

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY, JJ.

OPINION

DECIDED: October 1, 2026

² Act of Dec. 14, 2023, P.L. 369, No. 40, § 1, *as amended*, 74 Pa.C.S. § 1786.

(“SEPTA”). The Act provides for concurrent jurisdiction with district attorneys over SEPTA-related criminal prosecutions occurring within the counties served by SEPTA, except for Philadelphia; for SEPTA-related crimes occurring within Philadelphia, Act 40 provides for the special prosecutor’s exclusive jurisdiction, at his sole discretion, and independent of the judgment of Appellant. For the reasons that follow, we find that Appellant has failed to establish that Act 40 is unconstitutional, and, thus, affirm the order of the Commonwealth Court.

I. Background

By way of background, SEPTA is one of the largest transit systems in the country, providing regional rail, bus, trolley, and subway transportation services to five counties in the greater Philadelphia area, as well as connections to transit systems in Delaware and New Jersey. SEPTA is the primary provider of public passenger transportation in Pennsylvania’s first-class county — Philadelphia County. In 1963, the General Assembly established SEPTA pursuant to the Metropolitan Transportation Authorities Act, 74 Pa.C.S. §§ 1701-1785. That legislation provided for the “creation of a separate body corporate and politic in each metropolitan area, to be known as the transportation authority of that metropolitan area, extending to and including all of the territory in the metropolitan area.” *Id.* § 1711(a). In turn, a “[m]etropolitan area” was defined as “[a]ll of the territory within the boundaries of any county of the first class and all other counties located in whole or in part within 20 miles of the first class county.” *Id.* § 1701. Consistent with Section 1701, SEPTA operates in Philadelphia and the four contiguous counties of Bucks, Chester, Delaware and Montgomery. Additionally, as a transportation authority, SEPTA exercises the powers of a Commonwealth agency. See *id.* § 1711(a) (“An authority shall in no way be deemed to be an instrumentality of any city or county or other municipality or engaged in the performance of a municipal function, but shall exercise the

public powers of the Commonwealth as an agency and instrumentality thereof.”). Finally, Philadelphia County is the most populous county in Pennsylvania. Because of its population, Philadelphia is the only county of the first class in the Commonwealth; further, it is governed by a home rule charter, adopting that form of government as part of the consolidation of the City of Philadelphia and the County of Philadelphia in 1951.

As set forth by the Commonwealth Court below, on May 9, 2022, the Pennsylvania Senate Transportation Committee held a public hearing on the safety and sustainability of public transportation in Pennsylvania. *Krasner v. Henry*, 319 A.3d 56, 65 (Pa. Cmwlth. 2024) (*en banc*). Testimony was presented at the hearing relating to homelessness, mental illness, and substance abuse issues that contributed significantly to the number of incidents that SEPTA personnel and riders encountered. *Id.* Additionally, in October 2022, the General Assembly determined that, during District Attorney Krasner’s time as the Philadelphia District Attorney, violent crime and violence in Philadelphia increased, and residents and the economy suffered due to his policies. *Id.* at 66 (citing Select Committee on Restoring Law and Order, Second Interim Report, October 24, 2022 (“Select Committee Report”)). Legislation was proposed to address these issues, and, on October 25, 2022, House Bill 140 (Printer No. 3601) was amended to include provisions for the appointment of a special prosecutor authorized to prosecute all crimes within SEPTA. Governor Tom Wolf vetoed that bill. *Id.*

Subsequently, additional legislative hearings were held at which additional and widespread concerns were voiced by SEPTA riders regarding incidents of violence, leading to a reluctance to use SEPTA, and in some cases, a cessation of using SEPTA’s transportation services altogether. 2023 Pa. Leg. J. – Senate 357-65 (May 2, 2023). Thereafter, Senator Wayne Langerholc, Jr., Senate Transportation Chair and principal sponsor of the bill, introduced Senate Bill 140, which included the same provisions as

House Bill 140, and amended the Public Transportation Law to provide for, *inter alia*, the appointment of a special prosecutor authorized to prosecute all crimes within SEPTA. Senate Bill 140 passed the Senate and the House. On December 14, 2023, Governor Josh Shapiro signed the legislation, denominated Act 40, into law.

II. Act 40

In sum, Act 40 provides for the appointment by the Pennsylvania Attorney General (“Attorney General,” “Office of the Attorney General,” or “OAG”) of a special prosecutor to investigate and institute criminal proceedings for a violation of the laws of the Commonwealth occurring within SEPTA in the counties served by SEPTA. 74 Pa.C.S. § 1786(a)(4). The special prosecutor is required to be a member in good standing of the bar of the Commonwealth for a minimum of ten years; have five years of experience in criminal prosecutions in the Commonwealth; not have been employed by the district attorney’s office in a county of the first class or the Office of the Attorney General within six years; possess the “character and fitness compatible with the standards expected to be observed by members of the bar” of the Commonwealth; and, be a resident of the county in which the special prosecutor is to serve. *Id.* § 1786 (a)(1)(iv).

Act 40 lays out that, upon passage, “[n]otwithstanding any other provision of law or regulation, a special prosecutor shall have the authority to investigate and prosecute, and has jurisdiction over, any criminal matter involving an alleged violation of the laws of this Commonwealth occurring within [SEPTA]. The special prosecutor’s prosecutorial jurisdiction shall include the power and independent authority to exercise all investigative and prosecutorial functions and powers of an office of the district attorney of a county of the first class.” *Id.* § 1786(a)(2). These investigative and prosecutorial powers include conducting proceedings before a grand jury, participating in court proceedings including

criminal and civil matters, initiating and conducting prosecutions in any court of competent jurisdiction, including appeals, and reviewing documentary evidence. *Id.* § 1786(a)(2)(i).

Importantly, Act 40 draws a distinction between the investigation and prosecution of alleged crimes occurring within SEPTA and those taking place in the county of the first class and the other counties that SEPTA serves. Generally speaking, the special prosecutor has concurrent jurisdiction with the prosecutors in all the counties where SEPTA operates. *Id.* § 1786(a)(4). When the special prosecutor seeks to assert preemptive prosecutorial jurisdiction over criminal actions or proceedings involving alleged violations of the law within SEPTA in all such counties, except for counties of the first class, it must do so by submitting a written request to the district attorney in that county to take over that prosecution and the district attorney of that county must consent to the special prosecutor's jurisdiction in writing. *Id.* § 1786(a)(4)(iii). However, in a county of the first class, the special prosecutor's preemption of prosecutorial jurisdiction is at the sole discretion of the special prosecutor. *Id.* § 1786(a)(4)(i). Specifically, upon assertion of preemptive prosecutorial jurisdiction in a county of the first class, the district attorney "shall suspend all investigations and proceedings regarding the matter and shall turn over to the special prosecutor all materials, files and other data relating to the matter." *Id.* § 1786(a)(4)(iv). Moreover, prior approval of the district attorney of the first class is not required for the filing of any criminal complaint or arrest warrant affidavit. *Id.* § 1786(a)(4)(v).

Additionally, Act 40 speaks to the rights of criminal defendants and the role of the judiciary with respect to such prosecutions. Specifically, no individual charged by the special prosecutor "shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be

dismissed and no relief shall be available in the courts of [the] Commonwealth.” *Id.* § 1786(a)(5).

