null and void on November 30, 2022, upon the adjournment *sine die* of the 206th

General Assembly's legislative session, and a declaration that he is not subject to impeachment under Article VI of the Constitution because, as the District Attorney of Philadelphia, he is not a "civil officer" subject to impeachment by the General Assembly and because the Amended Articles do not allege he engaged in any conduct that constitutes impeachable "misbehavior in office." Petition ¶ 9. Far from asking for an advisory opinion, District Attorney Krasner is seeking review of a "real and concrete," not "abstract," controversy that arose when the House of Representatives voted to impeach him and continued when the Senate decided to carry over the impeachment proceedings and proceed with the trial even after the adjournment *sine die* of the 206th General Assembly. *See Firearm Owners Against Crime*, 261 A.3d at 481 ("The doctrine of standing 'stems from the principle that judicial intervention is appropriate only where the underlying controversy is real and concrete rather than abstract.'") (quoting *City of Phila. v. Commonwealth*, 838 A.2d at 566, 577 (Pa. 2003)).

The touchstone of standing is "protect[ing] against improper plaintiffs." *In re Application of Biester*, 409 A.2d 848, 851 (Pa. 1979); *accord Firearm Owners Against Crime,* 261 A.3d at 481. To do so, courts require a plaintiff to demonstrate that he or she has been "aggrieved" by the conduct he or she challenges. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). "To determine whether the plaintiff has been aggrieved, Pennsylvania courts traditionally examine whether the plaintiff's

interest in the outcome of the lawsuit is substantial, direct, and immediate." Firearm Owners Against Crime, 261 A.3d at 481. A party's interest is *substantial* when it "surpasses the interest of all citizens in procuring obedience to the law." *Id.* (quoting *Commonwealth, Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014)). A party's interest is *direct* when "the asserted violation shares a causal connection with the alleged harm." *Id.* A party's interest is *immediate* "when the causal connection with the alleged harm is neither remote nor speculative." *Id.* (quoting *Donahue*, 98 A.3d at 1229).

It is self-evident that District Attorney Krasner is a proper plaintiff. This is not a case in which the Court must consider whether associations, special interest groups, taxpayers or other parties who are not directly subject to the challenged action have standing. Here, District Attorney Krasner is challenging the constitutionality of the Amended Articles of Impeachment, which accuse ***him*** of misbehavior in office, and of the Respondents' efforts to subject ***him*** to an impeachment trial in the Senate. Nor can there be any dispute that there is a causal connection between the asserted violation (the unconstitutionality of the Articles of Impeachment and impending trial) and the alleged harm (being impeached by the House of Representatives and subject to trial in the Senate, both in violation of the Constitution). Finally, District Attorney Krasner's interest in the outcome of the lawsuit is immediate because the alleged harm is neither remote nor speculative.

The Pennsylvania House of Representatives impeached District Attorney Krasner on November 16, 2022. It is certain, not speculative, that, in violation of Article VI of the Constitution, he has been impeached even though he is not a "civil officer" and has not engaged in "any misbehavior in office." That harm has materialized. Nor is it speculative that he will be subject to trial, even though the Articles of Impeachment became null and void with the adjournment *sine die* of the legislative session.

Respondents' assertion that District Attorney Krasner has not been injured because "[a]ll that has happened to date is that Petitioner Krasner has been timely served with Articles of Impeachment," Respondents' Br. at 19, is unsupportable. The Amended Articles of impeachment accuse District Attorney Krasner, among other things, of contributing to an increase in violent crime in Philadelphia. His impeachment and associated accusations of "misbehavior in office" have been widely publicized in Philadelphia, throughout the state, and even nationally, with stories from, among others, the Washington Post and New York Times.[5] In

[5] *See*, *e.g.*, Jacey Fortin, *Pennsylvania House Votes to Impeach Philadelphia's Progressive D.A.*, N.Y. Times (Nov. 16, 2022), https://www.nytimes.com/2022/11/16/us/krasner-impeached-pennsylvania.html; Kelly Kasulis Cho, *Philadelphia District Attorney Krasner impeached amid violent crime spike*, Washington Post (Nov. 17, 2022), https://www.washingtonpost.com/nation/2022/11/17/larry-krasner-impeachment-trial-philadelphia/; Mark Scolforo, *Pennsylvania House impeaches Philadelphia's prosecutor over policies*, L.A. Times (Nov. 16, 2022), https://www.latimes.com/world-nation/story/2022-11-16/pennsylvania-house-

addition to the immediate reputational harm caused by the inflammatory claims in the Amended Articles, the impeachment imminently threatens to interfere with the important public safety functions of District Attorney Krasner's office. He already is required to divert attention from his work as District Attorney to prepare for a trial that should never take place. Accusations by the House of Representatives that he has engaged in misbehavior in office have a direct and immediate impact on his office's interactions with witnesses, law enforcement, defense counsel, and his constituents.

Moreover, Respondents' assertion that the Amended Articles of Impeachment have no adverse impact on District Attorney Krasner is disingenuous. He was impeached by a Republican majority, who disagree with his policies, in a lame duck session, on the eve of an election in which the Republicans expected to lose control of the House of Representatives. The Republican majority impeached him knowing there would unlikely be sufficient votes in the Senate to remove him from office. They evidently believed that the mere fact of impeachment, standing alone, served some function in weakening District Attorney

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impeaches-philly-prosecutor-over-policies; Scott Calvert, *Philadelphia District Attorney Larry Krasner Impeached by Pennsylvania House*, Wall Street Journal (Nov. 16, 2022), https://www.wsj.com/articles/philadelphia-district-attorney-larry-krasner-faces-impeachment-vote-in-pennsylvania-house-11668604729.

Krasner, hampering the effectiveness of his office, and chilling his criminal justice reform initiatives.

Finally, District Attorney Krasner's impeachment is a matter of historical record, and his reputation will forever be tarnished by the mere fact of his impeachment, without regard to whether he is ultimately removed. President Clinton's impeachment had a material impact on his presidency and will forever define his tenure in office even though he was acquitted by the Senate. President Nixon resigned rather than face impeachment proceedings. For a publicly elected official, the mere fact of impeachment causes an injury. In sum, District Attorney Krasner has been sufficiently injured to have standing to seek a declaratory judgment that his impeachment is unconstitutional.

In the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541, the General Assembly vested in courts the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." 42 Pa.C.S. § 7532. "Significantly, the legislature provided that the Declaratory Judgments Act is 'remedial,' and 'its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.'" *Firearm Owners Against Crime*, 261 A.3d at 482 (quoting 42 Pa.C.S. § 7541(a)). Moreover, unlike the federal court system, where standing has Constitutional underpinnings in Article III's case or

controversy requirement, "[u]nder Pennsylvania law, the doctrine of standing is a prudential, judicially-created tool, affording discretion to courts." *Id.* at 481-82 (internal citation and quotation omitted). Here, given the remedial nature of the Declaratory Judgments Act, and immediate, individualized, and concrete nature of District Attorney Krasner's injury, the Court should overrule Respondents' Preliminary Objection II and review District Attorney Krasner's Petition.

C. WHETHER DISTRICT ATTORNEY KRASNER, AS A LOCALLY ELECTED OFFICIAL, IS SUBJECT TO IMPEACHMENT (CLAIM II) AND WHETHER THE ARTICLES OF IMPEACHMENT ALLEGE ANY CONDUCT THAT CONSTITUTES "MISBEHAVIOR IN OFFICE" (CLAIM III) ARE ISSUES RIPE FOR THIS COURT'S REVIEW

Respondents also object to the second and third claims in the Petition as unripe for judicial review. Respondents' Br. at 20. They make no such argument as to the first claim regarding the non-carryover of the Amended Articles of Impeachment to a new legislative session. *See id.* Therefore, there is no dispute that Claim I is ripe for judicial review. Respondents assert that whether District Attorney Krasner is a "civil officer" subject to impeachment (Claim II) and whether the Amended Articles allege conduct that constitutes "any misbehavior in office" (Claim III) are issues "not ripe for resolution." *Id.* at 21. As the Pennsylvania Supreme Court has explained, the justiciability doctrines of standing and ripeness are "closely related because both may encompass allegations that the plaintiff's harm is speculative or hypothetical and resolving the matter would

constitute an advisory opinion." *Firearm Owners Against Crime*, 261 A.3d at 482. District Attorney Krasner's harm from being impeached is neither speculative nor hypothetical for the reasons set forth in Part B above. He has been impeached, and the constitutionality of the Amended Articles is therefore ripe for review.

Although there is some overlap between ripeness and the imminence aspect of the standing inquiry, the Pennsylvania Supreme Court has characterized ripeness as "distinct from standing as it addresses whether the factual development is sufficient to facilitate a judicial decision." *Id.* This inquiry leads to the obvious conclusion that Claims II and III are ripe for judicial review. Here, the Petition presents a purely legal question that requires no factual development to facilitate a judicial decision. District Attorney Krasner is not asking the Court to review whether, as a factual matter, he engaged in the conduct alleged in the Amended Articles. To the contrary, Claim II seeks a declaratory judgment that District Attorney Krasner, as a locally elected official, is not, as a matter of law, a "civil officer" subject to impeachment under Article VI. There is no factual dispute about District Attorney Krasner's status as a locally elected official or that he serves as the District Attorney for the City of Philadelphia. Similarly, Claim III seeks a declaratory judgment that, as a matter of law, the conduct alleged in the Amended Articles does not constitute "any misbehavior in office" for purposes of Article VI.

Notably, Respondents do not assert that the legal issues raised in District Attorney Krasner's Petition are not ripe because the Senate has yet to determine whether District Attorney Krasner is an impeachable "civil officer" or whether the Amended Articles allege "misbehavior in office." In fact, Respondents have asserted the Senate has no role in making that determination. In a "Fact Sheet" on the Impeachment Process as it relates to District Attorney Krasner, published by the House Republican Caucus, of which Respondents Bonner and Williams are members, the Caucus states that the House of Representatives "has the sole power of impeachment" and, "[a]s a body, the House decides what is, or is not, an impeachable offence; the House also decides what would be 'misbehavior in office.'"[6] The parties are not awaiting any determination by the Senate of the legal issues raised in the Petition.

Even leaving aside the unique features of impeachment, where the mere fact of impeachment creates an injury, it is well established that a party need not await prosecution, trial and conviction to challenge the constitutionality or legality of the enforcement action. "Applying the traditional substantial-direct-immediate test for standing," the Pennsylvania Supreme Court "has afforded standing to plaintiffs

[6] House Republican Caucus, Fact Sheet: Impeachment Process in PA, *Impeachment is the Legislature's most powerful tool for holding any Pennsylvania elected official to account*, (Oct. 25, 2022) available at: https://www.pahousegop.com/Display/SiteFiles/1/2022/ImpeachProcess.pdf

in pre-enforcement declaratory judgment actions challenging the legality or constitutionality of statutes." *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 482 (Pa. 2021). In *Yocum v. Commonwealth*, 161 A.3d 228, 231 (Pa. 2017), for example, the Supreme Court held that an attorney employed by the Pennsylvania Gaming Control Board had standing to bring an action for declaratory and injunctive relief challenging the constitutionality of restrictions the Pennsylvania Race Horse Development and Gaming Act imposed on the Board's employees. The Court concluded the attorney's claim was ripe because she presented a constitutional question of law and "additional factual development of petitioner's claims that might result from awaiting her actual application to or recruitment by a possible future gaming industry employer 'is not likely to shed more light upon the constitutional question of law' she has presented [. . ., which was] 'particularly well-suited for pre-enforcement review.'" *Id.* at 237 (quoting *Robinson Twp.*, 83 A.3d at 925).[7]

[7] *See also*, *e.g.*, *Cozen O'Connor v. City of Phila. Bd. of Ethics*, 13 A.3d 464, 466 (Pa. 2011) (law firm had pre-enforcement standing to bring declaratory judgment action to challenge Philadelphia Board of Ethics advisory opinion interpreting the City Code's campaign contribution limitation); *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 913 (Pa. 2013) (physician had standing to bring pre-enforcement declaratory judgment action challenging state statute restricting his ability to obtain and share information with other physicians); *Commonwealth v. Donahue*, 98 A.3d 1223, 1230 (Pa. 2014) (Office of the Governor had standing to bring declaratory judgment action to challenge the Office of Open Records' statutory interpretation, and noting that "[o]ur position in this respect is consistent

The U.S. Supreme Court has come to the same conclusion. For purposes of the more rigorous U.S. Constitution Article III standing analysis, a "recurring issue in [the Supreme Court's] cases is determining when the threatened enforcement of a law creates an Article III injury. When an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014). A credible threat of prosecution suffices. *Id.* at 159. Accordingly, just as arrest and prosecution are not a prerequisite to challenging the constitutionality of a law, a trial in the Senate and a verdict of removal are not a prerequisite for judicial review of the constitutionality of the Amended Articles.

Ripeness is best understood as having two aspects: (1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967), *overruled on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Where the issue presents a purely legal question, it is fit for judicial review. *Id.* at 149. Here, the Petition presents purely legal questions regarding the Constitutionality of the Amended Articles. As to the second factor, the hardship to District Attorney Krasner of withholding court consideration until after the Senate trial is substantial.

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with similar decisions where we have recognized the justiciability of declaratory judgment actions seeking pre-enforcement review of an administrative agency's interpretation and enforcement of a governing statute").

In *Abbott Labs.*, the U.S. Supreme Court held that pharmaceutical companies could bring a pre-enforcement challenge to an FDA regulation because "petitioners deal in a sensitive industry, in which public confidence in their drug products is especially important. To require them to challenge these regulations only as a defense to an action brought by the Government might harm them severely and unnecessarily." *Id.* at 153. Here, District Attorney Krasner is a publicly elected official who serves as the chief law enforcement officer for the City of Philadelphia. Public confidence in his integrity and commitment to public safety is imperative to the performance of his duties. District Attorney Krasner and the functions of his office would be severely and unnecessarily harmed by him standing trial in the Senate as the result of Articles of Impeachment that should be nullified and declared unconstitutional.

Because they have no explanation for why the Amended Articles are not ripe for judicial review, most of Respondents' "ripeness" argument restates their first objection, namely that separation of powers and the political question doctrine prohibit judicial review of an ongoing impeachment proceeding. Respondents' Br. at 21-24. Those arguments are addressed in Part A above. Because Claims II and III are ripe for judicial review, the Court should overrule Respondents' Preliminary Objection III.

VIII. CONCLUSION

Respondents have not met their burden of showing that District Attorney Krasner cannot succeed on the claims set forth in his Petition. *Highley v. Dep't of Transportation*, 195 A.3d 1078, 1082 (Pa. Commw. Ct. 2018). His claims are justiciable and ripe, and he has standing to bring them. The Court should therefore overrule Respondents' Preliminary Objections in their entirety.

***

Respectfully submitted,

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, 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 that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 21, 2022

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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

PETITIONER'S CONSOLIDATED OPPOSITION TO RESPONDENT WARD'S CROSS-APPLICATION FOR SUMMARY RELIEF AND REPLY IN SUPPORT OF HIS APPLICATION FOR SUMMARY RELIEF

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I. INTRODUCTION

District Attorney Krasner's opening brief provides compelling grounds — founded in the text and structure of the Constitution, statutes, and court decisions — supporting three fundamental ways in which the Amended Articles of Impeachment are unlawful: the Amended Articles of Impeachment do not carry-over from the adjournment *sine die* of the General Assembly; he is not a "civil officer" subject to impeachment; and the Amended Articles of Impeachment do not allege any conduct that constitutes "misbehavior in office." Yet, despite the length of Senator Kim Ward's opposition — nearly double District Attorney Krasner's brief — she does not refute the sound bases supporting the three core contentions. Her lengthy brief comes up not only short but, as shown below, demonstrates that District Attorney Krasner is entitled to a declaration that the Articles of Impeachment are unlawful.

