

[J-43-2025] [MO: Todd, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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

Appellants

V.

DAVID W. SUNDAY, JR., IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
PENNSYLVANIA,

Appellee

: No. 49 EAP 2024
:
:
: Appeal from the Order of the
: Commonwealth Court entered on
: June 14, 2024, at No. 8 MD 2024.

: ARGUED: May 14, 2025

CONCURRING OPINION

JUSTICE WECHT

DECIDED: October 1, 2026

Although the constitutional prohibition against local or special laws has evolved since its introduction, that prohibition nonetheless has remained since its advent in the Pennsylvania Constitution of 1874. As amended by the 1967 Constitution, that provision states: “The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law . . . [r]egulating the affairs of counties, cities, townships, wards, boroughs or school districts.”¹

1 PA. CONST. art. III, § 32(1). This Court has observed that the prohibition on local or special laws was “to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in 1873.” *Pa. Tpk. Comm’n v.* (continued...)

This Court recently explained:

[Article III, Section 32,] has been interpreted . . . to contain equal protection guarantees and, more specifically, to prohibit legislation limited to a specific class of identifiable members, where that class is “closed or substantially closed to future membership[.]” *W. Mifflin Area Sch. Dist. v. Zahorchak*, 4 A.3d 1042, 1048 (Pa. 2010). To be valid, the class must be open, that is, it must be so defined that other members can come in. See *Pa. Tpk. Comm’n*, 899 A.2d at 1097-98 & n.18. If the legislative classification is realistically open to new members, it will generally be deemed valid even if it only includes a single member at the time of enactment. See *Harristown Dev. Corp v. DGS*, 614 A.2d 1128, 1132 n.9 (Pa. 1992); compare *Harrisburg Sch. Dist. v. Hickok*, 761 A.2d 1132, 1136 (Pa. 2000) (invalidating a provision of the Education Empowerment Act giving special treatment to a “class” of school districts defined by having borders coterminous with Pennsylvania’s capital city), with *Harrisburg Sch. Dist. v. Zogby*, 828 A.2d 1079, 1091 (Pa. 2003) (upholding the same act as amended so only the Harrisburg School District was initially certified as an empowerment district, but other school districts could later be certified depending on changed conditions).²

“Many special-law challenges alleging a closed class,” the Court there observed, “involve an attempt by the General Assembly to evade the constitutional prohibition by cleverly defining a closed class of one or a handful of entities in seemingly general terms.”³

Speaking generally, “Act 40,”⁴ the law at issue in this case, was enacted to direct the appointment of a special prosecutor with authority to preempt local prosecutors in the prosecution of crime occurring “within a public transportation authority that serves as the

Commonwealth, 899 A.2d 1085, 1094 (Pa. 2006) (quoting *Haverford Twp. v. Siegle*, 28 A.2d 786, 788 (Pa. 1942)); see generally Donald Marritz, Symposium, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 WIDENER J. PUB. L. 161, 183-96 (1993).

² *Pa. Interscholastic Athletic Ass’n v. Campbell*, 310 A.3d 271, 282 (Pa. 2024) (citations modified) (“PIAA”).

³ *Id.* at 282-83 (citing, *inter alia*, *Zahorchak*, 4 A.3d at 1048-49; *Sample v. City of Pittsburgh*, 62 A. 201, 203-04 (Pa. 1905)).

⁴ Act of Dec. 14, 2023, P.L. 369, No. 40, *codified at* 74 Pa.C.S. § 1786.

primary provider of public passenger transportation in the county of the first class,” *i.e.*, SEPTA⁵ (and only SEPTA).⁶ Challenging Act 40’s constitutionality, Philadelphia District Attorney Larry Krasner (“DA Krasner”), *et al.* (collectively, “DAO”), contend that Act 40’s usurpation of DAO’s jurisdiction and authority violates Article III, Section 32’s prohibition of special laws. DAO asserts that the narrow, highly specific criteria that describe the special prosecutor’s preemptive jurisdiction and the timing of Act 40’s sunset provision point only at DAO during DA Krasner’s tenure, creating a constitutionally impermissible “closed class.” By virtue of painstakingly honed statutory limiting criteria, DAO argues, the law was designed to affect no other District Attorney past, present, or future. The class described by Act 40 is not “realistically open to new members.”⁷ Consequently, DAO contends that Act 40 is a local or special law prohibited by Article III, Section 32, of the Pennsylvania Constitution.