Act 40 also provides that law enforcement agencies of the county of the first class must notify the special prosecutor of any arrest or criminal action involving a violation of the laws occurring within SEPTA; no new action may be initiated by the special prosecutor after December 31, 2026; the county of the first class shall reimburse the special prosecutor and OAG for any expenses incurred while investigating or prosecuting alleged violations of the laws occurring within SEPTA; during the period in which a special prosecutor serves in a county of the first class, the Commonwealth may not reimburse that county for the salary of the district attorney of that county; such amount shall be used to reimburse the OAG for the compensation of the special prosecutor and any expenses incurred for carrying out the special prosecutor’s duties; and, finally, the law expires on December 31, 2026. *Id.* § 1786(a)(7), (8), (10), (11), (12), (13).

III. Procedural Background

On January 11, 2024, Appellant filed a petition for review in the Commonwealth Court against the Attorney General. The petition for review sought injunctive and declaratory relief on the basis that, *inter alia*, Act 40 intruded upon Appellant’s traditional roles and functions; divested Appellant of territorial jurisdiction; nullified Appellant’s core prosecutorial functions; constituted an unconstitutional local or special law; violated the equal protection guarantees of the Pennsylvania Constitution; was unconstitutional because it called for the appointment of an unaccountable special prosecutor; and impaired the effective prosecution of criminal defendants in Philadelphia by violating their right to raise arguments in their defense. See Petition for Review at 29-46. Appellant requested, *inter alia*, that the Commonwealth Court declare Act 40 unconstitutional and enjoin the OAG from implementing it. See *id.* at 47-48. Further, Appellant claimed that

he vigorously charged and prosecuted SEPTA-related crimes; that any decrease in cases was due to sharply decreased SEPTA police arrests; that Act 40 does not provide SEPTA with greater resources; and that Act 40 was a targeted political action. *See id.* at 23-30.

On January 17, 2024, Appellant filed a petition for preliminary injunction as well as a supporting memorandum of law, and the OAG filed an answer opposing the petition for preliminary injunction. The Commonwealth Court held a scheduling conference on February 2, 2024, and that same day issued an order noting that the parties agreed that only legal issues were before the court and that hearings were not necessary to dispose of either the petition for review or the petition for preliminary injunction. Additionally, the order required notice to the court and Appellant prior to the implementation of Act 40, including the making of an offer to a prospective special prosecutor.³

Thereafter, Appellant and the OAG filed cross-applications for summary relief. On February 20, 2024, SEPTA filed an application to intervene, which the Commonwealth Court subsequently granted.

The Commonwealth Court, in an opinion authored by Judge Anne Covey, rejected Appellant's constitutional challenges to Act 40 in a split *en banc* decision. *Krasner v. Henry*, 319 A.3d 56 (Pa. Cmwlth. 2024) (*en banc*). The court first decided certain threshold justiciability issues, including whether Appellant's claims were ripe for decision prior to the appointment of a special prosecutor under Act 40, and whether Appellant had standing to the extent he sought to assert the rights of criminal defendants and the Philadelphia electorate.

As to the constitutionality of Act 40, the majority first found that, as a general matter, the Pennsylvania Constitution permitted the General Assembly to constrict the

³ Evidently, in early June 2024, the OAG appointed a special prosecutor who is currently prosecuting SEPTA crimes.

powers of home rule municipalities, including Philadelphia, and that it had abolished county officers in Philadelphia, directing such officers to be officers of the City of Philadelphia. *Id.* at 74-76 (citing Pa. Const. art. IX, § 2 (permitting municipality to govern by home rule charter and expressly authorizes legislature to limit such municipality's power); Pa. Const. art. IX, § 4 (setting forth district attorney as county officer, except in a county that adopted home rule charter); Pa. Const. art. IX, § 13 (providing for county officers to become officers of the City of Philadelphia and to continue to perform their duties until General Assembly provides otherwise)). Turning to the specific issues raised by Appellant, the court determined that the Pennsylvania Constitution did not specify a district attorney's duties and so permitted the General Assembly to regulate the powers of the office, and allowed it to deny powers to home rule municipalities. *Id.* at 77-78. The Commonwealth Court went on to find that Act 40 did not nullify any of Appellant's prosecutorial functions and that Appellant did not cite to any constitutional provision that was purportedly violated. Rather, the court reasoned that, because the General Assembly was free to set forth a district attorney's duties, and because Act 40 imbued the special prosecutor with authority "[n]otwithstanding any other provision of law or regulation," Appellant's challenge in this regard was without merit. *Id.* at 66 (citing 74 Pa.C.S. § 1786(a)(2)).

Further, as Act 40 addressed SEPTA, which is a Commonwealth agency, and crimes occurring within SEPTA, the court rejected Appellant's assertion that Act 40 was an impermissible local or special law. Even if Act 40 regulated the City of Philadelphia and the Philadelphia District Attorney, the Commonwealth Court proffered that, because the Pennsylvania Constitution permitted local and special laws limiting the powers and duties of officers of the City of Philadelphia, Act 40 was permissible legislation.

Related thereto, the court opined that Act 40 did not violate the Pennsylvania Constitution's equal protection guarantees, as Philadelphia is "exempted from the ban on special legislation," and the statute applies to counties of the first class with first-class countywide concerns. *Id.* at 84 (footnote omitted). Finally, the Commonwealth Court addressed the question of standing regarding Appellant's constitutional claim on behalf of potential criminal defendants, and it determined that Appellant had no standing to raise such arguments, explaining that Appellant's assertion that Act 40 would lead to the dismissal of charges and convictions was "entirely speculative." *Id.* at 89-90.

In a concurring and dissenting opinion, Judge Christine Fizzano Cannon, joined by Judge Renee Cohn Jubelirer, agreed with much of the majority opinion, but would have held Act 40 unconstitutional on two grounds. First, and without taking a position on the policies or conduct of Appellant or the General Assembly, Judge Fizzano Cannon opined that the Act's reference to crimes occurring "within" SEPTA was unconstitutionally vague as to the extent of the special prosecutor's jurisdiction, resulting in an unconstitutional delegation of authority from the General Assembly to the special prosecutor. Second, Judge Fizzano Cannon determined that Appellant had standing to challenge Act 40 on behalf of criminal defendants, ultimately concluding that the statute violated Article I, Section 1 of the Pennsylvania Constitution which guarantees criminal defendants the right to raise arguments in their defense.

Judge Matthew Wolf filed a dissenting opinion, joined by Judge Cohn Jubelirer, likewise proffering two reasons for finding Act 40 to be unconstitutional. First, he concluded that the statute unconstitutionally divested Appellant of his territorial jurisdiction and core prosecutorial powers, finding that the case law that permitted the General Assembly to exercise a degree of control over district attorneys was limited to individualized cases, subject to judicial review. In Judge Wolf's view, Act 40 failed to

provide a process for reviewing the special prosecutor's decision to assert preemptive jurisdiction or for Appellant to be heard on that question. Additionally, Judge Wolf determined that Act 40 violated equal protection guarantees, as the statute's classifications – focusing on SEPTA-related crime; sunseting a year after the end of the current Philadelphia District Attorney's term; and precluding any person who served in the Philadelphia District Attorney's office since mid-2017 (the genesis of the current Philadelphia District Attorney's tenure) from becoming the special prosecutor – created a closed class of one. Moreover, the dissent eschewed reliance upon Article IX, Section 13(b)'s exception to the prohibition on special legislation regarding Philadelphia to uphold Act 40, as, in his opinion, the statute did not regulate the affairs of Philadelphia because it applied more broadly and was only nominally directed at SEPTA. Finally, Judge Wolfe warned that, if Act 40's prescription of the powers and duties of City officers were to stand, it would allow the General Assembly to pass any special legislation, as long as it spoke to some City official's duties.