With respect to District Attorney Krasner's claim that the Amended Articles of Impeachment do not carry-over from the adjournment *sine die* of the General Assembly's legislative session (Claim I), Senator Ward's chief argument is that the *sine die* provision grounded in Article II of the Constitution does not apply to Article VI, which governs the General Assembly's impeachment power. Part A below demonstrates that this argument cannot be reconciled with the plain text and structure of the Constitution. Article II applies to "The Legislature" generally,

without regard to a particular function. Senator Ward might have the seeds of an argument if the *sine die* provision were derived from Article III, which governs "Legislation," but that is not the case. Moreover, Senator Ward ignores entirely the fact that the clear language in the Pennsylvania Code and the Senate's own rules further demonstrate the applicability of *sine die* to impeachment. Instead, Senator Ward focuses on five Pennsylvania impeachment proceedings that apparently spanned two sessions of the General Assembly, but those impeachment proceedings occurred between 1794 and 1825, long before the *sine die* adjournment principle was codified in the Pennsylvania Constitution in 1967.

Part B below shows that Senator Ward's opposition to Claim II, which alleges that District Attorney Krasner is not a civil officer subject to impeachment, also misses the mark. Her position that Article VI, § 6 defines "civil officer" by reference to the individual's function rather than whether the individual holds a state or local office is flawed. That argument is not grounded in the text or structure of Article VI, § 6; it erroneously relies on a series of decisions that do not interpret Article 6; and it conflates different terms with different meanings. Additionally, rather than squarely address the Pennsylvania Supreme Court's discussion of the meaning of "civil officer" in *Burger v. School Board of McGuffey School District*, 923 A.2d 1155 (Pa. 2007), she offers a distorted and cabined reading of that decision. No matter how hard the opposition tries, it cannot escape

the conclusion that four members of the Supreme Court found cogent Justice Saylor's conclusion that a "civil officer" is one who holds statewide office only. And the opposition further fails to demonstrate that District Attorney Krasner is wrong in highlighting that the allocation of constitutional power to the General Assembly to regulate local officers — through legislation — confirms that the District Attorney of the City of Philadelphia is not a statewide "civil officer" who can be impeached under Article VI, § 6.

With respect to District Attorney Krasner's third claim — that the Amended Articles of Impeachment do not allege any conduct that constitutes "misbehavior in office" — Senator Ward's primary argument is not that they do (she fails to even engage directly on that issue), but rather that "misbehavior in office" under Article VI, § 6 somehow means something different than what the Pennsylvania Supreme Court has interpreted that identical phrase to mean in other parts of the Constitution. Part C demonstrates that her arguments do not stand, and that the Amended Articles of Impeachment do not come close to alleging conduct that meets the standard for "misbehavior in office" established by the Supreme Court.

Separately, Senator Ward seeks summary relief on the ground that the Senate and yet-to-be determined Senate Impeachment Committee are indispensable parties. For the reasons stated in Part D below, they are not.[1]

II. ARGUMENT

A. SENATOR WARD'S ARGUMENT THAT THE SENATE IS NOT MERELY PERMITTED BUT REQUIRED TO ACT ON THE ARTICLES OF IMPEACHMENT FROM THE PRECEDING GENERAL ASSEMBLY IS WRONG

District Attorney Krasner's Application for Relief demonstrates that the Pennsylvania Constitution, state statutory law, case law, and Senate rules mandate that the Senate is prohibited from proceeding with the Articles of Impeachment because they do not survive the adjournment *sine die* of the 206th General Assembly on November 30, 2022. *See* Mem. of Law in Supp. of Petitioner's Appl. for Summ. Relief and Expedited Briefing ("Petitioner's Appl.") at 8–15, *Krasner v. Ward*, No. 563 MD 2022 (Pa. Commw. Ct. filed Dec. 2, 2022). Senator Ward concedes, as she must, that legislative matters pending before a General Assembly terminate upon adjournment *sine die* and do not "carry over" from one General

[1] Two of the three House impeachment managers, Representative Timothy R. Bonner and Representative Craig Williams, have also opposed District Attorney Krasner's Application for Summary Relief. Because their opposition arguments are similar to those they made in their brief in support of their preliminary objections, to which District Attorney Krasner is submitting a separate response, and because their opposition arguments largely overlap with Senator Ward's opposition papers, this brief responds primarily to Senator Ward's opposition.

Assembly to the next, and that the Senate has nonetheless carried over the Articles of Impeachment against District Attorney Krasner from the 206th General Assembly to the 207th General Assembly. *See* Br. of Resp't Sen. Kim Ward in Opp'n to Appl. for Summ. Relief and in Supp. of Cross-Appl. for Summ. Relief ("Ward Br.") at 16, *Krasner v. Ward*, No. 563 MD 2022 (Pa. Commw. Ct. filed Dec. 16, 2022) (noting that "terminat[ion] of "legislative matters" upon adjournment *sine die* "is not in serious dispute"). Senator Ward points to no Constitutional provision, statute, or rule that expressly authorizes the Senate to carry over Articles of Impeachment from one General Assembly to the next — because none exists.

Instead, Senator Ward argues that the "text and structure of the Constitution *suggest* a conscious and deliberate intent" to treat the legislature's impeachment power as separate and independent from its law-making powers (Ward Br. at 25) (emphasis added), and then points to a handful of historical practices in the Commonwealth and elsewhere, mostly from hundreds of years ago, that hardly elucidate the Constitutional issue before this Court. *Id*. As set forth below, the text and structure of the Constitution not only "suggest" but, in fact, establish otherwise.

1. The Text and Structure of the Constitution Establish That the *Sine Die* Adjournment Principle Applies to Impeachment

Senator Ward's primary argument is based on the text and structure of the Constitution. *See id*. at 17–25. She agrees with District Attorney Krasner that adjournment *sine die* is "derived from Article II." *Id.* at 20. She then argues that Article II governs only "the exercise of *legislative* authority," which she defines narrowly and incorrectly as "lawmaking" or "the power to 'make, alter, and repeal laws.'" *Id*. (quoting *Blackwell v. Commw., State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989)). And since the Senate's impeachment power is found in Article VI, Senator Ward argues, that must mean that adjournment *sine die* does not apply to the Senate's impeachment power. *See id.* at 17.

The premise of Senator Ward's argument is flawed. When correctly analyzed, the structure of the Constitution actually refutes her position. The parties agree that the *sine die* provision derives from Article II, which is titled "The Legislature," and that article applies to all functions of the legislature, including legislation *and* impeachment. A separate article, Article III, titled "Legislation," is limited to the General Assembly's power to make, alter, or amend laws. But Article II is not so limited. Because the *sine die* provision does not appear in Article III, but rather is grounded in Article II, it applies whether the General

Assembly is enacting legislation pursuant to Article III or exercising its impeachment power under Article VI.

Although Section 1 of Article II vests the "legislative power" in the General Assembly, that term means all powers exercised by the legislature, not just the power to enact legislation. Senator Ward's proposed definition of "legislative authority" as limited to lawmaking, *id.* at 20, rests on an incomplete and misleading quotation from the *Blackwell* case. In fact, the Court said that "[t]he 'legislative power' *in its most pristine form* is the power 'to make, alter and repeal laws." *Blackwell*, *supra*, 567 A.2d at 636 (emphasis added); *see also id*. at 637 (describing lawmaking as the "'legislative power' is its quintessential form"). Implicit in these qualified descriptions is the Pennsylvania Supreme Court's recognition that the "legislative power" encompasses other functions performed by the legislature, not just lawmaking.

In any event, even if Section 1 is focused on enacting legislation, the remaining Sections of Article II, §§ 2–17, plainly apply to the General Assembly without limitation as to its function. For example, Article II includes provisions on the election, qualification, compensation, privileges, and terms of members. *See* Pa. Const. art. II, §§ 2, 3, 5–8, 15. These provisions apply equally when the members are enacting laws or engaged in an impeachment function. Similarly, other Sections encompassed in Article II with broad applicability, including

"Quorum" (§ 10), "Journals; yeas and nays" (§12), and "Legislative districts" (§ 16), confirm that the *sine die* adjournment principle derived from Article II does not relate solely to General Assembly's law-making powers.

In contrast, Article III, titled "Legislation," does focus on the Legislature's power to "make, alter, and repeal laws." Article III, Part A, sets forth the "Procedures" for the enactment of legislation, including, in Sections 1–8, passage of laws, reference to committee, form of bills, consideration of bills, concurring in amendments, conference committee reports; revival and amendment of laws, notice of local and special bills, and signing of bills. Because the *sine die* provision appears in Article II, which applies to the "Legislature," and not in Article III, which applies to "Legislation," the structure of the Constitution squarely supports District Attorney Krasner's position that the *sine die* provision applies to all acts of the Legislature, including impeachment, and is not limited to the enactment of legislation.

To be sure, the General Assembly's impeachment powers are not specifically discussed in Article II. But that does not mean that the *sine die* adjournment principle found in Article II, which "is not in serious dispute," *see* Ward Br. at 16, does not apply to the General Assembly's exercise of its impeachment power under Article VI. The General Assembly's power to enact legislation is not specifically discussed in Article II either. The other provisions of

Article II surely apply to impeachment proceedings. For example, members of the House and Senate receive compensation, pursuant to Article II, § 8 ("Compensation"), in connection with their impeachment work. The House's debate and vote on the Articles of Impeachment were "open" to the public, pursuant to Article II, § 13 ("Open sessions"). And, both the House and Senate kept a "journal of its proceedings" related to the Articles of Impeachment, pursuant to Article II, § 12 ("Journals, yeas and nays"), just as they do for law-making business. In sum, Article II's *sine die* adjournment principle applies to the General Assembly's exercise of its impeachment power, just as other provisions and principles in Article II do.

The "placement," "structure," and "text" of Article VI further reinforce the notion that *sine die* applies to impeachment. Specifically, the consecutive placement of Sections 4, 5, and 6 in Article VI indicates that the impeachment process is a bicameral undertaking, not unlike traditional law-making by the General Assembly. Section 4 establishes the House of Representatives' authority to impeach; Section 5 establishes the Senate's authority to try impeachments; and Section 6 establishes the officers liable to impeachment. *See* Pa. Const. art. VI, § 4 ("The House of Representatives shall have the sole power of impeachment."); art VI, § 5 ("All impeachments shall be tried by the Senate."); art. VI, § 6 ("The Governor and all other civil officers shall be liable to impeachment . . . .").

Clearly, the drafters of the Constitution recognized that the full impeachment process (i.e., impeachment and removal) could be completed only by both the House and the Senate playing their parts. There is therefore no reason to think that the drafters intended for the *sine die* adjournment principle established in the Constitution not to apply to impeachment.

Senator Ward ignores the consecutive placement of Sections 4, 5, and 6 in Article VI, choosing instead to home in on the word "shall" in Section 5. *See* Ward Br. at 25 (noting that this provision states that "[a]ll impeachments *shall* be tried by the Senate"). According to Senator Ward, the word "shall" means that the Senate has a "mandatory duty" to conduct a trial once the House has passed articles of impeachment, and as such, that articles of impeachment "cannot be extinguished by adjournment sine die." *Id*. This argument is wrong on multiple levels.

First, that "[a]ll impeachments shall be tried by the Senate" means simply that the Senate, and not the House or any other body, has the power to conduct an impeachment trial. *See McGinley v. Scott*, 164 A.2d 424, 430-431 (Pa. 1960) (distinguishing between the House's and Senate's power with respect to impeachment). Second, the Pennsylvania Supreme Court and courts throughout the United States have routinely held that "shall" does not always mean "must," and in some circumstances is intended to mean "should," "will," or "may." *See*

MERSCOPR, Inc.. v. Delaware Cnty., 207 A.3d 855, 865 (Pa. 2019) ("we are aware that the word 'shall' has also been interpreted to mean 'may' or as being merely directory as opposed to mandatory") (internal quotations omitted); *Gutierrez de Martinez v. Lamango*, 515 U.S. 417, 432 n.9 (1995); *English v. Trump*, 279 F. Supp. 3d 307, 323 (D.D.C. 2018) (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* § 11, at 113 (2012)) ("*Shall* is, in short, a semantic mess. *Black's Law Dictionary* records five meanings for the word."); *McReady v. White*, 417 F.3d 700, 702 (7th Cir. 2005) ("'Shall' is a notoriously slippery word that careful drafters avoid."); *Ford v. Hunnicutt*, Nos. 10-1253, 11-0033, 2012 WL 13081443, at *4 (D.N.M. Feb. 17, 2012) ("As recognized by the Supreme Court, the term 'shall' can mean 'is authorized to' depending on the context in which it is used . . ."); *United States v. 1993 Bentley Coupe*, No. 93-cv-1282, 1997 WL 803914, at *1 (D.N.J. Dec. 30, 1997) (finding that "shall" in the context of 28 U.S.C. § 1355(c) does not mean that courts "must" grant a stay upon an appellant's request); *Black's Law Dictionary* (11th ed. 2019) (defining "shall" in relevant part as "will" or "may").

Finally, and most importantly, even if "shall" is interpreted to mean "must" in this context, that does not mean that the Senate is obligated to conduct a trial of an unlawful or unconstitutional impeachment. Courts, including the United States Supreme Court, have routinely held that any mandatory obligation supposedly

imposed by "shall" can be overridden by other concerns. *See*, *e.g.*, *Lamango*, 515 U.S. at 419 (holding courts can review Attorney General's removal determinations, notwithstanding statutory phrase stating "certification of the Attorney General *shall* conclusively establish scope of office or employment for purposes of removal") (emphasis added). Undoubtedly, the Senate would not be obligated to conduct an impeachment trial where the House had impeached a civil officer for, say, wearing a New York Yankees hat in the office, or for being Black, gay, or Muslim. As these examples illustrate, the Senate is not, and cannot be, required to conduct an impeachment trial where the impeachment itself is unlawful, whether because it violates the *sine die* adjournment principle or some other constitutional provision. The use of the word "shall" simply describes an expectation that in normal circumstances — that is, where there is no constitutional impediment — a Senate trial will follow impeachment by the House; it does not operate to override other constitutional provisions. In sum, the Senate's power to conduct impeachment trials does not mean that *sine die* is inapplicable to impeachment.

2. Senator Ward Ignores the Clear Language in the Pennsylvania Code and the Senate's Own Rules That Further Demonstrate the Applicability of *Sine Die* to Impeachment

Senator Ward's textual analysis does not even address the fact that both the Pennsylvania Code and the Senate's own rules state that "all matters" pending at the end of a General Assembly terminate at adjournment *sine die*, which both

reflect the legislature's understanding that the constitutional principle is not limited to lawmaking, as Senator Ward now argues. Section 7.21 of the Pennsylvania Code states that the General Assembly is a "continuing body" for only two years, with the two-year period ending on November 30 of even-numbered years (101 Pa. Code § 7.21(a)), and, importantly for our purposes, that "*[a]ll matters* pending before the General Assembly upon the adjournment sine die or expiration of a first regular session maintain their status and are pending before the second regular session." 101 Pa. Code § 7.21(b) (emphasis added)). This provision does not distinguish between legislative matters and impeachment matters but instead refers to "[a]ll matters." Although it does not expressly state that "all matters" pending at the expiration of *sine die* do not carry over to the next General Assembly, that is the clear implication of this provision.