The Majority considers and rejects this argument. First, the Majority agrees with the Office of the Attorney General’s (“OAG”) contention that the statute regulates the affairs of a Commonwealth agency, *i.e.*, SEPTA, “as it aims to protect SEPTA’s employees and the Commonwealth’s citizenry to whom SEPTA provides public

⁵ The Southeastern Pennsylvania Transportation Authority.

⁶ In lieu of the statutory term “within,” the Majority sometimes refers instead to Act 40’s effect on “SEPTA-related” crime. In my view, this is potentially incompatible with the “within SEPTA” statutory terminology, and in any event is no more helpful in delineating the precise jurisdiction conferred upon the special prosecutor by Act 40 than the word “within.” A SEPTA station or SEPTA train is not self-evidently “*within* SEPTA,” qua the overseeing agency. This lack of grammatical clarity risks expanding the preemptive power assumed by the special prosecutor beyond what the General Assembly intended. Judge Fizzano Cannon explores this lack of clarity below as an improperly vague delegation of legislative power. See *Krasner v. Henry*, 319 A.3d 56, 91-95 (Pa. Cmwlth. 2024) (Fizzano Cannon, J., concurring in part).

⁷ *PIAA*, 310 A.3d at 282.

transportation in and around the greater Philadelphia region.”⁸ Trivially, then, the Majority holds that, “to the extent Act 40 regulates the affairs of SEPTA . . . , Act 40 is general legislation and not a local or special law.”⁹

But the Majority then pivots, finding that Act 40 *also* “regulates the affairs of Philadelphia and the duties of Philadelphia officers,” *i.e.*, the District Attorney.¹⁰ Thus, the Majority turns to Article III, Section 32, conceding at least that Act 40 has special law-like properties. In contraposition to that section, the Majority observes, stands Article IX, Section 13 of the Constitution. That section’s predecessor was ratified in 1951 and renumbered in 1968 to effectuate the consolidation of the geographically coextensive, but then governmentally distinct, County and City of Philadelphia. It provides, in relevant part:

(a) In 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.

(b) Local and special laws, regulating the affairs of the City of Philadelphia and creating offices or prescribing the powers and duties of officers of the City of Philadelphia, shall be valid notwithstanding the provisions of section thirty-two of Article III of this Constitution.¹¹

The Majority finds Section 13(b)’s language clear: “local laws regulating the affairs of Philadelphia and the powers and duties of its officers do not run afoul of Section 32’s prohibition on local or special laws.”¹²

The Majority rejects out of hand DAO’s argument that this provision was intended to be, and should be, limited to its immediate context of the consolidation of Philadelphia

⁸ Maj. Op. at 40.

⁹ *Id.* at 41.

¹⁰ *Id.*

¹¹ PA. CONST. art. IX, § 13 (“Abolition of county offices in Philadelphia”).

¹² Maj. Op. at 42.

County and City, based upon the absence of any such limiting language in Section 32. Thus, the Majority turns to consider whether Act 40 regulates the “affairs” of Philadelphia and/or the powers and duties of its officers. The Majority finds that it does both, bringing Section 13 to bear on the question. This conclusion standing alone would appear to be dispositive in OAG’s favor.