Because the underlying litigation began in the Commonwealth Court's original jurisdiction, Appellant appealed directly to our Court.⁴ Appellant raises multiple constitutional challenges to Act 40 for our review: whether Act 40 violates Article IX, Section 4 of the Pennsylvania Constitution by infringing upon Appellant's jurisdiction and powers by vesting in the special prosecutor sole discretion to assert presumptive jurisdiction over Appellant in the investigation and prosecution of certain crimes; whether Act 40 violates Article III, Section 32's prohibition against local and special laws; whether Act 40 failed to satisfy Article III, Section 7's publication and notice requirements; and whether Appellant has standing to claim that Act 40 denies criminal defendants the right to assert a defense.

⁴ 42 Pa.C.S. § 723(a).

IV. Analysis

Because this appeal turns, in part, on principles regarding separation of powers, legislative authority, and restrictions on forms of government, before addressing Appellant's arguments, like the Commonwealth Court, we conclude it is salient to first review our Commonwealth's governmental structure.

In 1776, the Pennsylvania Constitution established a government vesting legislative, judicial, and executive powers in three separate branches. Inherent in this structure is a system of checks and balances among the three branches, designed to prevent a concentration of power in any one branch, and to prevent one branch from exercising the core functions of another — an approach embodied in the separation of powers doctrine. *See Commonwealth v. Mockaitis*, 834 A.2d 488, 499 (Pa. 2003). Foundationally, the legislature creates the laws, Pa. Const. art. III, § 1; indeed, the General Assembly enjoys broad and flexible police powers to enact laws to promote public health, safety, morals, and the general welfare, as well as to promote the “public convenience or the general prosperity.” *See Best v. Zoning Board of Adjustment*, 141 A.2d 606, 611 (Pa. 1958) (citation omitted). The judiciary interprets the laws. Pa. Const. art. V, § 1. Finally, pursuant to Article IV, Section 2, the Governor holds “supreme executive power” to implement the laws. Pa. Const. art. IV, § 2; *see generally Markham v. Wolf*, 190 A.3d 1175, 1177 (Pa. 2018).

Within this tripartite framework of state government, the Constitution authorizes the General Assembly to create local forms of government, which the Pennsylvania Constitution refers to as municipalities, defining “[m]unicipality” as “a county, city, borough, incorporated town, township or any similar general purpose unit of government which shall hereafter be created by the General Assembly.” Pa. Const. art. IX, § 14 (entitled “Local Government”). Municipalities are creatures of the state and have no

inherent powers of their own. See *Naylor v. Township of Hellam*, 773 A.2d 770, 773 (Pa. 2001). Indeed, they possess “only such powers of government as are expressly granted to [them] and as are necessary to carry the same into effect.” *Appeal of Gagliardi*, 163 A.2d 418, 419 (Pa. 1960); *Philadelphia v. Fox*, 64 Pa. 169, 180-81 (1870); see generally *City of Philadelphia v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004).

Furthermore, the Pennsylvania Constitution specifically permits a municipality to adopt a home rule charter, but, in doing so, expressly authorizes the General Assembly to limit a home rule municipality’s power. Article IX, Section 2 of the Pennsylvania Constitution, entitled “Home rule,” provides:

Municipalities shall have the right and power to frame and adopt home rule charters A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter[,] or by the General Assembly at any time.

Pa. Const. art. IX, § 2. As a result, any municipality legislating under home rule governance cannot run afoul of its home rule charter, statutory law, or the Pennsylvania Constitution. *Pennsylvania Restaurant & Lodging Association v. City of Pittsburgh*, 211 A.3d 810, 816-17 (Pa. 2019).

As to our Court’s standard and scope of review of a lower court’s decision regarding the constitutionality of a legislative enactment, great deference is given to the validity of a statute. Specifically, legislation enacted by the General Assembly enjoys a strong presumption of constitutionality, and a challenging party bears a very heavy burden of persuasion. *Stilp v. Commonwealth, General Assembly*, 974 A.2d 491, 495 (Pa. 2009). A statute must violate an express or clearly implied constitutional prohibition before it will be held unconstitutional. *Russ v. Commonwealth*, 60 A. 169, 172 (Pa. 1905). Indeed, legislation is void “only when it violates the constitution *clearly, palpably, plainly*; and in such manner as to leave *no doubt* or hesitation on our minds.” *Sharpless v. Mayor of*

Philadelphia, 21 Pa. 147, 164 (1853) (emphasis original). If any doubt arises as to whether a challenger has reached his or her high burden, it is resolved in favor of the constitutionality of the legislation. *McLinko v. Department of State*, 279 A.3d 539, 565 (Pa. 2022); *Pennsylvania State Association of Jury Commissioners v. Commonwealth*, 64 A.3d 611, 618 (Pa. 2013). This principle derives, in part, from the presumption that our sister branches take seriously their constitutional oaths. *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005); see 1 Pa.C.S. § 1922(3) (“In ascertaining the intention of the General Assembly in the enactment of a statute the . . . [presumption is that] the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.”).

A. District Attorney Jurisdiction Under Article IX, Section 4

The first issue Appellant raises is whether Act 40 unconstitutionally infringes upon his territorial jurisdiction and powers in the investigation and prosecution of crimes by vesting in a special prosecutor the sole discretion to investigate and prosecute SEPTA-related crimes occurring in Philadelphia. Appellant’s Brief at 26. Appellant asserts that this grant of jurisdiction unconstitutionally infringes upon his territorial jurisdiction and prosecutorial powers. Specifically, Appellant maintains that the district attorney is a constitutional officer with exclusive prosecutorial power and jurisdiction under Article IX, Section 4 of the Pennsylvania Constitution, which provides that “[c]ounty officers shall consist of . . . district attorneys” Pa. Const. art. IX, § 4. In Appellant’s view, this constitutional status recognizes these individuals as public officers as well as their geographical jurisdiction. Appellant’s Brief at 27 (citing *Commonwealth ex rel. Specter v. Martin*, 232 A.2d 729, 734 (Pa. 1967)). According to Appellant, by vesting the special prosecutor with sole discretion to supersede him, Act 40 unconstitutionally restricts his authority.

Appellant rejects the Commonwealth Court's reasoning that Article IX, Section 4 provides Appellant no protection because the 1968 amendments to the Constitution excluded home rule jurisdictions from its scope. Rather, Appellant submits that Article IX, Section 13 establishes the relevance and continued applicability of Article IX, Section 4, as it provides that "[a]ll laws applicable to the County of Philadelphia shall apply to the City of Philadelphia." Pa. Const. art. IX, § 13(c). Thus, in Appellant's view, Section 13 did not abolish the Philadelphia District Attorney's status as an officer with "unique constitutional standing." Appellant's Brief at 29 (citing *Rogers v. Lycoming County Board of Commissioners*, No. 161 C.D. 2023, 2024 WL 300859, at *6 (Pa. Cmwlth. filed Jan. 26, 2024)). As a result, Appellant argues that home rule county officers, including district attorneys, are classified as constitutional officers and that nothing in Section 4 abrogated the constitutional allocation of authority to Appellant.