Senator Ward also does not address the Senate's own rules, which further indicate that impeachment is subject to *sine die*. Specifically, Senate Rule 12(j) states that "[a]ll bills, joint resolutions, *resolutions*, concurrent resolutions, or *other matters* pending before the Senate" do not survive "adjournment sine die or November 30th of [an even-numbered] years, whichever first occurs." Pa. Sen. R. 12(j) (emphasis added). The Articles of Impeachment are a "resolution," specifically, Pennsylvania House Resolution 240 ("HR 240"). To the extent they might be characterized as something other than a resolution, they certainly

constitute an "other matter[] pending before the Senate." Thus, the Senate's own Rules clearly establish that *sine die* applies to impeachment.[2]

Finally, Mason's Manual of Legislative Procedures similarly provides that the constitutional *sine die* rules are not limited to lawmaking activity. In addition to noting that pending legislation expires upon adjournment *sine die*, the manual also provides that a "motion to adjourn *sine die* has the effect of closing the session and terminating *all unfinished business* before the house." *Mason's Manual of Legislative Procedures* § 445.4 (2020) (emphasis added). The Senate Rules provide that the rules in Mason's Manual "shall govern the Senate in all cases to which they are applicable, and in which they are not inconsistent with the Standing Rules, Prior Decisions and Orders of the Senate." Pa. Sen. Res. 3, R. 26 (Jan. 5, 2021); *see also* Pa. Code 101 § 7.32 ("Mason's Manual of Legislative Procedure is the parliamentary authority of the Senate").[3]

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[2] Respondents Bonner and Williams argue that House Rules purportedly permit impeachment proceedings to be carried over from one General Assembly to the next. *See* Mem. of Law of Resp'ts Rep. Timothy R. Bonner and Rep. Craig Williams in Opp'n to Pet'r's Appl. for S. Relief and Expedited Briefing ("Bonner/Williams Br.") at 9, *Krasner v. Ward*, No. 563 MD 2022 (Pa. Commw. Ct. filed Dec. 16, 2022). Even if that were true, it is the Senate, not the House, that has carried the Articles of Impeachment from the 206th General Assembly to the 207th.

[3] The House rule is different in that it provides that "Mason's Manual supplemented by Jefferson's Manual of Legislative Procedure shall be the parliamentary authority of the House," unless it conflicts with other authority. Pa. House Res. 243 (Nov. 16, 2022), Rule 78.

3. Senator Ward's Reliance on Centuries-Old Impeachment Proceedings and an Advisory Opinion That *Precedes* the Amendment of Article II, § 4 in 1967 Is Misplaced

Senator Ward relies heavily on five impeachment proceedings in Pennsylvania that apparently "spanned two sessions of the General Assembly" and an Advisory Opinion from the Attorney General in *Umbel's Case*. Ward Br. at 7, 25–30. Notably, each of these five impeachments occurred between 1794 and 1825. *See id*. at 7–12. And *Umbel's Case* is from 1913. *See id*. at 26–28.

These impeachment proceedings and *Umbel's Case* say little to nothing about the constitutionality of the Senate's actions in this case because they all occurred long before the *sine die* adjournment principle was codified in the Pennsylvania Constitution in 1967. The *sine die* constitutional requirement is derived largely from Article II, § 4, which states, "The General Assembly shall be a continuing body during the term for which its Representatives are elected." That provision was added to the Pennsylvania Constitution by Amendment of May 16, 1967. *See* Pa. L. 1036 (1967). It was approved by Pennsylvanians by a two-to-one margin when it was proposed in a ballot measure in 1967.[4] Prior to 1959, Section 4 read, in relevant part: "The General Assembly shall meet at twelve o'clock,

[4] *See* Gen. Assembly of the Commw. of Pa., *Ballot Questions and Proposed Amendments to the Pennsylvania Constitution* (July 1998), http://jsg.legis.state.pa.us/resources/documents/ftp/publications/1998-75-BALLOT%20QUESTIONS%20REPORT.pdf.

noon, on the first Tuesday of January every second year, and at other times when convened by the Governor, but shall hold no adjourned annual session after the year one thousand eight hundred and seventy-eight."

Thus, the *sine die* adjournment principle did not become codified into the Constitution until 1967. As a result, impeachment proceedings in the 18th and 19th centuries and an Advisory Opinion from 1913 do not inform the constitutionality of the Senate's carry-over of the Articles of Impeachment against District Attorney Krasner in 2022.

Along the same lines, impeachment proceedings in other jurisdictions do not, and cannot, aid this Court in evaluating the constitutionality of the Senate's actions in this case. Senator Ward notes that the *sine die* principle exists in federal law, and that the impeachment proceedings of federal officials, including President Clinton, spanned from one Congress to the next. *See* Ward Br. at 30–32. But, *sine die* is not codified in the U.S. Constitution, like it is in the Pennsylvania Constitution.

Moreover, Senator Ward's assertion that the U.S. Senate "is plainly not a 'continuing body'—despite the fact that, as a practical matter, it may experience less 'turnover'" (*id*. at 32) is wrong. The 1988 U.S. Senate committee that determined that the U.S. Senate could choose to carry over the impeachment proceedings of Judge Alcee L. Hastings from the 100th Congress to the 101st

Congress relied on the fact that "[t]he Senate has been viewed as a 'continuing body' in that at least two thirds of its members (more than a quorum) always held over from one Congress to another." *See* S. Rep. No. 100-542, at 10, *Carrying the impeachment proceedings against Judge Alcee L. Hastings over to the 101st Congress* (Sept. 22, 1988). By contrast, the Pennsylvania Senate is expressly not a continuing body. *See* Pa. Const. art. II, § 4 ("The General Assembly shall be a continuing body during the term for which its Representatives are elected."). Indeed, half of Pennsylvania's Senators (less than a quorum) stand for election every two years.

B. SENATOR WARD'S ARGUMENT THAT DISTRICT ATTORNEY KRASNER IS A "CIVIL OFFICER" UNDER ARTICLE VI, § 6 IS WRONG

Article VI, § 6 provides that "[t]he Governor and all other civil officers shall be liable to impeachment for any misbehavior in office . . . ." Senator Ward departs from the text and structure of Article VI, § 6 — as well as other supporting authorities — by arguing that District Attorney Krasner meets the definition of a "civil officer." *See* Ward Br. at 37–43. She is incorrect.

District Attorney Krasner established in his opening brief that Section 6's reference to "civil officer" means statewide, not local, officers. *See* Petitioner's Appl. at 17–21. The only "civil officer" referenced in Section 6 is the governor, a statewide officer, and thus the phrase several words later — "all *other* civil

officers" — means other civil officers falling within the same general category. *Id*.[5] Section 6 later confirms that a local officer is not a "civil officer" within the meaning of this provision when it dictates that the remedy for impeachment is disqualification from holding "any office of trust or profit under this Commonwealth," namely *statewide office* only. *Id.* at 18. It makes little sense to bar impeached local officers from holding only statewide offices.[6] And, indeed, the Constitution provides that the District Attorney for the City of Philadelphia, a First Class City with its own Home Rule Charter, is subject to impeachment by local process. *See id.* at 21–26.

In response, Senator Ward presents a tangle of baseless arguments.

1. Senator Ward Is Wrong in Arguing That Whether an Official Is a "Civil Officer" Under Article VI, § 6, Turns on the Nature of His Office, Not the Level of Government of His Office

Senator Ward argues that District Attorney Krasner is a "civil officer" pursuant to Article VI, § 6, because civil officers are characterized by the duties

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[5] *See Burns v. Coyne*, 144 A. 667, 668 (Pa. 1928) (ejusdem generis); *Northway Vill. No. 3, Inc. v. Northway Props., Inc.*, 244 A.2d 47, 50 (Pa. 1968) (noscitur a sociis).

[6] *See Commonwealth ex rel. Woodruff v. Joyce*, 139 A. 742 (Pa. 1927) (holding that an office "under this commonwealth" was a state and not a local office). When interpreting Constitutional provisions, text is paramount and words must be construed in their context. *See Perry Cnty. Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 108 A. 659, 660 (Pa. 1919) ("[T]he general principles governing the construction of statutes apply also to the interpretation of Constitutions.").

and powers of their office, not by whether they hold a statewide or municipal office. *See* Ward Br. at 37–43. That is incorrect for several reasons.

First, Senator Ward's argument is untethered to the text and structure of the Constitution. Her argument starts on the false premise that District Attorney Krasner was elected to exercise power pursuant to Article IX, § 4 ("County officers shall consist of commissioners, controllers or auditors, district attorneys . . ."). Ward Br. at 37–38. In fact, because he is the City of Philadelphia's District Attorney, Article IX, § 4 does not apply to him. And nothing in the text of Article VI, § 6, suggests that the powers of an office are determinative of whether it is covered by that impeachment provision.

Second, Senator Ward relies on a series of cases that do not interpret Section 6; instead, those decisions interpret terms other than "civil officer," sections and articles of the Constitution other than Section 6 (or even Article VI), and irrelevant statutes. *E.g.*, *Richie v. City of Phila.*, 74 A. 430 (Pa. 1909) (Article III, "public officer"); *Alworth v. Cnty. of Lackawanna*, 85 Pa. Super. Ct. 349 (Pa. Super. Ct. 1925) (same); *Commw. ex rel. Foreman v. Hampson*, 143 A.2d 369, 373 (Pa. 1958) (Article XIV, "public officer"); *In re Ganzman*, 574 A.2d 732 (Pa. Commw. Ct. 1990) (statute declaring "election officers" ineligible from "civil office" being

voted for at the election at which he is serving). None of these cases shed light on the meaning of "civil officer" in Article VI.[7]

Third, Senator Ward errs by conflating Section 6's term "civil officer" with (now) Article III, § 27's use of the term "public officer." Essentially, Senator Ward argues that since courts appear to determine whether someone is a "public officer" by examining "the nature and inherent authority of the office," that must also be the test for determining whether an officeholder is a "civil officer." Her premise for equating these two terms is a nearly half-century old Attorney General Opinion. *See* Ward Br. at 39 n.29 (citing *Opinions of the Attorney General of Pennsylvania, 1974*, Official Opinion No. 49 (Sept. 18, 1974)). Article VI, however, uses the term "public officers" as well as the term "civil officers," so they cannot mean the same thing. *See PECO Energy Co. v. Commw.*, 919 A.2d 188, 191 (Pa. 2007) (applying canon of statutory construction that the framers are

[7] Reliance on case law construing statutes can, of course, be helpful in the context of constitutional interpretation where the language and context is sufficiently analogous. For example, *Commw. ex rel. Woodruff v. Joyce*, 139 A. 742 (Pa. 1927) — which Senator Ward also ignores — defined the phrase officers "under this commonwealth" in a statute to mean statewide officeholders only and that the legislature "had it wished to include municipal offices within the [statute], that term could have been used." As analogized to Article VI, § 6, the fact that "civil officers" are barred only from holding an office "under this commonwealth" after removal leads to a strong inference that only statewide officers are subject to impeachment under Article VI, § 6. *See supra* at 17 n.6; *see also* Petitioner's Appl. at 18.

"presumed to understand that different terms mean different things."). Moreover, an Opinion of an Attorney General is not legally authoritative; it is intended simply to provide guidance to state officials. *See DiNubile v. Kent*, 353 A.2d 839, 841 (Pa. 1976) ("[O]pinions of the Attorney General are merely for the guidance of state executive officials acting in their executive capacity. It is the province of courts to adjudicate issues of law.").[8]

2. Senator Ward's Effort to Distinguish *Burger* Fails

The parties appear to agree that the Pennsylvania Supreme Court has not squarely held whether a local official is a "civil officer" within the meaning of Article VI, § 6. Yet, the closely related question of whether a local official is a "civil officer" and subject to removal pursuant to Article VI, § 7 was addressed in 2007 in *Burger v. School Board of McGuffey School District*, 923 A.2d 1155 (Pa. 2007). Petitioner's Appl. at 19–20. As Justice Saylor concluded, a local official

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[8] *Houseman v. Commw. ex rel. Tener*, 100 Pa. 222 (Pa. 1882), cited by all Respondents, does not support their interpretation of Article VI, § 6. In *Houseman*, the Supreme Court concluded that a local official was subject to removal (not impeachment) under the provision of then-Article VI, § 4, which stated: "Appointed officers other than judges of the courts of record and the superintendent of public instruction may be removed at the pleasure of the power by which they shall have been appointed." *Id*. at 229. To reach that conclusion, the Court observed that the "very general" language in the provision included "nothing in it which authorizes a distinction between state, county and municipal officers." *Id.* at 230. *Houseman* did not involve an interpretation of current Article VI, § 6, and the textual differences between that Section, described *supra*, and the provision at issue in *Houseman*, are dispositive. *Houseman* was not cited in any opinion in *Burger*.

could not be a "civil officer" because "state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed . . . ." 923 A.2d at 1167 (Saylor, J., concurring). The four-Justice majority called his theory "cogent," but because the parties did not dispute that particular issue, the majority stated that it would leave ruling on the issue to a future case. *Id.* at 1161 n.6.

Contrary to Senator Ward's assertion, *see* Ward Br. at 45, District Attorney Krasner does not "ignore" the majority opinion; he recognized that the majority did not rule on the meaning of "civil officer," but discussed it in a footnote complimenting the cogency of Justice Saylor's analysis. It is Senator Ward who ignores the majority opinion in stating that "*Burger* supports that the District Attorney of Philadelphia is a civil officer," Ward Br. at 47, when the majority opinion lends no support at all to that proposition.

Despite the detailed and probative analysis of Justice Saylor — only fifteen years ago, and focused on interpreting the very term at issue here — Senator Ward inexplicably states that Justice Saylor's opinion "does not support [District Attorney Krasner's] argument." *Id*. at 45. While of course there are factual differences from this case — *Burger* involves Section 7 removal not Section 6 impeachment, and also concerns a school superintendent, not a district attorney — Justice Saylor's opinion plainly "supports" the conclusion that the "civil officer" described in Section 6 must be a statewide official. And while both Justice Saylor

and the majority noted a tension between his opinion and some prior decisions, his conclusion notwithstanding (described by four other Justices as "cogent") was that only a statewide official, not a local one, could be a "civil officer."

Thus, there can be no doubt that Justice Saylor's analysis in *Burger* that garnered essentially the support of five Justices — the most relevant and on-point analysis from the Pennsylvania Supreme Court — supports District Attorney Krasner's interpretation that only a statewide official can be a "civil officer" covered by Section 6.[9]

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[9] Senator Ward also repeatedly misreads history to support her position. For example, she attempts to divine the framers' intent concerning the meaning of Article VI, § 6, from a single statement by a single legislator in the constitution's legislative history. *See* Ward Br. at 45. That provides no support, *Indem. Ins. Co. of N. Am. v. Bureau of Workers' Comp. Fee Rev. Hearing Off.*, 245 A.3d 1158, 1168 (Pa. Commw. Ct. 2021) (noting that "the statement of a single legislator is not entitled any weight"), and is contrary to the fuller history discussed in District Attorney Krasner's Brief. Petitioner's Appl. at 20–21.

Further, Senator Ward's description of historical impeachment practice of the General Assembly demonstrates that impeachment was directed at statewide, not local officers. Not one of the twelve historical impeachments cited in Senator Ward's brief was of a local official. *See* Ward Br. at 5–6. Instead, they include state officers such as judges, justices, and one state Comptroller General. *See Joyce*, 139 A. at 743 ("We think no one would gainsay that [county] judges are state officers in Pennsylvania.") (citing *Commonwealth v. Conyngham*, 65 Pa. 76 (Pa. 1870)).