But the Majority goes farther, turning to Article III, Section 20, and Article IX, Section 2 of the Pennsylvania Constitution. Speaking broadly, these provisions except from the prohibition of special legislation, by defining as “general,” laws that discriminate based upon the legislatively prescribed classification of “counties, cities, boroughs, school districts, and townships according to population.”¹³ Philadelphia County is the lone first-class county of which Act 40 speaks, and the Majority grants the General Assembly the benefit of finding that Act 40 “is uniform in its treatment of all counties of the same class.”¹⁴ Thus, after deeming Act 40 special legislation that nonetheless is permitted by Article IX, Section 13, the Majority pivots to finding that the legislation “is, by definition, general and not local.”¹⁵ So twice the Majority describes Act 40 as general legislation and once it treats Act 40 as special legislation. The former two instances, of course, avoid Article III,

¹³ PA. CONST. art. III, § 20 (“Classification of Municipalities”) (“The Legislature shall have power to classify counties, cities, boroughs, school districts, and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution.”); PA. CONST. art. IX, § 2 (generally granting municipalities the power to adopt home rule charters).

¹⁴ Maj. Op. at 44.

¹⁵ *Id.*

Section 32 entirely, while the latter characterization of Act 40 renders it permissible only by operation of Section 13's safe harbor specifically for Philadelphia.¹⁶

The intent and effect of Act 40 are substantially clearer than the Majority allows, and they should not be ignored. Larry Krasner was elected Philadelphia District Attorney for the first time in 2017. He was reelected in 2021 and again in 2025. Three times, the voters of Philadelphia have chosen DA Krasner to see to the prosecution of crime that occurs within that city. Twice they did so, after years of opportunity to observe and assess DA Krasner's job performance.

In December of 2023, the General Assembly enacted Act 40. The Act gave the Attorney General thirty days to appoint a special prosecutor "to investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a transportation authority that serves as the primary provider of public passenger transportation in the county of the first class."¹⁷ Among various experiential requirements, Act 40 provided that the special prosecutor may "[n]ot have been employed by the district attorney's office in a county of the first class or the Office of Attorney General within six years of the effective date of this section."¹⁸ Notably, counting six years back from

¹⁶ The Majority goes on to consider and reject DAO's pure equal protection argument. *See id.* at 45-47. Arguably, DAO's argument in this regard is redundant, the special-law argument effectively serving as the animating essence of DAO's equal protection claim. *See generally Pa. Tpk. Comm'n*, 899 A.2d at 1094 (Pa. 2006); *cf. Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1115 n.9 (Pa. 2014) ("[T]he common constitutional principle at the heart of the special legislation proscription of Section 32 and the equal protection clause is that like persons in like circumstances should be treated similarly by the sovereign." (cleaned up)). For reasons stated herein, I reject the Majority's statement that, "because Appellant has failed to establish that Act 40 impermissibly treats the Philadelphia District Attorney differently merely because he is the Philadelphia District Attorney, he has failed to demonstrate any such equal protection violation." Maj. Op. at 45.

¹⁷ 74 Pa.C.S. § 1786(a).

¹⁸ *Id.* § 1786(a)(1)(iii).

Act 40's effective date, December 14, 2023, this almost perfectly overlaps with DA Krasner's entire tenure as District Attorney to the time of enactment. In effect, the statute specified that anyone who had served under DA Krasner is *ipso facto* disqualified from serving as special prosecutor.

This red flag is but one of several. For example, essentially contradicting the Majority's view that Act 40 is directed at SEPTA as a state agency to address a statewide issue—*i.e.*, crime occurring “within” SEPTA writ large—Act 40 concerns itself *only* with that subset of SEPTA criminality that occurs within the jurisdictional limits of DAO's authority. Specifically, rather than entrusting preemptive discretion of the special prosecutor relative to surrounding counties served by SEPTA,¹⁹ the General Assembly expressly restricted it: “A special prosecutor may not assert preemptive prosecutorial jurisdiction under this section in a case where jurisdiction also exists in a county other than a county of the first class” unless the district attorney in that county grants the special prosecutor's written request to do so.²⁰ In short, crime “within” SEPTA evidently is so severe that DAO cannot be trusted to handle it, but the SEPTA crime problem loses its urgency at the Philadelphia border.