Appellant adds that, beyond Article IX, Section 4, case law provides that the General Assembly cannot grant the Attorney General unfettered authority to supersede district attorneys. Specifically, Appellant claims that, while the General Assembly may vest in an unelected appointee the power to supersede a district attorney, it may do so only on a case-by-case basis where such decision is subject to review by a court for an abuse of discretion, and, typically, in circumstances where evidence of misconduct or conflicting interest or loyalty casts doubt on the proper performance of the duties of the district attorney. Appellant asserts that Act 40 violates this precedent, citing *In re Shelley*, 2 A.2d 809 (Pa. 1938), and its progeny. In doing so, Appellant also distinguishes *Commonwealth v. McHale*, 97 Pa. 397 (1881), and similar decisions as merely reflecting circumstances in which supersession is appropriately authorized, such as in cases of

conflict of interest. Furthermore, Appellant references the Commonwealth Attorneys Act⁵ and contends this statute manifests these limitations and provides for the Attorney General to petition a court to supersede a district attorney only where the district attorney “failed or refused to prosecute and such failure or refusal constitutes abuse of discretion” or by a president judge of the court of common pleas requesting that the Attorney General intervene in a proceeding. 71 P.S. § 732-205(a)(4). Thus, Appellant stresses that, based upon these decisions and statutory law, the General Assembly cannot vest the Attorney General or any appointee the absolute and sole discretion to supersede a district attorney. Appellant argues that Act 40 is contrary to this precedent, as it allows for an appointee of the Attorney General, within his or her “sole discretion,” to assert preemptive prosecutorial jurisdiction over any crime occurring within SEPTA in Philadelphia. Finally, Appellant contends that Act 40’s stated reasons for granting the power of supersession to the Attorney General’s appointee are without a factual basis, as, in Appellant’s view, there is no need for a special prosecutor, as he is zealously prosecuting SEPTA-related crime.

Appellant also challenges the Commonwealth Court’s conclusion that Act 40 is a valid exercise of the legislature’s authority over home rule municipalities and is within its power to regulate SEPTA. Specifically, Appellant proffers that a home rule municipality is able to exercise any power not specifically denied to it by the Constitution, the General Assembly, or its home rule charter. Pivoting, Appellant asserts that, in any event, this matter is not about home rule, as no ordinance or law of the City is at issue and he does not contend that the home rule power of Philadelphia has been infringed; rather, he claims it is his constitutional authority that is at issue. Similarly, Appellant posits that the legislature’s authority to regulate SEPTA does not override constitutional limits on the

⁵ Act of Oct. 15, 1980, P.L. 950, No. 164, § 101-506, effective Jan. 20, 1981, *as amended*, 71 P.S. §§ 732-101 to 732-506.

General Assembly's power. Indeed, in Appellant's view, Act 40 does not regulate SEPTA, as it imposes no obligations or duties upon that agency; rather, it concerns only the special prosecutor and its jurisdiction over crimes within SEPTA. Thus, Appellant maintains that Act 40 unconstitutionally limits his jurisdiction and power by vesting in the special prosecutor "sole discretion" to assert preemptive prosecutorial jurisdiction in Philadelphia.

The OAG responds that, contrary to Appellant's contention, Article IX, Section 4 does not give Appellant the inherent or exclusive constitutional authority to prosecute SEPTA-related crimes. Specifically, the OAG proffers that this provision must be read as a whole and in the context of other constitutional provisions. The OAG sets forth that the first clause of Section 4 provides that "[c]ounty officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law." Pa. Const. art. IX, § 4, cl. 1. Turning to the fifth clause of Section 4, the OAG notes that the provisions for county government in Section 4 "shall apply to every county except a county which has adopted a home rule charter or an optional form of government." *Id.* art. IX, § 4, cl. 5. The OAG adds that 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" and that all former county officials in Philadelphia "shall become officers of the City of Philadelphia." *Id.* art. IX, § 13(a), (f). The OAG submits that the Philadelphia District Attorney is not a county officer under Article IX, Section 4, as this section excludes from its definition of county officer counties which have adopted a home rule charter such as Philadelphia, and, thus, supplants the county government provided in Section 4, including all county offices which

were abolished in Article IX, Section 13. Therefore, the OAG claims that the Philadelphia District Attorney is a city — not a county — officer, whose duties are subject to legislative limitations.

Even if the Philadelphia District Attorney is considered to be a county officer under Article IX, Section 4, the OAG offers that case law has held that this section confers no specific powers upon a district attorney or any other county officer, but, rather, only specifies that they be elected and compensated. *Id.* art. IX, § 4. The OAG then traces the history of Section 4, proffering that it came into being in 1838 to curtail the appointive powers of the Governor, rendering many of the officers previously appointed to hold elected positions. OAG’s Brief at 23. Indeed, the OAG notes that district attorneys were not initially listed as county officers, as it was the Attorney General who prosecuted criminal offenses; however, in 1874, the General Assembly established the role of the district attorney, and the Pennsylvania Constitution was amended to include district attorneys as “county officers” who would be elected.

While Appellant asserts that the supersession provisions of the Commonwealth Attorneys Act render Act 40 unconstitutional, in the OAG’s view, such reliance on that statute is fatal to his constitutional argument. Specifically, the OAG reasons that, if the General Assembly made each district attorney the “chief law enforcement officer for the county in which he is elected,” 71 P.S. § 732-206(a), then it follows that the legislature may limit the power and create a special prosecutor for SEPTA. According to the OAG, because the Attorney General is given priority under the Commonwealth Attorneys Act to prosecute certain crimes with statewide implications, such as crimes by state officials and employees, this confirms that the General Assembly is authorized to limit district attorneys’ jurisdiction over certain crimes. In making this argument, the OAG distinguishes our Court’s decisions in *Shelley* and *Commonwealth v. Schab*, 383 A.2d

819 (Pa. 1978) (plurality), which predated the Attorney General being an elected official and the Commonwealth Attorneys Act.

In the OAG's view, *Shelley* upheld a statute giving "absolute discretion" to "supersede and set aside" a district attorney; thus, it reaffirmed the notions that the Constitution does not prescribe the duties of the district attorney and that the legislature may regulate those duties and constrain the district attorney's authority. OAG's Brief at 27 (citing *Shelley*, 2 A.2d at 811). Moreover, the OAG dismisses our Court's plurality decision in *Schab* as irrelevant, noting that, at the time of that decision, there was no statute expressly giving the Attorney General the ability to supersede, and the Commonwealth Attorneys Act had not yet been enacted. While the plurality rejected the Attorney General's common law authority for supersession, it also found that, under the Administrative Code, the Attorney General needed only to establish good cause for supersession.

Finally, the OAG warns of the consequences of Appellant's position, suggesting that, if the "modest limitation" on Appellant's authority – leaving him with authority over all non-SEPTA-related crimes in Philadelphia – violates Article IX, Section 4, then the Commonwealth Attorneys Act, which significantly encroaches upon district attorney's jurisdiction, could not survive, and offers other statutes which could intrude upon county officers under Article IX, Section 4, placing them in jeopardy as well.