3. Senator Ward Incorrectly Argues That the First Class City Government Law and Article IX, § 13, Do Not Support the Conclusion That District Attorney Krasner Is Not a "Civil Officer" Subject to Impeachment Under Article VI, § 6

As District Attorney Krasner explained in his opening brief, amendments to the Pennsylvania Constitution in the 1950s and 1960s gave Philadelphia broad power to self-govern while expressly authorizing the General Assembly to regulate local Philadelphia officers, including as it relates to their impeachment and removal. *See* Petitioner's Appl. at 21–26.[10] Article IX, § 13(f) subjected Philadelphia officers to statutory law "in effect at the time this amendment becomes effective [1951]," (*id.* at 24), including, as is relevant here, the impeachment provisions of the First Class City Government Law, *codified*, 53 Pa. Stat. § 12199, *et seq.* *See Lennox v. Clark*, 93 A.2d 834, 839 (Pa. 1953) (under Section 13(f), Philadelphia officers "automatically became subject thereby to the laws then in effect governing and regulating city officers and employees . . . ."); *see also Burger*, 923 A.2d at 1167 (Saylor, J., concurring). Article IX, § 13, must be read together with Article VI, § 1, which states, "[a]ll officers, whose selection is not provided for in this Constitution, shall be elected or appointed as may be

[10] *See*, *e.g.*, Pa. Const. art. IX, § 2; 53 Pa. Stat. § 13131; 53 Pa. Cons. Stat. § 2961; *Delaware Cnty. v. Middletown Twp*., 511 A.2d 811, 813 (1986) ("[A] home rule municipality's exercise of power . . . is valid absent a limitation found in the Constitution, the acts of the General Assembly, or the charter itself, and we resolve ambiguities in favor of the municipality.").

directed by law." The allocation of constitutional power to the General Assembly to regulate local officers — through legislation — confirms that the District Attorney of the City of Philadelphia is not a statewide "civil officer" who can be impeached under Article VI, § 6.

Senator Ward, however, argues that the Philadelphia District Attorney is a "constitutionally created county officer" subject to the constitutional impeachment procedures of Article VI. She cites Article IX, § 4, which enumerates a list of "county officers" that includes "district attorneys." Ward Br. at 51; *see also* Bonner/Williams Br. at 26–27. Yet Article IX, § 4, is *expressly* inapplicable to home rule jurisdictions like Philadelphia and thus does not apply to the Philadelphia District Attorney: Section 4's "[p]rovisions for county government . . . shall apply to every county *except a county which has adopted a home rule charter* . . . ." The exclusion of Philadelphia officers from Section 4 was part of a 1968 amendment. Senator Ward refers to this provision as a "threshold matter," but she ignores this crucial text.[11] At base, the import of the

[11] Authority that the Philadelphia District Attorney is a "constitutional officer" or "state officer" cited by all Respondents pre-dates the 1968 amendment to Section 4, and therefore is irrelevant. *See, e.g., McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960); *Commw. ex rel. Specter v. Martin*, 232 A.2d 729 (Pa. 1967); *Commw. ex rel. Specter v. Freed*, 228 A.2d 382, 386 (Pa. 1967). Senator Ward misstates that the Philadelphia District Attorney "does not occupy a statutorily created office." In fact, the Office of the Philadelphia District Attorney was created by legislation in May 1850, so District Attorney Krasner does "occupy a statutorily created office."

1968 amendment is clear: because Section 4 does not apply to Philadelphia, the Philadelphia District Attorney is not an officer whose selection is provided for in the Constitution, and the constitutional impeachment provision should not be applicable to him. Instead, Article IX, § 13, and Article VI, § 1 apply, which authorize legislative regulation of non-constitutional officers' conditions of tenure, including removal.[12]

Next, Senator Ward argues that, beginning with the enactment of Article IX, § 13(f) in 1951, existing Philadelphia officers would continue to perform their duties until the General Assembly "provided otherwise," and it has not yet so provided with respect to the District Attorney of Philadelphia. But any inaction by the General Assembly since 1951 concerning removal of the Philadelphia District Attorney is irrelevant. Senator Ward ignores the full text of Section 13(f), which

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See P.L. 654, No. 385 (May 3, 1850), An Act Providing for the Election of District Attorneys.

Though they do not focus on the amendment to Article IX, § 4, cases decided after 1968 conclude that the District Attorney of Philadelphia is not a statewide officer, but is instead a local city officer subject to local law. That is true even if district attorneys exercise powers in the name of the state and "carry out delegated sovereign functions" in the performance of their duties. *See Carter v. City of Phila.,* 181 F.3d 339, 350 (3d Cir. 1999); *Chalfin v. Specter*, 233 A.2d 562, 565 (Pa. 1967) (Bell, C.J., concurring).

[12] *See Watson v. Pennsylvania Tpk. Comm'n*, 125 A.2d 354, 356–57 (Pa. 1956); *Weiss v. Ziegler*, 193 A. 642, 644–45 (Pa. 1937); *In re Marshall*, 62 A.2d 30, 32 (Pa. 1948); *In re Marshall*, 69 A.2d 619, 625 (Pa. 1949). *Cf. Lennox*, 93 A.2d at 839.

states that "the provisions of this Constitution and the laws of the Commonwealth *in effect at the time this amendment becomes effective*" apply to Philadelphia officers. Statutes governing impeachment of municipal officers in the First Class City Government Law, 53 Pa. Stat. §§ 12199–205, were enacted in 1919, and they encompass the District Attorney as a "municipal officer."[13] The framers of Article IX, § 13(f) would have known about the statutory process for impeachment of local officers, and in choosing the constitutional language they did, preserved that law and constitutionally bound Philadelphia officers to it.

Senator Ward further asserts that the First Class City Government Law is not the "sole method" of impeachment for the Philadelphia District Attorney. Ward Br. at 54; *see also* Bonner/Williams Br. at 25–26. That is incorrect. As previously explained, the Article VI, § 6, impeachment procedure does not apply to District Attorney Krasner because he is not a "civil officer" within the meaning of the Section. The establishment of the First Class City Government Law impeachment procedure is strongly confirmatory of that reading of Article VI. The Pennsylvania Supreme Court stated in *Burger*, 923 A.2d at 1163, that "the constitutional power of removal must be read in conjunction with other constitutional provisions, a

[13] There can be no serious doubt that the Philadelphia District Attorney is a "local officer," not a statewide officer, *see Carter*, 181 F.3d at 350; *Chalfin*, 233 A.2d at 565, and thus he is a "municipal officer" potentially subject to impeachment under 53 Pa. Stat. § 12199.

reading which makes clear that the General Assembly may enact limitations on the constitutionally conferred power to remove a civil officer at least where the office at issue was created by the General Assembly." Similarly here, the constitutional power of impeachment in Article VI should be read in conjunction with the other provisions of the constitution providing for removal of local officers. That the Constitution expressly provides for the regulation of local Philadelphia officers through the legislative process further confirms that the Constitution treats the terms of tenure for those local officers differently from statewide officers, emphasizing local control.

Lastly, Senator Ward asserts that 53 Pa. Stat. § 12199 — a century-old statute — might conflict with the Constitution and therefore "cannot stand." Ward Br. at 56. But this statute has been applied by the Supreme Court before without raising any constitutional problems, *see In re Marshall*, 62 A.2d 30 (Pa. 1948) and 69 A.2d 619 (Pa. 1949), and courts have long upheld statutory removal provisions for legislatively created offices like the Philadelphia District Attorney. *See In re Georges Twp. Sch. Dirs.*, 133 A. 223, 225 (Pa. 1926); *see also Watson v. Pennsylvania Tpk. Comm'n*, 125 A.2d 354, 356–57 (Pa. 1956); *Weiss v. Ziegler*, 193 A. 642, 644–45 (Pa. 1937).[14]

[14] Decisions striking down removal or recall statutes, *see In re Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995), *S. Newton Twp. Electors v. S. Newtown Twp.*

C. DISTRICT ATTORNEY KRASNER IS NOT SUBJECT TO IMPEACHMENT BECAUSE THE AMENDED ARTICLES OF IMPEACHMENT DO NOT ALLEGE "ANY" CONDUCT THAT CONSTITUTES "MISBEHAVIOR IN OFFICE"

District Attorney Krasner's Application for Summary Relief also demonstrated that the Amended Articles of Impeachment fail for a third independent reason: they do not allege "any" conduct that falls within the scope of "misbehavior in office" as set forth in Article VI, § 6 of the Pennsylvania Constitution. Petitioner's Appl. at 26-39. District Attorney Krasner's argument has three foundational pillars: (1) For more than 150 years, the Pennsylvania Supreme Court has construed the identical term — "misbehavior in office" — in Article VI, § 7 and Article V, § 18(d)(3) of the Pennsylvania Constitution to refer to the common law criminal offense of the same name (Petitioner's Appl. at 27–30); (2) Read in the light most favorable to the House, the Amended Articles of Impeachment do not allege "any" conduct that comes close to meeting this settled definition of "misbehavior in office" (Petitioner's Appl. at 30–36); and (3) The Pennsylvania Supreme Court's decisions construing the identical phrase "misbehavior in office" should control this Court's analysis of the issue, rather than six words of unreasoned *dicta* from the sole case cited by the House in the impeachment proceedings, *Larsen*

Sup'r, 838 A.2d 643 (Pa. 2003), and *Birdseye v. Driscoll*, 534 A.2d 548 (Pa. Commw. Ct. 1987) did not involve Philadelphia officers subject to Article IX, § 13, and therefore do not control here.

v. Pennsylvania, 646 A.2d 694 (Pa. Commw. Ct. 1994) (Petitioner's Appl. at 36–39).

In her Opposition Brief, Senator Ward fails to rebut these arguments. Indeed, while she disputes that the common law definition of "misbehavior in office" properly defines the scope of Article VI, § 6, Senator Ward does not effectively challenge the other two pillars of District Attorney Krasner's position: 1) settled case law has construed identical language in the Pennsylvania Constitution as co-extensive with the common law offense; and 2) the Amended Articles of Impeachment do not allege conduct that falls within the common law definition of "misbehavior in office."

Nonetheless, Senator Ward argues that relief is not warranted because, she contends, the identical constitutional phrase used in Article VI, § 6 ("misbehavior in office") means something entirely different than the same language in other provisions of the Pennsylvania Constitution, namely Article VI, § 7 and Article V, §§ 18(d)(3) & (5). Given the well-established principle that the same constitutional language is generally construed to have the same meaning in different parts of the Constitution, *Cavanaugh v. Davis*, 440 A.2d 1380, 1381 (Pa. 1982); *In re Humane Soc'y of the Harrisburg Area, Inc.*, 92 A.3d 1264, 1271 (Pa. Commw. Ct. 2014), Senator Ward's position faces an extremely high bar, and, as we discuss below, she fails to even come close to clearing it.

1. Senator Ward's Opposition Fails to Substantively Address District Attorney Krasner's Principal Arguments in His Application for Summary Relief as to Claim III

Before addressing the sole merits argument raised by Senator Ward, we pause briefly to consider two of the express and/or implicit concessions contained in her Opposition papers. First, despite the fact that the Amended Articles of Impeachment relied on *Larsen v. Senate of Pennsylvania* as its sole source of authority as to the definition of "misbehavior in office," Senator Ward now concedes in her Opposition that "*Larsen's* pronouncement [about the "misbehavior in office" language] is *dicta.*" Ward Br. at 62. Moreover, although Senator Ward fails to acknowledge this fact, even this *dicta* in *Larsen* does not purport to "interpret" the language in question; it merely makes an (incorrect) observation about whether the interpretation proffered by former Justice Larsen had been ruled upon in prior precedents.

Senator Ward's *dicta* concession is undoubtedly correct, for the reasons described at pages 37–39 of District Attorney Krasner's opening brief: *Larsen*'s six-word aside rejecting the argument that the constitutional phrase "misbehavior in office" in Article VI, § 6, is defined by the common law offense of the same name, was completely unnecessary to the judgment. In *Larsen* the Court had already (correctly) determined that former Justice Larsen's criminal conviction would satisfy *any* definition of "misbehavior in office," and thus the precise definition of the

term did not matter to the outcome of the *Larsen* case. As a result, any discussion in *Larsen* about the meaning of the phrase was not binding on this Court or any other. *Commonwealth v. Singley*, 868 A.2d 403, 409 (Pa. 2005) (citing *Hunsberger v. Bender*, 180 A.2d 4, 6 (Pa. 1962) (finding that a statement in prior opinion, which clearly was not decisional but merely *dicta,* "is not binding upon us")). *See generally Storch v. Landsdowne,* 86 A. 861, 861 (Pa. 1913) ("Courts only adjudicate issues directly raised by the facts in a case or necessary to a solution of the legal problems involved."); *Cohens v. Virginia,* 19 U.S. 264, 399-400 (1821) (Marshall, C.J.) (explaining why *dicta* is not binding in subsequent cases).

Despite this concession, Senator Ward goes on to argue that *Larsen's* "wisdom" is worthy of consideration as the "only interpretation of 'misbehavior in office' as used in Section 6 by any Pennsylvania Court." Ward Br. at 62. But while *Larsen* might be the "only" decision to have specifically addressed this language in that particular constitutional provision, it was not (as we demonstrated in the opening brief and expand on below) the only decision to examine the same constitutional language, and *Larsen* did not even acknowledge these other decisions, much less credibly distinguish them. As a result, its discussion cannot credibly be described as "wisdom" or as persuasive. The entirety of the "analysis" consisted of a claim that, although Larsen's proffered interpretation of the term

"misbehavior in office" might find support in the legislative history, it "finds no support in judicial precedents." But even these six words — conclusory as they were — were demonstrably incorrect, given the multitude of judicial precedents (including some from the Pennsylvania Supreme Court) that had interpreted the identical phrase as synonymous with the common law crime. *In re Braig*, 590 A.2d 284, 286 (Pa. 1991) ("In the several cases where interpretation of these provisions came before the appellate courts, it was uniformly understood that the reference to 'misbehavior in office' was to the criminal offense as defined at common law."); *see also Commonwealth v. Davis*, 149 A. 176, 178 (Pa. 1930) (constitutional provision requiring removal "on conviction of misbehavior in office" to be interpreted "exactly the same way" as the criminal statute); *Commonwealth v. Shaver*, 3 Watts & Serg. 338, 340 (Pa. 1842) (finding no basis to remove officer for "misbehavior in office" where "it is perfectly manifest that he has not even been charged with, much less convicted of it").

Senator Ward's concession that this aside is *dicta* means that this Court is free to ignore *Larsen* entirely, and it should do so given that it contains no legal analysis, only six words of "analysis" at all, and even these six words were demonstrably wrong.

Senator Ward also does not dispute District Attorney Krasner's detailed showing as to why the Amended Articles of Impeachment, even viewed in the light

most favorable to the House, do not rise to the level of "misbehavior in office" within the meaning of Article VI, § 6. To be sure, Senator Ward attempts to frame her lack of opposition under the banner of purported "impartiality" — *i.e.*, she claims she "cannot opine on whether the conduct alleged in the Articles of Impeachment are sufficient to remove District Attorney Krasner for misbehavior in office without pre-judging the facts and law, which would be inappropriate." Ward Br. at 74. This impartiality argument — coming from an elected official who spends 83 pages arguing in support of upholding the Amended Articles of Impeachment — is puzzling. Taking a position on whether the Amended Articles, assuming their truth, satisfy the common law definition of "misbehavior in office" would say nothing on any factual issue that might come before the Senate, and certainly would not cast doubt on Senator Ward's impartiality any more than the views already espoused by Senator Ward in the other 83 pages of her brief.

In this context, Senator Ward's silence on this issue (after addressing so many others) speaks volumes: If District Attorney Krasner is correct about the proper definition of the term (and we demonstrate below why he is), the allegations here are plainly insufficient: Alleging "misbehavior in office" requires a very high showing: a public official has engaged in "misbehavior in office" only if he or she "fail[ed] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive." *Braig*, 590 A.2d at 286;

see also Commonwealth v. Peoples, 28 A.2d 792, 794 (Pa. 1942) ("The law is clear that misfeasance in office means either the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."); *Commonwealth v. Green*, 211 A.2d 5, 9 (Pa. Super. Ct. 1965) ("The common law crime of misconduct in office, variously called misbehavior, misfeasance or misdemeanor in office, means either the breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive."). The Amended Articles here do not come close to making this showing, and it is telling that Senator Ward does not even try to defend them.

2. The Constitutional Phrase "Any Misbehavior in Office" in Article VI, § 6 Incorporates the Common Law Crime of the Same Name, Just as It Indisputably Does in Article VI, § 7 and in Article V, § 18(d)(3)

The only meaningful dispute remaining here is whether the Constitutional impeachment provision, Article VI, § 6, requires an allegation of conduct that falls within the common law offense of "misbehavior in office" in order to force an official to undergo a Senate trial for removal. District Attorney Krasner demonstrates in his opening brief why the scope of the constitutional provision is co-extensive with the common law offense. Nothing in the opposition comes close to refuting this argument.