Finally, Act 40 has a sunset provision that is more than suggestive. At the time of Act 40's enactment, DA Krasner's term was set to expire at the end of 2025. The legislature provided that Act 40's grant of authority to a special prosecutor would effectively expire on December 31, 2026, by providing that “[n]o new action or proceeding may be initiated by a special prosecutor under this section after” that date.²¹ While this

¹⁹ SEPTA serves Bucks, Chester, Delaware, and Montgomery Counties. All but Chester County share a border with Philadelphia.

²⁰ *Id.* § 1786(a)(4)(iii).

²¹ *Id.* § 1786(a)(8).

does not correspond to the day DA Krasner's term was to end, the additional year after the expiration of the term DA Krasner then was serving effectively ensured that the special prosecutor retained the right to assert jurisdiction over crimes that occurred right up to the last day of DA Krasner's tenure—but not much further.²²

One cannot read these various provisions in tandem and seriously maintain that Act 40 was crafted as “general” legislation in any reasonable sense of that terminology, whether because it speaks in terms of county classification or otherwise. The legislative intent animating Act 40 would scarcely be more blatant if it called out DA Krasner by name. In short, the General Assembly has enacted a law designed to clip DA Krasner's wings without affecting any other District Attorney in Pennsylvania, present or future—including DA Krasner's hypothetical successor.

This Court has observed:

The main purpose behind Article III, Section 32 was to put an end to the flood of privileged legislation for particular localities and for private purposes which was common in 1873. Over the years, the underlying purpose of Article III, Section 32 has been recognized to be analogous to federal principles of equal protection under the law, see U.S. Const. amend. XIV, § 1, and thus, special legislation claims and equal protection claims have been reviewed under the same jurisprudential rubric. The common constitutional principle at the heart of the special legislation proscription and the equal protection clause is that like persons in like circumstances should be treated similarly by the sovereign. Nonetheless, it is settled that equal

²² Had DA Krasner been voted out of office in 2025, the special prosecutor also would have had discretion *not* to exercise its preemptive authority in 2026 against DA Krasner's putative successor. As of this writing, the legislature has not extended Act 40 to encompass the balance of DA Krasner's present term, which runs through 2029. Thus, the special prosecutor's authority ostensibly will sunset at the end of this year. However, in the budget enacted on July 12, 2026, the General Assembly earmarked \$1.2 million in funds for the special prosecutor to accommodate either the future extension of that office's term or its winding-up. *See The SEPTA special prosecutor in Philly is set to expire this year. Will state lawmakers extend it into Larry Krasner's third term?*, THE PHILADELPHIA INQUIRER, July 18, 2026, available at <https://www.inquirer.com/news/pennsylvania/larry-krasner-septa-special-prosecutor-harrisburg-20260718.html>.

protection principles do not vitiate the Legislature's power to classify, which necessarily flows from its general power to enact regulations for the health, safety, and welfare of the community, nor do these principles prohibit differential treatment of persons having different needs.²³

We have explained:

[T]he legislature may determine what differences in situations, circumstances, and needs call for a difference in class, subject to the supervision of the courts as the final interpreters of the constitution, to see that it is actual classification, and not special legislation under that guise. And the test in this respect is, not wisdom, but good faith, in the classification.²⁴

“It may therefore be taken as settled law that . . . the courts will look beyond the mere form of the act, and examine its true intent and effect, in the light of the purpose of the constitutional restrictions” on special laws.²⁵