In its response, SEPTA, contrary to the OAG, assumes, *arguendo*, that the Philadelphia District Attorney holds a constitutional office, as district attorneys are enumerated as one of the officers under Article IX, Section 4. However, SEPTA argues that this is irrelevant, as both Article IX, Section 4 and Article IX, Section 13(b) (which abolished county offices in Philadelphia) are silent regarding the powers and duties attendant to those offices. Indeed, SEPTA stresses that Article IX, Section 13(f) states

that 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 manners consistent with the Constitution and legislation. SEPTA’s Brief at 18 (quoting Pa. Const. art. IX, § 13(f)) (emphasis original). Furthermore, SEPTA submits that our Court has consistently permitted the General Assembly to regulate the duties of those offices, citing, *inter alia*, *Shelley*; *Commonwealth v. Lehman*, 164 A. 526, 527 (Pa. 1932); and *McHale*. Thus, in SEPTA’s view, Act 40 does not unconstitutionally divest Appellant of jurisdiction – District Attorney Krasner remains the Philadelphia District Attorney. Furthermore, SEPTA notes that Act 40 does not contain any express or implied prohibition on the legislature restricting Appellant’s jurisdiction, and, thus, does not run afoul of the Constitution.

Moreover, SEPTA maintains that, by its terms, Act 40 “simply grants the special prosecutor concurrent jurisdiction over crimes within SEPTA,” and does not limit Appellant’s jurisdiction, but, rather, allows the special prosecutor to supplement it, giving him “an additional resource to combat crime.” SEPTA’s Brief at 21 (citing 74 Pa.C.S. § 1786(a)). SEPTA claims that Appellant and the OAG regularly exercise concurrent jurisdiction, and, in support thereof, points to the Commonwealth Attorneys Act and its eight categories of criminal cases in which the Attorney General possesses the power to prosecute in county criminal court, and creates concurrent jurisdiction for three of those categories. Moreover, SEPTA highlights the Pennsylvania Race Horse Development Gaming Act, 4 Pa.C.S. § 1517(d)(1), (2), and the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-4, under which the Attorney General enjoys prosecutorial superiority. Related thereto, SEPTA argues that the fact that the special prosecutor may in its discretion preempt Appellant’s jurisdiction does not nullify his prosecutorial powers. Indeed, SEPTA emphasizes that concurrent jurisdiction brings with it merely the option to

exercise preemptive jurisdiction. Further, SEPTA rejects Appellant's assertion that this discretion must be judicially reviewable to be constitutionally sound, as such is not required by the constitution or case law, and SEPTA eschews *Shelley* and *Schab* as a basis for any such requirement.

Amici Pennsylvania Senate Republican Caucus and Pennsylvania House Republican Caucus, writing in support of the OAG, offer that Article IX, Section 4 does not apply in this matter as, by its terms, it does not pertain to a county like Philadelphia which adopted a home rule charter. *Amici* reason that, even if Section 4 did apply, it does not address whether the Attorney General may prosecute crimes within a county or whether the General Assembly may modify a district attorney's jurisdiction. *Amici* answer this question by pointing to Article IX, Section 2, which provides that a home rule charter municipality may perform any function not denied by the General Assembly. Therefore, according to *Amici*, the General Assembly retains the authority to limit the scope of a municipality's home rule governance. *Amici* contend that the legislature may limit a district attorney's powers and expand the OAG's powers to appoint a special prosecutor to investigate and prosecute crimes within a public transportation authority. Finally, and related thereto, *Amici* stress that the legislature may regulate crimes committed within its own agencies, and SEPTA has been classified as an agency of the Commonwealth.

In reviewing this issue, we begin by noting that, in construing and applying our Constitution, we are guided by certain fundamental tenets of interpretation. First, the ultimate touchstone is the actual language of the Constitution itself. *Stilp, supra*. Thus, if the constitutional language is clear and explicit, we will not "delimit the meaning of the words used by reference to a supposed intent." *Commonwealth ex rel. MacCallum v. Acker*, 162 A. 159, 160 (Pa. 1932). Relatedly, constitutional provisions must be read as a whole, and in the context of other relevant constitutional provisions. *Jubelier v. Rendell*,

953 A.2d 514, 528 (Pa. 2008) (“[B]ecause the Constitution is an integrated whole, effect must be given to all of its provisions whenever possible.”). This approach “reflects an understanding that our 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.” *Id*; see also *Krasner v. Ward*, 323 A.3d 674, 701 (Pa. 2024).

Therefore, consistent with our well-established approach to constitutional interpretation, in considering whether Act 40 unconstitutionally intrudes upon Appellant’s jurisdiction to prosecute SEPTA-related crimes in Philadelphia, we begin with the language of our Constitution.

Article IX, Section 4, entitled “County Government,” provides, in clause 1, that:

County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

Pa. Const. art. IX, § 4, cl. 1 (emphasis added). Yet, this clause is qualified by clause 5 of that same section, which provides:

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

Id. art. IX, § 4, cl. 5 (emphasis added). Thus, Article IX, Section 4’s initial clause declares district attorneys to be county officers. However, pursuant to its fifth clause, the first clause does not apply to counties which have adopted a home rule charter. It is undisputed that Philadelphia presently is the only county of the first class in our

Commonwealth, and is governed by a home rule charter. As such, the first clause, which mandates certain county officers, does not apply to Philadelphia.

Additionally, Article IX, Section 13 provides, in relevant part, 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,” and that all former county officials in Philadelphia “shall become officers of the City of Philadelphia.” *Id.* art. IX, § 13 (a), (f).⁶ Thus, the Philadelphia District Attorney is a city — and not a county — officer under our Constitution.

Regardless, even if we considered Appellant to be a county officer, a cursory review of Section 4’s unambiguous language makes clear that the Constitution provides no specific powers to district attorneys — much less powers that are expressly beyond legislative limitations — other than that they be elected and compensated “for services performed for the county or any other governmental unit.” *Id.* art. IX § 4 cl.3;⁷ *see also*

⁶ This constitutional provision states, 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.

* * *

(f) *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 (emphasis added).

⁷ Article IX, Section 4 provides:

(continued...)

Specter v. Freed, 228 A.2d 382, 384 (Pa. 1967) (“Not one word” of Article IX, Section 4 “concerns the functions or duties of district attorney[s] or any other so-called county officer therein mentioned.”). As no specific powers are constitutionally prescribed, county officers (as well as city officers in Philadelphia) are subject to legislative control. See Pa. Const. art. IX, § 13(f) (establishing that 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 manner consistent with the Constitution and statutes (emphasis added)); *Spahn v.*

County officers shall consist of commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.

County officers, except for public defenders who shall be appointed as shall be provided by law, shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies shall be filled in such a manner as may be provided by law.

County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law.

Three county commissioners shall be elected in each county. In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected.

Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.

Id. art. IX, § 4.

Zoning Board of Adjustment, 977 A.2d 1132, 1143-44 (Pa. 2009) (“Thus, ‘by constitutional mandate, the General Assembly may limit the functions to be performed by home rule municipalities.’” (quoting *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996)); *McHale*, 97 Pa. at 406 (upholding statutes providing for the appointment of a special prosecutor and rejecting argument that a district attorney “cannot be stripped of his powers by the legislature” merely because the Constitution “makes the district attorney a constitutional officer”); see also *Shelley*, 2 A.2d at 812 (“[I]t is well established that since the Constitution does not prescribe the duties of the district attorney[,] the legislature may regulate the performance of such duties and provide for cases in which it would be improper for the elected officer to act.”); *Lehman*, 164 A. at 527 (same). Indeed, even Appellant “do[es] not contend that the General Assembly lacks any power to regulate the office of district attorney.” Appellant’s Brief at 34 n.8.