Three provisions of the Pennsylvania Constitution contain the term "misbehavior in office": Article V, § 18 uses the term twice; subsection (d)(3) provides for automatic removal of a justice, judge or justice of the peace "convicted of misbehavior in office"; a later provision in Section 18 (subsection (d)(5)) cross-references the impeachment provision, noting that "[t]his section is in addition to and not in substitution for the provisions for impeachment for misbehavior in office contained in Article VI."

Article VI then uses the same term twice: Article VI, § 7 provides for removal of civil officers on "conviction of misbehavior in office or of any infamous crime" and Article VI, § 6 provides that the Governor and all other civil officers "shall be liable to impeachment for any misbehavior in office . . ."

The Pennsylvania Supreme Court has construed this identical constitutional language ("misbehavior in office") at least three times, beginning in 1842 in *Commonwealth v. Shaver*, 3 Watts & Serg. 338 (Pa. 1842), when the Court held that removal of a Huntingdon County Sheriff from office under what is now Article VI, § 7 could not properly be based on criminal misconduct *before* the Sheriff took office — bribery during the election. In reaching this result, the Supreme Court construed the constitutional language "misbehavior in office" as co-extensive with the common law offense of "misbehavior in office."

Almost a century later, in *Commonwealth v. Davis*, 149 A. 176, 178 (Pa. 1930), the Supreme Court relied in part on *Shaver* to construe the constitutional removal provision the same way, holding that the Mayor of Johnston was automatically removed from office on conviction of the common law crime of "misbehavior in office" because such a provision satisfied the constitutional removal language.

Against this backdrop, the Pennsylvania Supreme Court considered a similar question in *In re Braig*, 590 A.2d 284, 286 (Pa. 1991), addressing a petition for automatic removal and disqualification from office under Article V, § 18, of a former judge who had been convicted of mail fraud in federal court. The former judge argued that the common law offense of "misbehavior in office" governed the scope of the disqualification provision and that his mail fraud conviction did not satisfy the common law definition of the term. The Supreme Court looked at *Shaver* and *Davis* and agreed that the common law offense of "misbehavior in office" properly defined the scope of the judicial removal provision:

> Based on our reading of all the cases, we must conclude that the language of Article V, Section 18(*l*), like the identical language of present Article VI, Section 7, refers to the offense of "misbehavior in office" as it was defined at common law. This conclusion is not without its difficulties, however. Since the enactment of the Crimes Code effective June 6, 1973, common law crimes have been abolished and "[n]o conduct constitutes a crime unless it is a crime under this title or another statute of this Commonwealth." 18 Pa.C.S. § 107(b). Thus no prosecution on a charge of "misbehavior in office" can now be undertaken. Rather than reach the difficult question whether the

> legislature could effectively nullify the constitutional provision by abolishing the crime referred to therein, we think it prudent to adopt a holding under which the constitutional provision may still be given effect. Therefore, we hold that the automatic forfeiture provision of Article V, Section 18(*l*) applies where a judge has been convicted of a crime that satisfies the elements of the common law offense of misbehavior in office.

Braig, 590 A.2d at 287–88. The Court went on to hold that the automatic disqualification provisions could not be applied, as the offense did not meet the common law definition of "misbehavior in office."

Against this backdrop, Senator Ward faces a huge hurdle in asking this Court to construe the identical language at issue in *Shaver, Davis* and *Braig* differently here. *Braig* expressly held that the term "misbehavior in office" in one constitutional provision should have the same definition already adopted for use in a different constitutional provision with "identical language," and did so despite the fact that the common law offense of "misbehavior in office" had been abolished in the interim. That holding is incompatible with the argument that this Court can now construe the same language differently simply because it is in another part of the Constitution. As we noted in our opening brief, the analysis of *Braig* is so closely on point as to be controlling here.

Senator Ward has two counters to this argument, but each lacks merit. First, she argues that Article VI, § 6 does not contain identical language to the other two provisions because it applies to "any misbehavior in office" while the provisions at

issue in *Braig*, *Shaver* and *Davis* applied to "conviction" for "misbehavior in office." Quite frankly, Senator Ward focuses on the wrong language, as a fair read of all three cases, particularly *Braig*, makes clear that the Supreme Court was construing the language "misbehavior in office" — language identical to that in Article VI, § 6 here. Senator Ward's learned discourse on the meaning of the word "any" (Ward Br. at 63–64) is entirely irrelevant. Putting the word "any" before another word, such as "misbehavior," does not change the meaning of that word, and the dispute in this case is about the meaning of "misbehavior in office," not about the meaning of "any."

While all three cases involved conviction, the Supreme Court's focus was not on the term "conviction," just as the focus here is not on the term "any." To be sure, there is a difference between the impeachment provision of Section 6 and the removal provision of Section 7. The former contemplates a trial and possible conviction by the Senate. The latter builds off a trial and conviction that has already occurred in the judicial system, calling for consequences based on that conviction and not requiring a trial in the Senate because the trial has already occurred. But that difference in who conducts the trial does not suggest that there should be any difference in the scope of the misconduct covered by the two provisions — misconduct that, again, is defined by *exactly the same language*.

The impeachment provision's inclusion of "any" misbehavior in office means that that no "conviction" of the common law offense is required. But District Attorney Krasner is not contending that a conviction is required; his argument is simply that because the operative language construed in *Braig* ("misbehavior in office") is identical to that here, the construction of this identical term should be the same. It is therefore up to the House to allege "any" conduct that plausibly falls within the common law offense of "misbehavior in office." Indeed, "any" indicates that there could be different kinds of conduct that amount to the common law crime of misbehavior in office. The Amended Articles of Impeachment in this case allege none.

Second, Senator Ward argues that the Constitutional Amendment of 1966, (referenced also in *Braig*), which changed the constitutional provision from one that permitted impeachment for any "misdemeanor in office" to one that allowed for impeachment for "misbehavior in office," supposedly evinced an intent by the people and the legislature to expand the grounds for impeachment beyond the common law definition of "misbehavior in office." This argument is puzzling. Why would anyone attempting to move away from the common law definition of "misbehavior in office" adopt the very language ("misbehavior in office") that the Pennsylvania Supreme Court had construed for over a century as synonymous with the common law offense of the same name? Doing so would be irrational, and

Senator Ward articulates no conceivable reason to ignore the obvious counter-explanation for the use of this same language: The change was intended to restrict impeachment to conduct that involved the common law offense of "misbehavior in office," thus reserving impeachment for serious criminal offenses, rather than trivial matters or policy disputes like this one. *See* JARED P. COLE & TODD GARVEY, CONG. RSCH. SERV., R46013, IMPEACHMENT AND THE CONSTITUTION 7 (2019) (citing CHARLES L. BLACK, IMPEACHMENT: A HANDBOOK 30 (1974) ("[W]hatever may be the grounds for impeachment and removal, dislike of a president's policy is definitely not one of them, and ought to play *no* part in the decision on impeachment.")).

Senator Ward cites no authority showing any contrary intent. Instead, she speculates as to various motives that "must have" or "presumably" prompted the people and the Legislature to change the constitutional language. There is no merit to any of this speculation. First, the text speaks for itself, and the text adopts language that, as of 1966, had been consistently construed to include the common law offense. Second, a contemporaneous report prepared for use by delegates to the 1966 Constitutional Convention made clear that the amendment was intended to limit the reach of the impeachment provision in this way, not to broaden it as Senator Ward argues (Ward Br. at 73):

> The common law crime of misconduct in office, variously called misbehavior, misfeasance, or misdemeanor in office, means either the

> breach of a positive statutory duty or the performance by a public official of a discretionary act with an improper or corrupt motive. . . . *The multiple usage of the term "misbehavior in office" appears to be a codification of the common law offense* . . . . [I]t seems doubtful whether judges [or other officials subject to these impeachment provisions] can be impeached for simple neglect of non-statutory duties or for misconduct or misbehavior. There is some evidence in the Constitution itself that impeachment is limited to the more serious types of misconduct.

Preparatory Committee Report on the Judiciary, for the Pennsylvania Constitution Convention, 1967-1968, at 160 (1968), https://www.paconstitution.org/wp-content/uploads/2019/09/rm-05.pdf.

This report alone refutes Senator Ward's speculation about reasons for the change in language of the constitutional impeachment provision. The amendment adopted a term with a settled meaning, and its obvious purpose was to adopt that same settled meaning for the new impeachment provision. Any argument to the contrary lacks merit and finds no support in either judicial precedent (beyond Larsen's dicta) or the contemporaneous history.

3. District Attorney Krasner's Claim Is Ripe for Review.

As a final argument, and without citing any meaningful authority, Senator Ward argues that District Attorney Krasner's Application for Summary Relief as to Claim III should be dismissed because it is supposedly "premature, at this pre-trial stage, for this Court to determine whether the Articles of Impeachment are sufficient to establish 'any misbehavior in office' because we do not know what

facts will be presented at trial." Ward Br. at 74. For the reasons stated in Petitioner's Brief in Opposition to Preliminary Objections of Respondents Bonner and Williams, at pages 27 to 32, Claim III is ripe for judicial review because it presents a purely legal question of whether the Amended Articles of Impeachment are an unconstitutional exercise of the House of Representatives' impeachment power because the conduct alleged — even if true — does not constitute "any misbehavior in office." Senator Ward does not argue that the Senate will take up that purely legal question. Instead, she argues that the Senate will act as a jury. There is no legal principle requiring District Attorney Krasner to wait until the conclusion of the trial for a ruling that he should never have been impeached.

Senator Ward's attempt to analogize the Amended Articles to an indictment only proves District Attorney Krasner's point. *See* Ward Br. at 73. If this were a criminal case with a facially invalid indictment, the proper remedy would be a motion to dismiss the indictment, which would properly be subject to pre-trial disposition by the judiciary. Such a remedy exists to prevent the harm caused by forcing an accused to go to a trial based on a defective charge that never should have been brought in the first place.

The issue here is similarly ripe, as the charge is defective on its face and there is nothing for the Senate to properly try. District Attorney Krasner, as a matter of law, has not been accused of "misbehavior in office" as that term is

properly defined in the Pennsylvania Constitution, and as a result his impeachment should be declared invalid and void.

D. THE COURT SHOULD DENY SENATOR WARD'S CROSS-APPLICATION FOR SUMMARY RELIEF BECAUSE THE SENATE AND SENATE IMPEACHMENT COMMITTEE ARE NOT INDISPENSABLE PARTIES

Senator Ward cross-moves for summary relief on the basis that this Court lacks jurisdiction because the Senate and the as-yet-unformed Senate Impeachment Committee are indispensable parties that are not joined. *See* Ward Br. at 75-82. She argues the following: (i) the Senate as a body is indispensable because District Attorney Krasner seeks relief affecting the Senate's right to try impeachments; and (ii) the Senate Impeachment Committee, which does not exist (yet) and thus has no members, is indispensable. Neither argument has merit.

1. The Senate Is Not an Indispensable Party

Senator Ward argues that because District Attorney Krasner seeks an order "declaring the rights of the non-party Senate," this Court cannot adjudicate this matter unless and until the body itself is joined. *See* Ward Br. at 76–79. Fundamentally, Senator Ward's argument ignores longstanding Pennsylvania precedent holding that government bodies are not indispensable parties when their interests are adequately represented by individual members who *are* parties. *See*

City of Philadelphia v. Commonwealth, 838 A.2d 566, 582-84 (Pa. 2003) (citing *Leonard v. Thornburgh*, 467 A.2d 104, 105 (Pa. Commw. Ct. 1983) (en banc)).[15]

In *City of Philadelphia v. Commonwealth*, the Supreme Court rejected a similar argument to Senator Ward's. There, the Court concluded that even if a constitutional challenge to legislation "centers, not upon any substantive aspect of the legislation at issue, but upon the procedure by which it was adopted" — a procedure that necessarily implicates the core constitutional powers and duties of the legislature — the General Assembly is not an indispensable party if legislative

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[15] While District Attorney Krasner does not disagree with the basic legal standard cited by Senator Ward, her recitation of the standard ignores that the question of indispensability in the context of disputes involving arms of the Commonwealth government is "considerably more complex than simply considering rules of civil procedure and decisional law as adopted and developed within traditional concepts of parties to actions at law." *Ross v. Keitt*, 308 A.2d 906, 908 (Pa. Commw. Ct. 1973) (immunity context).

A nonparty is indispensable "when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. The basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of him or her. In undertaking this inquiry, the nature of the claim and the relief sought must be considered." *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 581 (Pa. 2003) (citations and punctuation omitted). The necessity of joining such parties does not mean that any party whose interests may be affected by a judgment must be joined. *See id.* District Attorney Krasner recognizes that in an action for a declaratory judgment, in general, "all persons having an interest that would be affected by the declaratory relief sought ordinarily must be made parties to the action." *Id*. at 581-82. Nevertheless, "[w]hile this joinder provision is mandatory, it is subject to limiting principles," including "where a person's official designee is already a party" and additional parties would result in duplicative litigation. *See id*.

officers are joined who "are capable of representing the interests of the Legislature as a whole." *Id.* at 584. Senator Ward's brief fails to acknowledge this principle.[16]

Clearly, Senator Ward, as the interim President Pro Tempore, can adequately represent the interests of the Senate in this matter. District Attorney Krasner seeks a declaration that, *inter alia*, the impeachment proceedings against him cannot proceed and any attempts to take up the Articles of Impeachment against him are unlawful. *See* Petitioner's Appl., at (A)-(E).

In her official capacity, Senator Ward exercises primary control over the impeachment process in the Senate. *See* Pennsylvania Senate Resolution 386 (Nov. 29, 2022) ("S.R. 386"). Specifically, pursuant to Senate Resolution 386, which purports to establish "special rules of practice and procedure in the Senate when sitting on impeachment trials," Senator Ward, as President Pro Tempore, is empowered to control the fundamental aspects of the impeachment proceedings,

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[16] Senator Ward cites cases for general principles of indispensability, but they do not bolster her arguments that the Senate and Committee are indispensable. Two of her cases found no indispensability. Of the three cases that did find indispensability, none involve the interest of a nonparty Commonwealth entity, much less one already represented by the entity's presiding officers. *See HYK Constr. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1016 (Pa. Commw. Ct. 2010) (in zoning action, neighbors found indispensable); *Polydyne, Inc. v. City of Phila.*, 795 A.2d 495, 496 (Pa. Commw. Ct. 2002), as amended (Apr. 30, 2002) (bidder for government contract indispensable in action by competitor); *Bucks Cnty. Servs., v. Phila. Parking Auth.*, 71 A.3d 379, 388 (Pa. Commw. Ct. 2013) (certain private actors indispensable). Larsen, upon which Senator Ward leans heavily, does not address indispensability at all.

including "direct[ing] . . . necessary preparations [for impeachment proceedings] in the Senate Chamber [and directing] the form of proceedings." S.R. 386, Section 6. Further, unless otherwise ordered by the Senate, she "*may* appoint a committee of Senators . . . to receive evidence and take testimony . . ." *Id.* Section 10 (emphasis added). Moreover, "[t]he President pro tempore shall be an ex officio member [of the committee] and may vote in case of a tie on any question before the committee." *Id.* The President Pro Tempore is further responsible for setting the first meeting of the committee. *Id.* at Section 10(c).