²³ *Pa. Tpk. Comm’n*, 899 A.2d at 1094 (cleaned up; footnote omitted). While it is well-established that the Pennsylvania Constitution ensures the equal protection of laws, the *terms* “equal protection” do not appear anywhere in that charter. Rather, we have traced equal protection principles primarily to Article III, Section 32, as well as other, narrower provisions. For a detailed discussion of Pennsylvania Constitutional sources of equality, see *generally* Robert F. Williams, Symposium, *A “Row of Shadows”: Pennsylvania’s Misguided Lockstep Approach to Its State Constitutional Equality Doctrine*, 3 WIDENER J. PUB. L. 343 (1993). The Majority aptly notes that this Court recently qualified the equivalency this Court has drawn in the past between Pennsylvania’s equal protection-adjacent provisions and federal equal protection jurisprudence, leaving the door open to future arguments that Pennsylvania provides more protection against classification-based laws than does the federal counterpart. See Maj. Op. at 40 n.11 (citing *Allegheny Reproductive Health Ctr. v. Pa. Dep’t. of Human Servs.*, 309 A.3d 808, 923 (Pa. 2024)). Professor Marritz, in criticizing this forced equivalency and arguing for a distinct jurisprudence of state equality protections, explains at length the different impulses that animated Article III, Section 32’s forerunner and the Fourteenth Amendment to the United States Constitution. See Marritz, *supra* n.1, at 194-96.

²⁴ See *Commonwealth ex rel. Fell v. Gilligan*, 46 A. 124, 124 (Pa. 1900).

²⁵ *Id.* at 127; see *In re Cavill’s Estate*, 329 A.2d 503, 505 (Pa. 1974) (“A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.” (internal quotation marks omitted)); see also Marritz, *supra* n.1, at 198-99 & nn.160 & 163 (collecting cases). For (continued...)

For these reasons, this Court has held in no uncertain terms that “a classification is *per se* unconstitutional when the class [it purports to describe] consists of one member and it is impossible or highly unlikely that another can join the class”²⁶—the so-called “class of one.”²⁷ In *Hickok*, the Court considered a classification describing “a school district of the second class with a history of low test performance which is coterminous with the city of the third class which contains the permanent seat of government.”²⁸ This, the Court held, was impermissible special legislation that affected and could affect only Harrisburg.

In *Commonwealth ex rel. Fertig v. Patton*,²⁹ an 1828 statute provided as follows:

in all counties of this Commonwealth where there is a population of more than sixty thousand inhabitants, and in which there shall be any city incorporated at the time of the passage of this act with a population exceeding eight thousand inhabitants, situate at a distance from the county seat of more than twenty-seven miles by the usually travelled public road, it shall be the duty of the president judge or of the additional law judge, or of either, to make an order providing for the holding of one week of court, after each regular term of court for said county, for the trial of civil or criminal cases in said city.³⁰

This roundabout description picked out only Crawford County, and specifically Titusville; the class otherwise was closed.

this reason, in *Appeal of Ayars*, 16 A. 356 (Pa. 1889), the Court found that an act dividing cities into seven classes infringed the Constitution because there was no distinction among cities of the fourth through seventh classes relative to the topic legislated upon. The legislation merely served to open the door to local legislation based upon an unprincipled classification.

²⁶ *Hickok*, 761 A.2d at 1136.

²⁷ *PIAA*, 310 A.3d at 283; see *Zahorchak*, 4 A.3d at 1048.

²⁸ *Hickok*, 761 A.2d at 1136.

²⁹ 88 Pa. 258 (Pa. 1878).

³⁰ *Id.* at 259.

Petitioners filed suit to enforce the act. Among respondents' defenses was the argument that the Pennsylvania Constitution of 1874³¹ rendered the law in question a prohibited special law. The court sternly rejected the argument that this was a permissible "classification" that was "not intended for the present merely," but rather "provide[d] for and anticipate[d] the wants of the future."³² Pointedly, the Court described the law as "classification run mad."³³ Accepting classification by population alone as constitutional, the Court opined that "[t]he moment we resort to geographical distinctions we enter the domain of special legislation."³⁴ The statute was repugnant to the Constitution because there was "no provision by which any other county may by reason of its increase of population in the future[] come within the class"—it was the epitome of a special law.³⁵

In *DeFazio v. Civil Service Commission of Allegheny County*,³⁶ the General Assembly passed a law that "requir[ed] sheriffs of second class counties," *i.e.*, Allegheny County alone, "to abide by certain hiring and promotion procedures and limit[ed] the political activities of the sheriff's employees."³⁷ This Court held that the statute violated Article III, Section 32, because it went

³¹ Like Article III, Section 32 today, Article III, Section 7 of the Constitution of 1874 prohibited the legislature from passing "any local or special law . . . [r]egulating the affairs of counties, cities, townships, wards, boroughs, or school districts[,] . . . [c]hanging the venue in civil or criminal case[,] . . . [or l]ocating or changing county seats," among other things.