Related thereto, Appellant’s reliance upon the Commonwealth Attorneys Act, asserting that the supersession provisions contained therein render Act 40 unconstitutional, actually supports the view that it is the legislature which may define the powers of district attorneys. Through the Act, the General Assembly deems each district attorney to be “the chief law enforcement officer for the county in which he is elected,” 71 P.S. § 732-206(a), but sets forth eight categories of cases in which the Attorney General possesses the power to prosecute in county criminal court, and creates concurrent jurisdiction in three of those categories, *id.* § 732-205(a), (b). Moreover, as offered by SEPTA, the Pennsylvania Race Horse Development Gaming Act, 4 Pa.C.S. § 1517(d)(1), (2), and the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-4, provide that the Attorney General enjoys concurrent jurisdiction with district attorneys for prosecutions pursuant to those laws. These legislative enactments strongly support the principle that the legislative branch may establish concurrent jurisdiction or even limit the

power of the district attorney, and if so, it logically follows that the legislature may, via Act 40, limit Appellant's power.⁸

We also reject Appellant's argument that the General Assembly's power to control prosecutorial jurisdiction must be limited to individual criminal matters and requires advance judicial review, pursuant to our Court's decisions in *Shelley* and *Schab*.

Initially, some historical context is required. As set forth by the OAG, before the adoption of Article IX, Section 4 in the Constitution of 1838, most local officials were appointed by the Governor. This changed with the adoption of the 1838 Constitution, which provided for the election of local officials. However, the list of officials did not include district attorneys, who did not become elected officials until 1874. This was consistent with the times, as the prosecution of criminal offenses was exclusively the duty of the Attorney General, who delegated this duty by appointing deputy attorneys general in the counties. *Miller v. County of Center*, 173 A.3d 1162, 1173 (Pa. 2017) (Donohue, J., concurring). In 1850, however, the General Assembly enacted legislation transferring the duties performed by these appointed deputies to officials elected by the voters of the county, who became known as "district attorneys." *Freed*, 228 A.2d at 384 (citing Act of May 3, 1850, P.L. 654, § 1). In 1874, the Constitution was amended to include district attorneys as "county officers," and provided for their election and compensation. Pa. Const. of 1874 art. XIV, § 7 (predecessor of the current Article IX, Section 4). However, the Attorney General remained an appointed position for the next 100 years. Only in 1978 was the Pennsylvania Constitution amended to designate the Attorney General the chief law officer of the Commonwealth, and an elected office. This led, in turn, to the 1980

⁸ We need not address whether the legislature could constitutionally strip a district attorney of *all* of his power or jurisdiction.

Commonwealth Attorneys Act. Both *Shelley*, decided in 1938, and *Schab*, rendered in 1978, predate these constitutional and statutory provisions.

Perhaps the most relevant decision to our inquiry is our 1881 decision in *Commonwealth v. McHale*, 97 Pa. 397 (1881). That appeal addressed prosecutions for conspiracy to commit election fraud brought by a special prosecutor appointed to try the cases pursuant to the Act of 1866. McHale challenged the indictments because they were not signed by the district attorney, and, in a decision authored by Justice Edward Paxson, we rejected that challenge. We explained that the district attorney was a candidate in the general election at which the alleged frauds were committed, and which allegedly increased his vote; thus, we reasoned, it would have been a breach of his professional and official duties to act as district attorney in those cases.

Further, and critical to the current appeal, McHale also challenged the appointment of the special prosecutor as illegal. He contended that, as the Constitution made the district attorney a constitutional officer, he could not be stripped of his prosecutorial powers by the legislature through the Act of 1866. In rejecting this argument, we reasoned that, “[w]hile the legislature may not abolish the office, it can control the officer. [It] can regulate the performance of his duties, and punish him for misconduct, as in the case of other officers. And where he neglects or refuses to act, or where, from the circumstances of a given case, it is improper and indelicate for him to act, it is competent for the legislature to afford a remedy.” *Id.* at 406. Accordingly, we upheld the Act of 1866, and *McHale* thus stands for the proposition that, even though a district attorney is a constitutional officer, the General Assembly may define the duties and functions of a district attorney, and provide for the appointment of a special prosecutor.

Over 45 years later in *In re Shelley*, 2 A.2d 809, 811 (Pa. 1938), Carl Shelley, District Attorney of Dauphin County, challenged a statute giving the Attorney General the

“absolute discretion” to “supersede and set aside” district attorneys. Specifically, the statute provided that, “[i]n any investigation . . . pending before any court of oyer and terminer and general jail delivery, or before any court of quarter sessions in any county of this Commonwealth, the Attorney General . . . may, at any stage of the investigation or proceeding, in his absolute discretion, supersede and set aside the district attorney of the county.” *Id.* at 811 (quoting statute). The Attorney General notified Shelley that he was superseding him in the conduct of a contemplated grand jury investigation into several high-ranking members of the Executive Branch who, like the Attorney General at the time, were political appointees of the Governor.

Our Court, speaking through Justice Horace Stern, found the statute to be constitutional, even though at that time the district attorney was an elected constitutional officer, and the Attorney General was not. Significantly, our Court began by reaffirming the “well established” principle that, since the “Constitution does not prescribe the duties of the district attorney[,] the legislature may regulate the performance of such duties and provide for cases in which it would be improper for the elected officer to act.” *Id.* at 812 (citing *McHale*, 97 Pa. at 406; *Lehman*, 164 A. at 527 (“As the Constitution does not prescribe the duties of the district attorney, [it has been held that] the legislature may regulate the performance of such duties [of the office] and provide for cases in which it would be improper for the elected officer to act.”))).

The *Shelley* Court then turned to the question of whether there “is any restriction whatever upon the power of the Attorney General to supersede the district attorney of a county[.]” *Id.* Stated another way, the Court asked whether the discretion was “so illimitable as to be beyond the pale of judicial review.” *Id.* Noting that both the district attorney and the Attorney General were quasi-judicial officers, the Court focused upon the unfettered discretion aspect of the Attorney General’s powers to supersede, and

concluded that the discretion possessed by the Attorney General at common law could be abused, and if so, the exercise of such discretion could not be sustained. *Id.* at 813. Importantly, our Court cautioned that “all judicial and quasi-judicial officers must exercise discretionary powers upon the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary action,” and such question was “necessarily a question for the determination of the courts.” *Id.* The Court explained its broad and foundational understanding of the grant of “absolute discretion:”

It is true that the statute uses the phrase “*absolute* discretion,” but, while the adjective supplies emphasis, it cannot be judicially interpreted to connote other than a discretion consistent with those immutable principles which govern the administration of justice, that is, a discretion reasonably based upon the attendant pertinent circumstances from which its exercise arises, and which is the only range or discretion permissible to a judicial or quasi-judicial officer.

Id. at 813 (emphasis original).