In other words, the Senate has designated its President Pro Tempore with significant authority and control over Senate impeachment proceedings, including the proceedings against District Attorney Krasner. Senator Ward is therefore an adequate representative of the Senate in this matter.[17]

For similar reasons, a judgment in the absence of the Senate will not impair its "right" to try impeachments. Ward Br. at 77-78. As explained in *City of Philadelphia*, even if a declaratory judgment squarely affects the constitutional functions of a government body, that body is not necessarily indispensable, even though "[i]t could reasonably be argued . . . that the Legislature's participation is

[17] In the event the Court has any concerns that Senator Ward, standing alone, is an adequate representative of the Senate, Senator Jay Costa, leader of the Senate Democrats, seeks leave to intervene. District Attorney Krasner does not oppose Senator Costa's intervention; neither does Senator Ward.

necessary, as it has a general interest in defending the procedural regularity of the bills that it approves." *City of Phila.*, 838 A.2d at 584. Joinder of the body is not necessary where, like here, it is adequately represented by an existing party. *See also Stilp v. Commonwealth*, 910 A.2d 775, 785–86 (Pa. Commw. Ct. 2006) ("Because the Attorney General is participating and because the legislative leaders of both chambers are participating, we conclude jurisdiction is sufficiently established under the Declaratory Judgments Act [in a constitutional challenge to legislation]."), *aff'd sub nom. Stilp v. Commw., Gen. Assembly*, 974 A.2d 491 (Pa. 2009); *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (rejecting Senate Pro Tem's argument that Commonwealth and Attorney General were necessary parties in challenge to legislation); *MCT Transp. Inc. v. Phila. Parking Auth.*, 60 A.3d 899, 904 (Pa. Commw. Ct. 2013) (joinder of legislature not necessary in constitutional challenge to legislation), *aff'd*, 81 A.3d 813 (Pa. 2013), and *aff'd*, 83 A.3d 85 (Pa. 2013).[18] Requiring District Attorney Krasner to join the Senate as a body in addition to Senator Ward would be an exercise in unnecessary formalism.

[18] That the Senate was named as a party in Larsen is irrelevant. Joinder of a party in prior litigation regarding a similar subject matter says nothing about its indispensability in a different litigation between different parties.

2. The Impeachment Committee Is Not an Indispensable Party

Senator Ward also argues that the Senate Impeachment Committee, which has not yet been formed, is an indispensable party. Ward Br. at 79-82. But she fails to acknowledge that, as interim President Pro Tempore of the Senate, she is empowered by the Senate to create or *not* create that Committee, in her discretion. *See* S.R. 386, at Section 10(a) ("In an impeachment trial, unless otherwise ordered by the Senate, the President pro tempore *may* appoint a committee of Senators, no more than half of whom must be members of the same political party. The President pro tempore shall be an ex officio member and may vote in case of a tie on any question before the committee.") (emphasis added). A declaratory judgment would prevent her from creating the committee; if the committee never comes into existence, it can never be, and is not now, an indispensable party.

Senator Ward advances a patchwork of arguments that the Court cannot enter summary relief as long as the John Doe designees — members of the yet-to-exist committee — remain unidentified. *See* Ward Br. at 79–81. Notably, Senator Ward does not appear to argue that the John Does themselves are indispensable. What Senator Ward's Brief misses is that the John Doe designees are joined in the Petition for Review for a later day as members of a committee that may or may not come into existence. In the present Application, District Attorney Krasner is pursuing claims against Senator Ward and the Respondent House Managers, not

yet the John Does. *See* Petitioner's Appl., at Proposed Order #2. If the Court grants the requested relief, there is no need for further future relief against the John Does because the committee of which they would be members will never exist.

Alternatively, if the Court does not grant District Attorney Krasner's Application for Summary Relief, and this matter proceeds, the Committee may eventually exist, at which time its members will be identifiable and will be designated in this litigation, *see* Pa. R. Civ. P. 2005. Thus, Senator Ward's request for immediate dismissal for lack of subject matter jurisdiction is premature and inappropriate. Indeed, even if the Senate or committee were indispensable (which they are not), the Court should allow District Attorney Krasner leave to amend the Petition to join any such party in subsequent proceedings.

3. The Senate and Its Party Caucuses Have Notice of This Matter But Did Not Seek Leave to Intervene

Senator Ward's remaining argument — that proceeding in the Senate's absence deprives the Court of jurisdiction — is also meritless. The Senate has had ample opportunity to join this litigation, which is a public matter of public concern. Both Pennsylvania law and this Court specifically encourage interested parties to seek leave to intervene. *Stilp*, 910 A.2d at 786 ("Intervention will be liberally granted to past or current state legislators who wish more personal involvement."). The sole person to seek leave is Senator Costa.

The Senate also had actual notice of this matter. On December 2, the day this action was commenced, undersigned counsel for District Attorney Krasner furnished copies of the Petition and Application for Summary Relief to counsel for both House and Senate party caucuses. Such counsel were also notified of the Court's December 6 scheduling Order, which set a deadline for applications to intervene. If it were so critical for the Senate to be a party, and if its rights would be impaired in its absence, representatives of the Senate comprising a majority of Senators surely would have sought leave to intervene. They did not.

III. CONCLUSION

For the reasons stated above, District Attorney Krasner's Application for Summary Relief should be granted. Senator Ward's Cross-Application for Summary Relief should be denied.

***

Respectfully submitted,

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, 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 that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 21, 2022

/s/ John S. Summers
John S. Summers

WORD COUNT CERTIFICATION

I hereby certify that the foregoing brief complies with any applicable word count limitation. The brief contains 12,714 words, as determined by the word count feature of the word processing system used to prepare this brief, exclusive of the cover page, tables, and signature block.

Dated: December 21, 2022

/s/ John S. Summers
John S. Summers

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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

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA AND POWER INTERFAITH IN SUPPORT OF PETITIONERS

Pursuant to Pa. R.A.P. 531(b)(i)(iii), the American Civil Liberties Union of Pennsylvania and Power Interfaith, by and through the undersigned attorneys, hereby seek leave from this Honorable Court to file a brief in support of the Petition's Application for Summary Relief and Expedited Briefing. In support of this Application, the Amici Curiae aver as follows:

1. *Amici* are two non-profit organizations representing the interests of thousands of their members in southeastern Pennsylvania who expressed support for Petitioner Krasner's stated policy goals by voting overwhelmingly to elect him to serve as the Philadelphia District Attorney in 2017, and then to reelect him in 2021.

2. Among *Amicus Curiae* ACLU-PA's goals are the protection of the civil liberties of those who live and work in this Commonwealth, including the right to vote and the rights of defendants in criminal proceedings. The ACLU-PA has expressly supported initiatives that overlap with many of the stated policy goals that the Pennsylvania House of Representatives cited as bases for House Resolution 240, including the elimination of cash bail, alternatives to incarceration and pre-trial detention, legalization of marijuana, decriminalization of sex work in Philadelphia, and bringing balance back to sentencing. Whether the General Assembly has authority to impeach an elected county official for his efforts to end mass incarceration and racial inequities in the criminal justice system is thus an issue of vital importance to the ACLU-PA and its members.

3. Among *Amicus Curiae* POWER Interfaith's goals are civic engagement and organizing communities so that the voices of all faiths, races, and income levels are counted and have a say in government. POWER Interfaith represents more than 150 congregations across Southeastern and Central Pennsylvania, and its civic engagement efforts include voter education programs, voter registration drives, information about applying for mail ballots, completing them properly and returning them on time, and "Souls to the Polls" efforts to encourage congregants to vote. On behalf of its members, POWER Interfaith represents the interests of Philadelphia voters in ensuring that their voices are heard through the selection of the voters' chosen candidates.

4. Therefore, the *Amici Curiae* have a direct and substantial interest in ensuring that the General Assembly does not abuse its impeachment power or otherwise violate the Pennsylvania Constitution by improperly seeking to remove a duly-elected public official based on policy differences, and that the relief sought by Petitioner in the Application for Summary Relief and Expedited Briefing is granted.

5. If leave is granted, *Amici* intend to file the brief attached to this Application as Exhibit "A." The Amici Curiae believe this Honorable Court will benefit from the brief they seek to file, because it provides discussion of the constitutional safeguards applicable to the impeachment process, and in particular their necessity to the preservation and protection of popular sovereignty in our Commonwealth.

CONCLUSION

For the foregoing reasons, the Court should grant leave and permit *Amici Curiae* to file the attached brief in favor of the Petitioner.

Respectfully submitted,

Date: December 15, 2022

/s/Stephen Loney

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EXHIBIT A

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

BRIEF OF *AMICI CURIAE* AMERCIAN CIVIL LIBERTIES UNION OF PENNSYLVANIA AND POWER INTERFAITH IN SUPPORT OF PETITIONER

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INTEREST OF AMICI[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Pennsylvania is one of the ACLU's state affiliates, whose principal mission is to protect the civil liberties of those who live and work in this Commonwealth. The ACLU of Pennsylvania regularly appears as direct counsel or as *amicus curiae* in federal and state courts at all levels, in matters concerning civil liberties, including the right to vote and the rights of defendants in criminal proceedings. While the ACLU and ACLU-PA are nonpartisan and do not endorse candidates for office, the ACLU-PA supports many of the policy goals that the Pennsylvania House of Representatives cited as bases for House Resolution 240 including the elimination of cash bail, alternatives to incarceration and pre-trial detention, legalization of marijuana, decriminalization of sex work in Philadelphia, and bringing balance back to sentencing. Whether the General Assembly has authority to impeach an elected county official for his efforts to end mass incarceration and racial inequities in the criminal justice system is thus an issue of vital importance to the ACLU-PA and its members.

POWER Interfaith ("POWER") is a non-partisan faith-based community organizing network committed to building communities of opportunity that work for all. Founded in Philadelphia, POWER represents more than 150 congregations across Southeastern and Central Pennsylvania, working to bring about justice here and now. One of its five priority areas is civic engagement and organizing communities so that the voices of all faiths, races, and income levels are counted and have a say in government. POWER engages directly with voters across Pennsylvania, and its civic engagement efforts include voter education programs, voter

[1] Pursuant to Pa. R. App. P. 531(b)(2), Amici state that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

registration drives, information about applying for mail ballots, completing them properly and returning them on time, and "Souls to the Polls" efforts to encourage congregants to vote. On behalf of its members, POWER represent the interests of Philadelphia voters in ensuring that their voices are heard through the selection of the voters' chosen candidates.

BACKGROUND AND SUMMARY OF ARGUMENT

Larry Krasner ran for the office of Philadelphia District Attorney in 2017 on a platform of reform, emphasizing respect for the civil rights of criminal defendants and citizens who often face fraught interactions with law enforcement. His platform included reducing incarceration for nonviolent crimes in favor of diversionary opportunities, reducing pre-trial detention where the defendant poses no threat to public safety, reducing prosecution for marijuana possession, holding police accountable, and focusing office resources on prosecuting serious, violent crimes and shootings. An overwhelming majority of Philadelphia voters elected him with approximately 74% of the vote in 2017. In 2021, Mr. Krasner sought reelection on a similar platform, and Philadelphia voters chose him as their District Attorney again with an overwhelming majority of the vote (this time, over 69%).[2] A majority of the Philadelphia voters who made their voices heard in the 2021 municipal election are people of color, and this Court should not allow politicians outside of Philadelphia who are hostile to Philadelphians' right to self-government override their choice based on specious policy-driven allegations of "misbehavior in office."

Nearly all of the politicians seeking to push through impeachment are from outside of Philadelphia; some of them have now been voted out of office. They initiated an extraordinary process for the terribly ordinary reason that they do not like another official's policies or

[2] Mr. Krasner received 67% of the vote in the 2021 Democratic Primary.

approach—not because they have credibly accused him of any crime or actionable malfeasance. Their impeachment effort specifically identified several of Mr. Krasner's signature policies that the electorate effectively endorsed by reelecting him—including ending mass incarceration and bringing balance back to sentencing, not charging sex workers or those in possession of marijuana with crimes, reducing pre-trial incarceration, and ending cash bail—as grounds for removal from office. But removal of an elected official, by impeachment or otherwise, requires more than mere disagreement with policy decisions. The extraordinary process set forth in the Pennsylvania Constitution involves overturning the results of democratic election to removing from office a duly elected office holder, overturning the will of and effectively disenfranchising the voters who supported the office holder. As such, removal or impeachment runs counter to the principle that "the people are entitled to the services of the officer during the entire term for which they elected him . . . ." *Commonwealth ex rel. Veneski v. Reid*, 108 A. 829, 831 (Pa. 1919).

Accordingly, the process to remove an elected office holder must be beyond reproach to respect the will of the people who elected him. "[E]lected civil officers may be removed from office only for Cause . . . after due process has been accorded the officer upon conviction of 'misbehavior in office or of any infamous crime' or 'on the actions of two-thirds of the Senate.'" *Citizens Comm. to Recall Rizzo v. Bd. of Elections of City & Cty. Of Phila.*, 367 A.2d 232, 244 (Pa. 1976). Here, the impeachment proceedings fail to abide by the constitutionally proscribed process and are otherwise antidemocratic for several reasons, revealing the political, policy-driven nature of this move to overturn the will of the electorate in Philadelphia and statewide.

ARGUMENT

The process to remove a public official is carefully circumscribed under the Pennsylvania Constitution Articles VI §§ 4-7 (for "civil officers") and IX § 4 (for "county officers") and by

statute in 53 Pa. Stat. § 12199 (for municipal officers). The Pennsylvania Supreme Court has emphasized that to remove an elected official requires a showing that the removal is "for cause and [with] due process." *Citizens Comm. to Recall Rizzo*, 367 A.2d at 244-45 ("elected civil officers may be removed from office only for Cause . . . after due process has been accorded the officer upon conviction of 'misbehavior in office or of any infamous crime' or 'on the actions of two-thirds of the Senate'" (quoting *Houseman v. Commonwealth*, 100 Pa. 222 (1882)).

A fundamental precept of due process is that the Government must "turn square corners" in how it operates. *See, e.g., Niz-Chaveez v. Garland*, 141 S. Ct. 1474, 1486 (2021); *Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020). The Pennsylvania Constitution places numerous, explicit restrictions on the legislative process precisely to "encourage an open, deliberative and accountable government." *City of Phila. v. Commonwealth*, 838 A.2d 566, 585 (2003). "The General Assembly must comply with . . . such procedural requirements [because they] are integral to the preservation of the people's freedom. . . ." *Washington v. Dep't of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147 (2018).

Here, the General Assembly's consideration of House Resolution 240 runs afoul of several constitutional requirements and attempts to undo the will of the people based on some of the very reasons that the voters selected him, rather than proceeding on the sort of official misconduct required to trigger this extraordinary process.

A. House Resolution 240 Violates the Requirement that Removal from Public Office Is Limited to Gross Misbehavior or Criminal Conduct, Not Policy Differences.

Under the Pennsylvania Constitution, an elected official may only be impeached for "misbehavior in office." Pa. Const. art. VI, § 6. Reviewing the relevant cases, the Pennsylvania Supreme Court noted in the *Braig* decision that provision had been "uniformly understood" to require "the criminal offense . . . 'misbehavior in office' . . . as defined at common law." *In re*

Braig, 527 Pa. 248, 252 (1991) (collecting cases). *See also Rizzo*, 367 A.2d at 243-47 (finding recall provisions unconstitutional under Pennsylvania Constitution because *inter alia* they allowed removal of elected official without "cause").