³² *Fertig*, 88 Pa. at 260.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ 756 A.2d 1103 (Pa. 2000).

³⁷ *Id.* at 1104.

beyond merely singling out Allegheny County as a class to be treated differently and in essence . . . effectively created a new sub-classification, that of the sheriffs of second class counties. Plainly such a sub-classification bears no relationship either to the distinction of Allegheny County as a county of the second class or to any unique function of the office of county sheriff.³⁸

In *Perkins v. City of Philadelphia*,³⁹ this Court held invalid a law that, while stated generally, could in effect apply only to displace the then-serving group of public building commissioners. Although the law was couched permissibly in terms of any first-class city, a putatively open class, because the office of commissioner of public buildings would cease to exist upon enactment, then the law could never affect anyone but that first group.

This act is nominally general; applies in terms to cities of the first class; abolishes commissioners of public buildings for the use of courts and municipal purposes in such cities, created by special acts of assembly; and places all buildings heretofore under their control in the control of the department of public works. At the date of its passage there was just one city, one set of commissioners, one special act of assembly, one public building, to which it could apply. From the very nature of the case there never could be another city in the first class to which the act could apply, for it transfers to the department of public works buildings heretofore under the control of such commissioners. No matter how many cities come into this class, nor how soon they reach it, this act cannot apply to them⁴⁰

Necessarily, then, this Court deemed it a special, one-off law regulating just one set of officers in one city under one unrepeatable circumstance.⁴¹

³⁸ *Id.* at 1106.

³⁹ 27 A. 356 (Pa. 1893).

⁴⁰ *See id.* at 359.

⁴¹ In *Chalmers v. City of Philadelphia*, 95 A. 427 (Pa. 1915), a law regulated certain railroad employees based in part upon the municipal subdivision from which they hailed rather than their professional function. This Court rejected the municipal classification as unrelated to the subject of the regulation and struck the law as an unconstitutional special law.

More recently, this Court found meritorious a special law challenge in *Robinson Township v. Commonwealth*.⁴² There, this Court found unconstitutional a law that required the Department of Environmental Protection to report certain chemical spills to public drinking water facilities but not to owners of private water supplies.⁴³ This Court could not “conceive how” relieving DEP from notifying the approximate one quarter of Pennsylvania’s inhabitants who source their water from private supplies bore “any fair and substantial relationship” to the statutory objective to protect “the health, safety, environment and property of Pennsylvania citizens.”⁴⁴

Perkins is particularly resonant because here as well, short of DA Krasner’s incapacity or abdication of office, Act 40 as written can and will apply only to one district attorney’s office, and only for the *de facto* duration of a particular District Attorney’s term. That Act 40 nominally applies to “*the*” first-class county is of no moment, because the law sunsets years before the next decennial census, which is the first time another county might achieve first-class status.

These cases collectively point in one direction. Even where a law affects a narrow *class* rather than an individual official—e.g., sheriffs in second-class counties, as in *DeFazio*, and one group of building commissioners as in *Perkins*—it may be unconstitutionally narrow in its scope. And while it is true that discriminating primarily or perhaps *just* upon county classification may avoid the special-law prohibition, once the General Assembly layers narrowing criteria atop that classification that constructively close the class, the law no longer can be deemed general. This being the case, I

⁴² 147 A.3d 536 (Pa. 2016).

⁴³ *Id.* at 576-83.

⁴⁴ *Id.* at 581-82.

respectfully reject the Majority's contrary suggestions that Act 40 is in any sense a "general law."