Our Court then addressed the question of whether an appointed Attorney General – again, before that position was an elected one – could be subject to political pressure from the Governor, thereby undermining his impartiality. Our Court concluded that to allow the Attorney General to conduct the investigation “would be contrary to all standards of professional ethics.” *Id.* at 814. Therefore, the *Shelley* Court affirmed the trial court’s determination that the Attorney General, after supersession, could not perform his duties impartially; but, significantly, as a remedy, rather than remanding the case to the district attorney, we directed the lower court to “appoint an attorney at law resident in another county to perform his functions.” *Id.* Thus, the *Shelley* Court, while declining to recognize the Attorney General’s “absolute discretion” to supersede, nevertheless upheld the statute, reaffirmed that the Constitution does not provide a district attorney with any specific constitutional powers, and concluded that the General Assembly may enact

legislation limiting the role of a district attorney, at least in certain circumstances. *Id.* at 811.

Another 40 years later, our Court issued *Commonwealth v. Schab*, 383 A.2d 819 (Pa. 1978), a plurality decision in which we considered whether the Attorney General had supersession authority under the common law or under the Administrative Code. Initially, we highlight the context in which *Schab* arose. First, district attorneys were elected officials, while the Attorney General remained an appointed position; second, the General Assembly had repealed the supersession statute at issue in *Shelley*; third, our decision was rendered five months before the Attorney General became a constitutional officer, via Pa. Const. art. IV, § 4.1 (adopted May 16, 1978); fourth, there was no statute giving the Attorney General the right to supersession; and, finally, the Commonwealth Attorneys Act, which speaks to the Attorney General's supersession powers, had not yet been enacted.

The *Schab* plurality initially rejected a common law basis for supersession. *Schab*, 383 A.2d at 821. The Court then turned to the Administrative Code, which provided the Attorney General the power to take steps “as may be reasonably necessary to enforce the laws of the Commonwealth” and to intervene at the request of the president judge of the county and upon the Attorney General's request. *Id.* at 822. Reconciling these sections of the Administrative Code, and giving effect to both provisions, the *Schab* plurality required the Attorney General to establish “good cause for the supersession.” *Id.* at 824. Subsequent to *Schab*, however, the Attorney General became an elected position, and the General Assembly repealed the relevant sections of the Administrative Code and replaced these provisions with the Commonwealth Attorneys Act. Therefore, the plurality decision in *Schab* is of limited value, other than again affirming the broad

proposition that the legislature may, in certain circumstances, allow a district attorney to be superseded.

We find that Appellant has offered nothing in these decisions that would suggest that the General Assembly may limit a district attorney's duties and jurisdiction only on a case-by-case basis, or that such limitation cannot be imposed through the designation of a finite class. Likewise, Appellant fails to point to any broader principle from these decisions that suggest the constitution mandates judicial review prior to the Attorney General exercising jurisdiction over a district attorney. Rather, in our view, these cases stand for the long-held principle that the General Assembly may regulate the duties and jurisdiction of a district attorney, and do not undermine the constitutionality of Act 40.

Likewise, consideration of the Commonwealth Attorneys Act does not establish that Act 40 is unconstitutional. Thereunder, the legislature deemed each district attorney the "chief law enforcement officer for the county in which he is elected." 71 P.S. § 732-206(a). Further, the Commonwealth Attorneys Act permits the Attorney General to prosecute certain crimes with statewide ramifications, such as crimes by state officials and employees, involving corrupt organizations, or prosecutions referred by Commonwealth agencies. *Id.* § 732-205(a). Appellant has failed to point to any provision in the Commonwealth Attorneys Act that would render Act 40 constitutionally infirm; rather, the existence of the Commonwealth Attorneys Act, which speaks to the powers of the office of district attorney and permits the supersession of a district attorney by the Office of the Attorney General, is consistent with the notion that that the General Assembly may constitutionally limit district attorneys' jurisdiction over certain crimes.

For these reasons, we conclude that Appellant has failed to establish that Act 40 unconstitutionally intrudes upon his jurisdiction to prosecute SEPTA-related crimes within Philadelphia. Rather, for the above stated reasons, including the absence of a

constitutional source for the territorial jurisdiction and prosecutorial powers of the district attorney's office, and the General Assembly's longstanding authority to prescribe the powers of the office, we conclude that Appellant's challenge to Act 40 as unconstitutionally limiting his authority must fail.⁹

B. Local or Special Law Under Article III, Section 32.

The second issue before us is whether Act 40 violates the constitutional prohibition against local or special laws found in Article III, Section 32 of the Pennsylvania Constitution, including equal protection guarantees which Appellant contends emanates from that provision. Appellant relies upon Article III, Section 32, which provides that “[t]he 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 [in eight categories].” Pa. Const. art. III, § 32. Appellant maintains that this provision incorporates principles of equal protection under the laws and that persons in like circumstances must be treated similarly, citing *Harrisburg School District v. Zogby*, 828 A.2d 1079, 1088 (Pa. 2003), and *Pennsylvania Interscholastic Athletic Association, Inc. v. Campbell*, 310 A.3d 271, 282 (Pa. 2024).

Specifically, in Appellant's view, Act 40 violates the prohibition on the passage of local or special laws and results in the disparate treatment of Philadelphia when compared to other counties. Appellant submits that to be valid, the class must be open – that is, defined such that other members can enter the class. *Campbell*. Appellant explains that, because Act 40 allows for the special prosecutor, in his sole discretion, to

⁹ Additionally, Appellant claims, relying upon Judge Fizzano Cannon's concurring and dissenting opinion, that “Act 40's vagueness only exacerbates this problem,” contending that it is not clear what “within” SEPTA means, and suggesting the statute is unconstitutionally vague in this regard. Appellant's Brief at 38 n.10. However, Appellant did not raise this issue before the Commonwealth Court, and we conclude that his brief mention of it, as an additional reason to reverse the Commonwealth Court decision, is insufficient to preserve the issue for our review. See Pa.R.A.P. 302.

assume jurisdiction over criminal matters regarding SEPTA in Philadelphia, but not with respect to any other district attorney in the other counties served by SEPTA, the legislation has created an impermissible closed class of one. In support thereof, Appellant points out that the special prosecutor's authority sunsets on December 31, 2026. As the next federal census will not occur until 2030, the Act would expire before another county could become a first-class county.¹⁰ Therefore, according to Appellant, the special prosecutor's power in Act 40 to unilaterally supersede Appellant is time limited, can only ever apply to Philadelphia, and, thus, creates a class closed to future membership, thereby violating Section 32.

Additionally, Appellant argues that Act 40 violates equal protection principles embodied in Section 32, contending there is no rational basis for the legislation. Specifically, Appellant explains that a statute must rest upon some ground of difference which will justify the classes created by the enactment, and such classification must have a fair and substantial relationship to the object of the legislation. According to Appellant, a statute must be stricken if it is based upon artificial or irrelevant distinctions used for the purpose of evading equal protection principles. In Appellant's view, Act 40's differential treatment of the City of Philadelphia and its District Attorney is artificial and irrelevant, discriminating against these entities by conferring on the special prosecutor preemptive prosecutorial jurisdiction for SEPTA-related crimes in Philadelphia, but only providing concurrent jurisdiction for SEPTA-related crimes occurring in the other counties that SEPTA serves. Furthermore, Appellant rejects the reason offered below for the legislation: that the Philadelphia District Attorney "permitted crime to metastasize within SEPTA, causing a threat to public safety." *Krasner*, 319 A.3d at 85 (footnote omitted).