The Seven Articles of Impeachment fall well short of this standard. Mr. Krasner has not been accused, much less convicted, of any crime. Rather, a faction of the General Assembly has chosen to impeach based on policy preferences, including over decisions that are fundamentally entrusted to Mr. Krasner's prosecutorial discretion. In particular, the Articles of Impeachment cite as bases for Mr. Krasner's removal criminal justice policy positions that Mr. Krasner touted during his political campaign and were ratified by a supermajority of Philadelphia voters. For example, the Articles cite as grounds for Mr. Krasner's impeachment:

- His support for policies to "end mass incarceration and bring balance back to sentencing." Amendment to House Resolution No. 240 at 3. Reform in this area is seriously overdue: Pennsylvania has about 70,000 people behind bars, the highest incarceration rate in the mid-Atlantic and Northeast.[3] In 2016, the State spent $2.5 billion on its correctional system, a six-fold increase over 30 decades.[4]
- His directive "not to charge sex workers," Amendments to House Resolution No. 240 (Rep. Ecker) Printer No. 3607 (Nov. 16, 2022) at 3. The ACLU in particular has long supported decriminalization of sex work, which results in driving sex workers underground where they are subject to coercion and heightened risk of

[3] U.S. Criminal Justice Data, THE SENTENCING PROJECT, https://www.sentencingproject.org/research/us-criminal-justice-data/?state=pennsylvania
[4] *See Blueprint for Smart Justice: Pennsylvania*, ACLU (2018) at 6, 10, *available at* https://www.aclupa.org/sites/default/files/field_documents/blueprint_for_smart_justice_pa.pdf

violence, and the people of Philadelphia are entitled to elect a District Attorney that supports this laudable goal.[5]

- His directive "not to charge . . . possession of marijuana and marijuana-related drug paraphernalia," Amendments to House Resolution No. 240 at 3. In recent terms, the Pennsylvania General Assembly has considered proposals to decriminalize marijuana possession, and the City of Philadelphia passed a marijuana decriminalization ordinance before Mr. Krasner became District Attorney. While marijuana possession is still a crime under state law, Mr. Krasner's policy simply brings enforcement policy in line with the municipal ordinance.
- His policies to "seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicates a range of incarceration of less than 24 months." Amendments to House Resolution No. 240 at 4. As noted above, Pennsylvania has the highest incarceration rate of any state in the mid-Atlantic and Northeast, and seeking alternatives to prison is a well-accepted criminal justice goal.
- His efforts to "reduc[e] pre-trial incarceration rates" and his policy to "ordinarily no longer ask for cash bail." Amendments to House Resolution No. 240 at 4. In recent years, Pennsylvania has considered legislative proposals to eliminate cash bail. Reform in this area is overdue: cash bail is the leading cause of mass incarceration in the United States; nationwide, 62 percent of people held in jail

[5] *See* N. Sanchez, *It's Time to Decriminalize Sex Work*, ACLU (Aug. 26, 2022) *available at* https://www.aclupa.org/en/news/its-time-decriminalize-sex-work

> have not been sentenced, the vast majority of whom are held because they cannot pay cash bail. Numerous jurisdictions (including New Jersey, New York, Illinois, and California) have eliminated or significantly reduced imposition of cash bail. Pretrial detention causes a major disruption for detained individuals and their families, and in Pennsylvania, the imposition of cash bail has been tied to higher rates of recidivism. And Black Pennsylvanians are twice as likely to be required to post cash bail as white Pennsylvanians.[6]

The Articles of Impeachment are rife with similar citations to other policies where the impeachment sponsors disagree with Mr. Krasner and the Philadelphians who voted for him. But policy disagreements are not a legitimate basis to remove an elected official under the Pennsylvania Constitution, especially when the intent of those policies is to protect the rights of criminal defendants under both the federal and Pennsylvania constitutions and to reduce racial disparities in the criminal justice system. The Pennsylvania Constitution requires a showing of actual misconduct to warrant removal from office to ensure that "duly elected officials are not removed from office by whim or caprice." *Rizzo*, 367 A.2d at 247. Not only does House Resolution 240 fail to meet that exacting standard, but it smacks of retaliation against Mr. Krasner and the voters who supported him by members of an opposing political party who object to his efforts to reform criminal justice in Pennsylvania's largest and most racially diverse city.

It is thus imperative for this Court to declare that impeachment of an elected official is unlawful if it is based on nothing more than philosophical differences. Allowing the House of Representatives to mischaracterize an elected official's lawful policy choices as "dereliction of

[6] *See Cash Bail*, ACLU, *available at* https://www.aclupa.org/en/issues/criminal-justice-reform/cash-bail

duty" justifying impeachment will chill other public officials from implementing important criminal justice reforms and stifle public debate about how to eliminate racial inequity in Pennsylvania's criminal justice system. Pennsylvanians deserve a fair debate over policies that have resulted in some of the highest levels of mass incarceration in the country at the cost of billions of taxpayer dollars every year. By declaring advocacy or implementation of reform policies as a basis to remove elected officials, the impeachment sponsors are acting in both an unprecedented and unconstitutional manner.

B. The Carryover of House Resolution 240 is Antidemocratic and Contravenes the Will of the Pennsylvania and Philadelphia Electorate.

Mr. Krasner has cited serious constitutional problems with the purported effort to continue House Resolution 240 from the 206th General Assembly to the 207th. *See Memorandum of Law in Support of Petitioner's Application for Summary Relief* at 8-16. In brief, the Pennsylvania Constitution requires that legislation under consideration, such as House Resolution 240, expires at the end of the General Assembly's term and must be "reintrod[uced] and repass[ed]" by a subsequent General Assembly to have legal effect. *Frame v. Sutherland*, 327 A.2d 623, 627 (Pa. 1974). That procedure has not been followed here.

The Pennsylvania General Assembly is not a continuing legislative body, and all legislative matters under consideration expire at the end of session. Pa. Const. Art. II §§ 2, 4; 101 Pa. Stat. § 7.21(a). As the Pennsylvania Supreme Court has written "unenacted bills pending at the end of [the] session expired." *Frame*, 327 A.2d at 627.

The expiration of bills and resolutions pending at the end of session is not merely a technical rule: it represents one of many important constraints the Pennsylvania Constitution places on the General Assembly to ensure that it is responsive and accountable to the electorate. As the Supreme Court has repeatedly noted, the Pennsylvania Constitution contains specific

restrictions on the General Assembly's legislative process – restrictions that have no analogue in the federal constitution – "to furnish essential constitutional safeguards to ensure our Commonwealth's government is open, deliberative, and accountable to the people it serves." *Washington v Dep't of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147 (2018) (citing *City of Phila. v. Commonwealth*, 838 A.2d 566, 585 (2003)). The Supreme Court considers these restrictions "as the embodiment of the will of the voters" because these restrictions were specifically added to the Pennsylvania Constitution when the people of Pennsylvania "lost confidence in the legislature's ability to fulfill its most paramount constitutional duty of representing their interests," and in response to "abuses and inadequacies in the lawmaking process," and members "of the legislature fail[ing] to respect the rules of procedure. . ." *Id*, 188 A.3d at 1144-45. Accordingly, rules on the legislative process constitute "mandatory constitutional directives from the people, not mere advisory guidelines" and "the General Assembly must comply with them in the course of the legislative process." *Id.*, at 1147.

The term of the Two Hundred Sixth General Assembly expired when its members' terms expired -- on November 30, 2022. Pa. Const. Art. II §§ 2, 4; 101 Pa. Stat. § 7.21(a). Following the end of the 206th General Assembly, the General Assembly was required to reintroduce House Resolution 240 and pass it again before "consideration by the other house." *Frame*, 327 A.2d at 627. Allowing the General Assembly to treat House Resolution 240 as continuing over from the last General Assembly to the current one would be a gross abuse of legislative process. Such a proceeding would run afoul of the requirement that elected officials may only be removed "after due process." *Rizzo*, 367 A.2d at 245.

The limited term for the General Assembly, as well as the requirement that incomplete legislation expires at the end of the term promotes democratic values in ensuring the General

Assembly is responsive to the electorate. The General Assembly's continued consideration of House Resolution 240 defies the will of the electorate in at least three important respects.

First, the General Assembly is seeking to override the will of Philadelphia voters, who elected and then reelected District Attorney Krasner by a large margin in 2021. Clearly Mr. Krasner is responsive to the demands of his community; indeed, many of his most significant policies supported by his community are precisely the grounds upon which the legislative sponsors seek his impeachment. And the grounds cited for impeachment in House Resolution 240 are like the claims of Mr. Krasner's political opponents, whose complaints were rejected at the polls. In this way, there is a fundamental disconnect—demographically and politically—between the electorate of Philadelphia (which is 40% white, 42% Black, 12% Latino, and 6% AAPI) and the statewide electorate (which is 81% white, 11% black, 5% Latino, and 3% AAPI). This disconnect between the General Assembly and Philadelphia voters is clear from the House vote, in which the State Representatives who represent Philadelphia voted overwhelmingly (21 to 1) against House Resolution 240. Absent extraordinary circumstances, "the people [of Philadelphia] are entitled to the services of the officer during the entire term for which they elected him . . . ." 108 A. 829, 831 (1919).

Second, in ignoring the end of the 206th General Assembly and acting as a continuing legislature, the General Assembly has ignored the strictures of the Pennsylvania Constitution. As discussed above, the Pennsylvania Constitution's restrictions on how the General Assembly may enact legislation are the "embodiment of the will of the voters." *Washington*, 188 A.3d at 1144. As such, these rules, including the prohibition on carrying over legislation, are "mandatory constitutional directives from the people" that must be complied with by the General Assembly "in the course of the legislative process." *Id.*, at 1147.

Third, the passage of House Resolution 240 itself ignored the will of the voters. H.R. 240 in its current form was not introduced until November 16, 2022, eight days after an election in which many of the supporters of H.R. 240 were defeated or chose not to run. Pennsylvania has always provided for relatively short terms (two years) for the members of the Pennsylvania House of Representatives. Biannual elections are a basic safeguard to keep the General Assembly responsive to the Pennsylvania electorate. *See generally* The Federalist No. 52 (Feb. 8, 1788) ("it is essential to liberty that the government in general should have a common interest with the people, so it is it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people . . . frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured"). And providing that legislative action does not continue from one legislature to the next is one of the key mechanisms to ensure that the General Assembly remains responsive to the electorate.

As noted above, H.R. 240 was not introduced or subject to a vote until a rump "lame duck" session of the 206th General Assembly, following an election in which supporters of H.R. 240 were eviscerated at the polls. Notably, 29 representatives who voted for H.R. 240 will not be members of the Pennsylvania House in the 207th General Assembly, including nine Representatives who lost their elections (Representatives Day, Gillespie, Hennessey, Polinchock, Hershey, Quinn, Saylor, Silvis, and Stephens) and nineteen members who retired rather than stand for reelection.

Under these circumstances, it would be antidemocratic, in addition to being highly irregular, to allow the H.R. 240 to avoid the normal legislative process of being "reintroduce[ed]" and "repass[ed]" before it can be considered by the Senate. *Frame*, 327 A.2d at 627. There is

certainly substantial reason to doubt that H.R. 240 could "repass" the Pennsylvania House of Representatives. But that is not a reason to allow the General Assembly to avoid "mandatory constitutional directives from the people." *Washington*, 188 A.3d at 1147.

CONCLUSION

For the foregoing reasons, the Court should enter declaratory relief in favor of the Petitioner.

Respectfully submitted,

Date: December 15, 2022

/s/Stephen Loney

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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

[PROPOSED] ORDER

AND NOW, this ___ day of December, 2022, upon consideration of the motion of the American Civil Liberties Union of Pennsylvania and POWER Interfaith for leave to file a brief as *Amicus Curiae*, and for good cause shown, it is hereby ORDERED that the Motion is GRANTED.

The Clerk of Court is hereby DIRECTED to cause the brief attached as Exhibit A to the Motion to be filed and entered on the docket in the above-captioned matter.

BY THE COURT:

_____

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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 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

No. 563 M.D. 2022

SENATOR JAY COSTA'S BRIEF IN OPPOSITION TO RESPONDENTS' RESPONSIVE PLEADINGS AND CROSS-MOTION FOR SUMMARY RELIEF

AND NOW comes Proposed Intervenor Senator Jay Costa, via counsel, Corrie Woods, Esq., and submits this Brief In Opposition to Respondents' Responsive Pleadings and Cross-Motion for Summary Relief.

INTRODUCTION

In this original jurisdiction action, Petitioner Larry Krasner, in his official capacity as District Attorney of Philadelphia, alleges that the 206th General Assembly adopted resolutions advancing articles of impeachment against him to a pretrial posture, but that the advancement of those articles to trial would be unlawful for several reasons, including that the 206th General Assembly did not advance them to trial prior to its adjournment *sine die* and expiry as a matter of law on November 30, 2022, such that the unfinished legislative business regarding his impeachment, like all unfinished legislative business, is now a nullity.[1] District Attorney Krasner seeks a declaratory judgment to that end, and has moved for summary relief.

Respondents, the chair and two members of the purported impeachment committee, have filed preliminary objections and/or answers raising new matter. Respondents argue, relative to the aforementioned argument, that District Attorney Krasner failed to join indispensable parties – *i.e.*, the Senate and Senate Impeachment Committee themselves; that District Attorney Krasner lacks standing to raise his claim; that it raises a nonjusticiable political question; and that it is meritless. Senator Costa now files this Brief in Opposition to Respondents' Responsive Pleadings and Cross-Motion for Summary Relief.

[1] District Attorney Krasner also raises challenges based on the scope of the impeachment power, concerning which Senator Costa takes no position.

BACKGROUND

As referred to above, 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. 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. *See generally* Petition for Review, 12/2/22. The same day, District Attorney Krasner filed an Application for Summary Relief, asserting the same arguments and again seeking a declaratory judgment to that end. *See generally* Application for Summary Relief, 12/2/22.

On December 6, 2022, this Honorable Court entered an order directing that, *inter alia*, (1) proposed intervenors apply for leave to intervene by December 12,

2022, at 3 p.m.; (2) Respondents file responsive pleadings by December 12, 2022, at 3 p.m.; (3) parties file answers to proposed intervenors' applications by December 16, 2022, at 3 p.m.; (4) Respondents file briefs in opposition to District Attorney Krasner's application, and any cross-motions for summary relief and memoranda in support thereof by December 16, 2022, at 3 p.m.; and (5) District Attorney Krasner file a brief in opposition to Respondents' responsive pleadings and any cross-motion for summary relief by today, December 21, 2022, at 3 p.m., all in advance of oral argument next Thursday, December 29, 2022, at 9 a.m. *See generally* Order, 12/6/22.

On December 12, 2022, Respondent Senator Kim Ward filed an answer and new matter, and Respondents Representatives Timothy R. Bonner and Craig Williams filed joint preliminary objections. *See* Answer and New Matter, 12/12/22; Preliminary Objections, 12/12/22.[2]

The same day, Senator Costa applied for intervention. *See* Application for Intervention, 12/12/22.

On December 16, 2022, Senator Ward filed an answer to District Attorney Krasner's application for summary relief and a cross-application for summary relief and memorandum in support thereof, and Representatives Bonner and Williams filed

[2] The other respondent, Representative Jared Solomon, filed a notice of his intent not to defend. *See generally* Notice, 12/13/22.

an answer to Senator Costa's application to intervene. *See generally* Answer to Application for Summary Relief, 12/16/22; Answer to Application for Intervention, 12/16/22.

At present, Senator Costa's application to intervene remains pending. However, and in an effort to avoid causing any delay in these proceedings by virtue of his proposed intervention, Senator Costa now files this Brief In Opposition to Respondents' Responsive Pleadings and Cross-Motion for Summary Relief.

ARGUMENT

1. To the extent this Honorable Court determines the Senate and Senate Impeachment Committee are indispensable parties, it should stay this matter pending District Attorney Krasner's joinder of those parties.

First, Senator Ward contends that this Honorable Court lacks subject matter jurisdiction to adjudicate District Attorney Krasner's claim because he failed to join the Senate and the Senate Impeachment Committee as such as parties. *See generally* Brief, 12/16/22, at 76-81. Senator Costa expresses no view as to whether the Senate and the Committee are indispensable parties. However, to the extent this Honorable Court determines that they are, it is free to simply stay this matter and direct District Attorney Krasner to join them. *See* Pa.R.Civ.P. 2232(c) ("At any stage of an action, the court may order the joinder of any additional person . . . who could have been joined in the action and may stay all proceedings until such person has been joined."). Senator Costa submits that to the extent this Honorable Court determines

that the Senate and Committee are indispensable parties, it should do so, as dismissing this action based on District Attorney Krasner's failure to join the Senate or the Committee would merely result in District Attorney Krasner's initiation of future, largely duplicative, and, due to practical time constraints, more chaotic litigation joining those parties, and all the additional expense of time and resources by all parties and this Honorable Court that such litigation would require. Moreover, inasmuch as, by all indications, Respondents have already directed District Attorney Krasner to proceed to a trial in less than 30 days, joinder of the Senate and the Committee in its entirety could be accomplished in short order.[3]

2. District Attorney Krasner has standing to seek a declaratory judgment that advancing the articles of impeachment to trial would be unconstitutional.