Act 40 patently imposes upon only one office just during the tenure of one leader by relieving that office of its customary prosecutorial jurisdiction over certain crimes that occur within its boundaries. The law disqualifies alumni of the DAO who served during the tenure of a particular District Attorney from assuming the *de facto* responsibility of superintending the DAO *vis-à-vis* SEPTA cases. The same statute runs more or less coterminously in the time of its application with the term of that particular District Attorney at the time of enactment. The statute's putatively general focus upon a state agency's facilities applies only within Philadelphia, but is not general with respect to that agency because it does not extend to the other counties also served by that agency, including Philadelphia's "collar counties." Act 40 is more focused in its objective and narrower in classification than the law rejected in *DeFazio*. Indeed, Act 40 is no less specific in its application than the almost comically specific law rejected in *Fertig*. And, like the law in *Perkins*, it is all but certain never to extend beyond its immediate, time-limited reach. Arguably, Act 40 is more pernicious than even the law in *Fertig*—a "classification run mad."⁴⁵ Thus, it beggars credulity, if *Hickock*, *Fertig*, *DeFazio*, and *Perkins* are still good law, to designate Act 40 differently than this Court treated the statutes at issue in those case—*all things being equal*.

The fatal problem for DAO is that all things are *not* equal.

Unlike the parties affected by the laws at issue in those cases, Philadelphia stands alone in one critical regard. In 1951 came the ratification of then Article XIV, Section 8, now Article IX, Section 13(b), which provides: "Local and special laws, regulating the affairs of the City of Philadelphia and creating offices or prescribing the powers and duties

⁴⁵ *Fertig*, 88 Pa. at 260.

of officers of the City of Philadelphia, shall be valid notwithstanding the provisions of section thirty-two of Article III of this Constitution.” In so many words, Section 13(b) carves an island out of equal protection principles just for laws “regulating the affairs of the City of Philadelphia and . . . prescribing the powers and duties of officers of the City of Philadelphia.” Just as the Majority concludes, this language is crystal clear. Act 40 regulates the affairs of the City of Philadelphia and, by necessary implication (and surely intentionally), it prescribes by negation the powers and duties of DA Krasner, an officer of Philadelphia. Act 40 thus is “valid notwithstanding the provisions of section thirty-two of Article III” of the Pennsylvania Constitution.

I cannot agree, though, that Act 40 is, in any way, by any analytic path, “general” under the law. Contrary to the Majority, I discern no basis to grant the General Assembly the benefit of designating Act 40 a general law simply because it has some effect on a state agency, or because it has as one descriptive criterion Philadelphia’s classification of one. “Many special-law challenges alleging a closed class,” we have said, “involve an attempt by the General Assembly to evade the constitutional prohibition by cleverly defining a closed class of one or a handful of entities in seemingly general terms.”⁴⁶

Here, I’m not sure the word “clever” applies. I would call this what it is: a statute tailored to hamstring Philadelphia’s thrice-elected and sitting District Attorney’s customary prerogatives relative to crime within the jurisdiction that office serves. Among laws this Court has identified as “local” and “special,” and as violative of equal protection, none seems quite this openly *ad hominem* in nature.

But none of that matters. For better or worse, Article IX, Section 13, confers authority upon the General Assembly to single out Philadelphia officials for special treatment in precisely this fashion. Not because a given law is anything but “special,” but

⁴⁶ PIAA, 310 A.3d 271 at 282-83.

rather because, as such a law, the Constitution expressly allows it. Was this the sort of legislation envisaged at the time of Section 13's ratification? Perhaps not. But the Court is not "at liberty to declare an act void because, in [its] opinion, [the law] is opposed to a spirit supposed to pervade the constitution."⁴⁷ We must cleave to the text we are given, and that section's allowance of special laws governing Philadelphia's affairs is as unambiguous as the General Assembly's objective in this case.

For the foregoing reasons alone, and with reservations about any use of legislation to target and restrain individual elected officials, I concur in the result.

Justice McCaffery joins this concurring opinion.

⁴⁷ See *Commonwealth ex rel. Elkin v. Moir*, 49 A. 351, 358 (Pa. 1901) (citation omitted).