Next, Representatives Bonner and Williams assert that District Attorney Krasner lacks standing to pursue his claims because the articles have not yet been advanced to trial. *See* Memorandum, 12/16/16, at 18-20. They posit that District Attorney Krasner has alleged no present or imminent injury, that his future burden

[3] In the context of arguing this issue, Senator Ward includes a few sentences asserting that District Attorney Krasner's claim is unripe because the Senate Impeachment Committee does not yet exist. *See* Brief, 12/16/22, at 81. Senator Ward offers no legal authority to that effect, and, thus, the claim is waived. And in any event, as detailed above, Respondents have already ordered District Attorney Krasner to respond to the articles this month and to proceed to *trial* in less than 30 days. District Attorney Krasner's request for a declaration that they are without authority to order him to do so is as ripe as it will ever be. *Cf. DRB, Inc. v. Dept. of Lab. & Indus.*, 853 A.2d 8, 14 (Pa. Cmwlth. 2004) (noting declaratory relief is "appropriate where there is imminent and inevitable litigation"). And, in any event, dismissal on this basis would, again, merely result in duplicative, rushed, and costly litigation in the next few weeks.

in having to defend himself against impeachment does not constitute an injury for purposes of standing, and that his potential future removal from office is too speculative to constitute an injury for purposes of standing, albeit offering no legal authority to that end.

The argument lacks merit. District Attorney Krasner has standing to pursue his claim. A party has standing if he demonstrates a "substantial, direct, and immediate interest in the outcome of the litigation." *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 506 (Pa. Cmwlth. 2019) ("*FOAC I*"). Although this generally requires the demonstration of an existing or imminent *injury*, in the context of parties seeking declaratory judgments, it essentially requires the demonstration of existing or imminent *legal uncertainty* that is reasonably likely to *result* in an injury. *See id.* (noting that standing doctrine in the context of actions for declaratory relief "also recognizes the remedial nature of the Declaratory Judgments Act," which is designed "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations"). *Id.* at 505; *see also generally Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467 (Pa. 2021) ("*FOAC II*"). Accordingly, our Supreme Court has quite-liberalized standing doctrine in actions for declaratory relief, determining that gun owners in Harrisburg had standing to seek declaratory relief that a gun-control ordinance was unlawful even though none were subject to any investigation or enforcement action. *See*

FOAC II, 261 A.3d at 482-490 (departing from traditional standing requirements in the context of declaratory judgment actions).

Here, District Attorney Krasner's claim to standing is far greater. Like the gun owners in *FOAC*, District Attorney Krasner is the subject of a legislative enactment, which threatens him in the following ways: he has been ordered to respond to the articles of impeachment and ordered to appear at trial, which will require the expense of attention, time, and resources on his part; and he may lose his duly-elected public office. Simply put, the subject of an impeachment proceeding has a substantial, direct, and immediate interest in whether it is legal *ab initio*.

Representatives Bonner and Williams advance no meaningful argument, beyond assertion, to the contrary. Preliminarily, they appear to advance a principle that a litigant must demonstrate existing injury, which is contrary to even pre-*FOAC* standing jurisprudence, which recognized the availability of relief for *imminent* harm, a standard that District Attorney Krasner, in light of his impending response deadline and trial appearance, likely meets. *See Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 665, 660 (Pa. 2005) (discussing requirement of immediate, rather than speculative, interest); *Kauffman v. Osser*, 271 A.2d 236, 239 (Pa. 1970) (same). But more saliently, Representatives Bonner and Williams ignore that *FOAC* liberalized standing doctrine in the context of actions for declaratory relief. *Compare Pittsburgh Palisades Park, LLC*, 888 A.2d 665, 661 n.4 (noting need for

at least immediately threatened wrong); *id.* at 663 (Saylor, J., dissenting) (noting need to liberalize standing doctrine in actions for declaratory judgment consistent with the Declaratory Judgment Act); *FOAC II*, 261 A.3d at 482-490 (doing so); *id.* at 497 (Baer, C.J., dissenting) (opining that the *Pittsburgh Palisades Park, LLC* test was not met). Beyond that, Representatives Bonner and Williams engage in something of a semantics exercise, simply recharacterizing District Attorney Krasner's harms in being forced to participate in an unlawful impeachment process as "the opportunity to answer . . . nothing more." Memorandum, 12/16/22, at 19. Although harm is certainly relative, this Honorable Court should reject these ill-conceived efforts to claim that a public official has no legal interest in the lawfulness of an impeachment proceeding of which he is the subject.[4]

3. District Attorney Krasner's claim that advancing the articles of impeachment to trial would be unconstitutional raises a constitutional legal question, and is not a nonjusticiable political question.

[4] Representatives Bonner and Williams also argue that District Attorney Krasner is obligated to advance his claims in the context of his impeachment trial. To that end, they offer absolutely no discussion of the general intersection of declaratory and other relief. Rather, they merely cite to *Larsen v. Senate of Pennsylvania*, 646 A.2d 694, 703-704 (Pa. Cmwlth. 1994), and *GGNSC Clarion LP v. Kane*, 131 A.3d 1062, 1069 (Pa. Cmwlth. 2016). Their arguments are so underdeveloped as to be waived, and, in any event, misplaced. *Larsen* did not hold that declaratory relief was not available to challenge the lawfulness of an impeachment proceeding in its entirety: rather, it held that a public official did not show a clear right to relief on the ground that his impeachment was being tried in part by a committee, rather than the full Senate. *See Larsen*, 646 A.2d at 703-705. Indeed, this Honorable Court's very consideration of the claim undermines Representatives Bonner and Williams' argument. Similarly, although *Kane* does stand for the proposition that a request for declaratory relief is moot where they can be raised in a pending administrative enforcement proceeding, it does not follow that the same is true of a legislative impeachment trial, particularly as it pertains to District Attorney Krasner's claims that the body conducting the trial has no authority to do so.

Next, Representatives Bonner and Williams assert that District Attorney Krasner's claim raises a nonjusticiable political question. *See generally* Memorandum, 12/16/16, at 9-16. After discussing political question doctrine generally, they assert that District Attorney Krasner's claim that advancing the articles of impeachment to trial would be unconstitutional raises a political question because it represents "a challenge to legislative power which the Constitution commits exclusively to the legislature." *See* Memorandum, 12/16/22, at 11-12 (citing *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1071 (Pa. 1996)).

The argument is too clever by half. Although the constitutional commitment of a question exclusively to a different branch does render it a political question, *see Baker v. Carr*, 369 U.S. 186 (1962), the constitution does not commit the question raised by District Attorney Krasner's claim – whether the constitution forbids the continuation of his impeachment despite its lapse – to the legislature. The resolution of constitutional questions is within the authority of the judicial branch, including constitutional questions about legislative authority and procedure. *See Sweeney v. Tucker*, 375 A.2d 698, 709-710 (Pa. 1977). Indeed, history is replete with examples of constitutional review of legislative authority and procedure. *See generally, e.g.*, *id.* (finding constitutional question appropriate for review); *Scudder v. Smith*, 200 A. 601 (Pa. 1938) (declaring joint resolution purporting to create a commission unconstitutional); *Stewart v. Hadley*, 193 A. 41 (Pa. 1937) (declaring legislation

violated the constitutional single-subject rule); *Zemprelli v. Daniels*, 436 A.2d 1165, 1169 (Pa. 1981) (involving challenge to confirmation of appointee as unconstitutional); *cf. Grimaud v. Commonwealth*, 865 A.2d 835 (Pa. 2005) (finding challenge to vote-counting procedure attendant constitutional amendments raised a political question)

Representative Bonner and Williams' argument to the contrary ignores the distinction between the constitutional question of the authority of the legislative *to* exercise a power and the political question of *how* it exercises it. District Attorney Krasner's claim does not challenge the legislature's exercise – *i.e.*, its particular manner of employing – a power exclusively dedicated to it by the Constitution – *i.e.*, trial of impeachment. Rather, it challenges whether the Senate has the present constitutional authority to exercise it in the first place. His claim in this regard is a constitutional one upon which our courts should opine, not a political one.

4. District Attorney Krasner's claim that advancing the articles of impeachment to trial is meritorious: Senator Ward's argument that the Senate has authority independent from the General Assembly to try impeachments violates the law and basic democratic principles.

Finally, Senator Ward contends that District Attorney Krasner's claim is legally meritless. *See generally* Brief, 12/16/22, at 16-33. Specifically, Senator Ward contends that District Attorney Krasner's arguments that the impeachment proceedings, like all legislative business, become nullities upon the lapse of the General Assembly by virtue of adjournment *sine die* or expiry by operation of law is meritless because, in her view, they are not legislative in character, and represent a constitutionally freestanding power and duty. To that end, she notes essentially that although legislative power is vested in the General Assembly in Article II of the Constitution, impeachment powers are vested in the House and Senate in Article IV. Senator Ward analogizes this case to a century-old case noting that non-enactments are not subject to the requirements of Article III of the Constitution, which governs "Legislation." She also contends that there is textual support for a freestanding power to try impeachments because Article IV directs that "impeachments *shall* be tried by the Senate." Senator Ward goes on to identify that although the question is one of first impression for our courts, an Attorney General opinion in 1913 concluded that impeachment proceedings did not lapse by reason of adjournment, and there have been five impeachments that spanned adjournment *sine die* in the past, which she claims is consistent with the practice of the House of Lords and the

United States Congress. She acknowledges that the General Assembly, unlike the Congress, has no continuing quorum, but contends that the point is not relevant because, in her view, neither are "continuing bodies" following lapse by adjournment or expiry. Finally, Senator Ward identifies that four states have permitted impeachments to bridge across legislative lapse.

Senator Ward's argument is meritless. Preliminarily, Senator Costa notes that he advanced a series of affirmative arguments in support of the application for summary relief in an appendix to his application to intervene, and incorporates those arguments as if set forth fully here. *See generally* Application to Intervene, 12/12/22, Appx. B. But by way of response to Senator Ward's arguments, first, the mere fact that the Constitution grants general legislative authority to the General Assembly in Article II and then specific impeachment-related powers in Article IV does not counsel toward a finding that they emanate from some separate constitutional authority. The sovereignty of the citizens of the Commonwealth of Pennsylvania is divided into three tripartite facets: the legislative power, vested in the General Assembly; the executive power, vested in the Governor; and the judicial power, vested in the courts. There are no others. And the Constitution is replete with examples of specific legislative powers vested elsewhere. For example, the authority to regulate elections *by law* is set forth in Article VII. *See* Pa. Const., Art. VII, § 4. The power to regulate local government is set forth in Article IX. *See id.*,

Art. IX, §§ 1-14. The power to amend the constitution is set forth in Article XI. *See id.*, Art. XI, § 1. One hopes that Senator Ward would not assert a broad, somehow non-legislative authority to exercise these powers even after the lapse of the legislative body. Indeed, the fact that the legislative authority is vested in the General Assembly in Article II, whereas other powers are specifically identified elsewhere, is patently and obviously the consequence of the organization of the Constitution, not a decision to vest lapsed legislative bodies with historically anomalous independent powers. This is so even if precedent establishes that acts other than legislation are not governed by the constitutional provisions attendant legislation. In short, the General Assembly is always acting via its constitutional legislative *authority*, regardless of whether it exercises the power of enacting legislation or some other power. Similarly, Senator Ward's argument that the mere fact that Article IV, Section 5 indicates that "impeachments shall be tried by the Senate," creates a freestanding power and *duty* to try all impeachments likewise distorts Constitutional text. It is plain that this textual provision merely identifies *who* shall try impeachments, not directs that they must.

Turning to Senator Ward's more historical arguments, of course, this Honorable Court is obliged to apply the law of Pennsylvania, rather than the opinion of a single public official in the early 20th century, or the occasional practice of the Senate, much less the practice of the House of Lords and the law of other

jurisdictions. But taking those items in turn, Senator Ward first relies on a 1913 opinion of the then-Attorney General of Pennsylvania in *Umbel's Case*, 41 Pa.C.S. 414, 1913 WL 5269 (Pa. Atty. Gen. 1913), that impeachment proceedings may bridge adjournments of the Senate. Therein, the Attorney General Acknowledges that *Commonwealth v. Costello*, 1912 WL 3913 (Ct. Quar. Sess. Phila. Cnty. 1912) (holding legislative committee which subpoenaed defendant lost authority to do so after adjournment *sine die*), came to a contrary conclusion with respect to an investigative subpoena, but reasons that *Costello* is distinguishable because it involved a committee of the House alone, rather than a committee of the entire General Assembly, and because, in his view, the impeachment power is not a legislative function.

Umbel's case is, again, not binding, and, in any event, not persuasive. Preliminarily, it interpreted a different constitution, and, in any event, offered no meaningful constitutional analysis whatsoever, as District Attorney Krasner and Senator Costa have done here. Moreover, its points in distinguishing the case of an investigative committee of the entire General Assembly, versus an impeachment committee of one chamber, are not well taken given that the House derives its authority from the General Assembly's legislative power. *See Costello*, 1912 WL 3913 at *6 (quoting *Ex Parte Caldwell*, 55 S.E. 910, 911 (W.Va. 1906) ("If the powers of that branch [i.e., the legislature] are at an end, the powers of a committee

appointed by it [or, by extension, a committee appointed by a single chamber of it] by it are also at an end. The limb cannot exist after the body has perished.")). Furthermore, as detailed above, its notion that the impeachment power is somehow separate and distinct from legislative authority is untenable.

Next, the fact that impeachments have occurred across General Assemblies in the early Nineteenth Century is unavailing. Indeed, unconstitutional and illegal legislative practices have persisted for longer and with more overall effect before being recognized as unconstitutional and illegal. *Cf. generally, e.g.*, *League of Women Voters v. Commonwealth*, 178 A.3d 737, 2018 (Pa. 2018) (recognizing constitutional limitations on politically motivated redistricting). And more to the point, these impeachments all occurred nearly 200 years, and three new Pennsylvania constitutions, ago, at a time when there was a significantly shortened legislative session and only a one-year term for members of the House of Representatives, thereby making it more difficult to conduct an impeachment in a timely fashion within a single General Assembly, and at a time when a full three-fourths of the Senate were elected, sworn, and seated at any given time. All of which is to say that this Honorable Court should not be persuaded that a legally untested and rarely employed practice of the Pennsylvania Senate at or around the time of the Andrew Jackson administration is constitutional in the face of actual constitutional

and legal arguments.[5] Similarly, Senator Ward's reliance on extrajurisdictional authority is of no moment. Indeed, Senator Ward's discussion of these four cases, devoid of any meaningful explanation of how their holdings should be engrafted onto the Pennsylvania Constitution, is underdeveloped.

CONCLUSION

Accordingly, and for all the reasons set forth herein, this Honorable Court should overrule Respondents' preliminary objections, grant District Attorney Krasner's application for summary relief, and deny Senator Ward's cross-application for summary relief, or grant such other relief as is just and proper.

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[5] Senator Ward's reliance on the House of Lords, where members are appointed by the King of England, and for life, is even further removed. *Accord* UK Parliament, "How members are appointed," https://www.parliament.uk/business/lords/whos-in-the-house-of-lords/members-and-their-roles/how-members-are-appointed/ (last visited Dec. 21, 2022).

CERTIFICATE OF SERVICE

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