¹⁰ This, according to Appellant, is because census population data is the sole criterion for county classification.

Appellant claims that the facts show that the Philadelphia District Attorney zealously prosecuted SEPTA-related crime, despite years of decline in arrests made by SEPTA police, with a prosecution rate of 92 percent. Additionally, Appellant proffers that, in the first quarter of 2024, there was a 45% decrease in serious crimes on SEPTA compared to the same period in 2023, as well as decreases in aggravated assaults and robberies. Furthermore, Appellant asserts that, even if crime was metastasizing, Act 40 is framed in general terms, focusing on “a county of the first class,” and “the primary provider of public passenger transportation in the county of the first class.” Appellant’s Brief at 45. According to Appellant, this generality provides no basis for treating some future first-class county and its district attorney differently from other counties and their district attorneys, resulting in the law being arbitrary on that basis as well. Thus, in Appellant’s view, Act 40 either creates an impermissible closed class, or arbitrarily discriminates against additional counties that may become first class.

Appellant adds that Act 40’s classifications are unrelated to either Philadelphia’s status as a county of the first class or to any unique function of the office of the Philadelphia District Attorney as compared to district attorneys of counties of other classes. Moreover, Appellant submits that, if the rationale underlying Act 40 was addressing crime relating to SEPTA, the distinction between Philadelphia and the other counties served by SEPTA is arbitrary; rather, Appellant maintains the special prosecutor’s jurisdiction should be uniform. Additionally, Appellant contends that the claim that the Philadelphia District Attorney permitted crime to metastasize within SEPTA is undermined by testimony before the Senate Transportation Committee, which established that any increased crime regarding SEPTA was not due to Appellant, but due to the “underfunding of transit police, decreased ridership, retention issues, the pandemic, and mental health and substance abuse issues.” *Id.* at 48.

Appellant argues that Act 40 does not fit within the exceptions regarding local and special laws that regulate the affairs of Philadelphia or prescribing the duties of a Philadelphia officer. Pa. Const. art. IX, § 13(b). Specifically, in seeming tension with his argument regarding the first issue, Appellant claims that Section 13(b) does not regulate the affairs of Philadelphia, maintaining that the “regulating the affairs clause” must affect all of the citizens of the municipality. Appellant’s Brief at 50. This, according to Appellant, is not satisfied by merely providing power to a special prosecutor. Furthermore, Appellant asserts that the creation of a special prosecutor does not prescribe the powers and duties of a City officer. The only provision of Act 40 which, in Appellant’s view, arguably prescribes the duties of a City officer is the provision which requires that, once the special prosecutor exercises jurisdiction, the Philadelphia District Attorney must suspend his actions and turn over all prosecution information and documents. Appellant submits that this is a *de minimis* requirement and insufficient to constitute a prescription of the duties of a City officer. Appellant adds that the provision imposes a duty on the office as a whole, not on any individual officer.

Additionally, Appellant contends that the text and history of Section 13 must be read as contemplating laws that directly concern both Philadelphia *and* its authority over its officers, and maintains that neither requirement is satisfied in this matter. Further, Appellant notes that, until 1951, Philadelphia was subject to two governments: the government of the City and the government of the County. Because of overlapping and inconsistent functions, in 1951, the two governments consolidated, and Section 13 addresses this city-county consolidation. This being the case, Appellant argues that there is no evidence that the drafters of Section 13 envisioned a perpetual “Philadelphia exception” to the bar on local or special laws. *Id.* at 53.

Amici Power Interfaith, Pennsylvania Policy Center, Abolitionist Law Center, Common Cause of Pennsylvania, League of Women Voters of Philadelphia, the State Conference of the NAACP, NAACP Philadelphia Branch, Make the Road Pennsylvania, and Urban League of Philadelphia, in a joint brief in support of Appellant, raise their own equal protection concerns. In their view, Article IX, Section 32 was adopted to “enshrine the notion that representative government must be responsive to the electorate as a whole, rather than a select few.” *Amici’s* Brief at 13. Here, according to *Amici*, Act 40 is at odds with the prohibition on local and special legislation created to safeguard representational rights. Specifically, *Amici* aver that Act 40 strips Philadelphians of their right to be represented by an elected official who is responsive to their needs and accountable to the community by replacing him with an official “whose mandate is to implement the will of political opponents whose policies were rejected at the polls, and then divests the judiciary from reviewing the authority of that official.” *Id.* at 14-15. Thus, *Amici* argue that Act 40 creates a classification that impermissibly infringes upon the fundamental voting rights of Philadelphians by limiting the scope of Appellant’s prosecutorial authority, and it retroactively nullifies the votes of the electorate who twice elected District Attorney Krasner, and his policy reforms — many of which are aimed at addressing institutional racism in the legal system and its disproportionate impact on Philadelphians of color. According to *Amici*, Act 40 strips Philadelphians of a prosecutor who is accountable to the people of Philadelphia, as well as discouraging Philadelphians from voting. Under strict scrutiny, which *Amici* proffer as the appropriate standard of judicial review, Act 40 is not necessary to advance a compelling state interest, and was motivated to override Appellant’s criminal reform measures.

Amici also contend that Act 40 targets Philadelphia and regulates its affairs and Appellant specifically, as the special prosecutor’s authority expires shortly after District

Attorney Krasner's term expires, and requires Philadelphia to pay for the special prosecutor's expenses. *Amici* add that by exempting from the local and special laws prohibition legislation involving Philadelphia, the Commonwealth Court exposes Philadelphians to discrimination and disparate treatment by the General Assembly. Finally, *Amici* claim that Act 40, by conferring jurisdiction to the special prosecutor over matters "within a public transportation authority," is inherently vague, and leaves Philadelphians without knowledge of who is responsible for investigating or prosecuting particular crimes. *Id.* at 27.

The OAG responds that Act 40 does not violate Article III, Section 32's prohibition on local and special laws because Act 40 is a general law. The OAG submits that Act 40 regulates a state entity and is uniform in its application among cities or counties of the same class, and, thus, does not implicate or violate Section 32. The OAG notes Section 32's identification of eight categories of prohibited local and special laws, including laws "[r]egulating the affairs of counties, cities, townships, wards, boroughs or school districts[.]" Pa. Const. Art. III, § 32(1). The OAG explains that this provision was intended to prohibit privileged legislation for particular localities for the private benefit of an individual or corporation, a common practice prior to 1873, citing *Haverford Township v. Siegle*, 28 A.2d 786, 788 (Pa. 1942), and emphasizes that, in the seven years before the adoption of Section 32, the General Assembly had enacted 8,755 local or special acts, and only 475 general laws. OAG's Brief at 33 (citing Robert Woodside, *Pennsylvania Constitutional Law* 576 (1985)). Thus, the OAG asserts that Section 32 was not intended to prohibit legislative classifications and did not forbid the legislature from drawing distinctions between classes, and that our consideration of such classifications is subject to a rational basis review. *Id.* at 35 (citing *Baltimore & Ohio Railroad Company v. Commonwealth, Department of Labor and Industry*, 334 A.2d 636, 643 (Pa. 1975)).

The OAG cautions that Section 32 must be read in context, pointing to Article III, Section 20 (legislation relating to each class of municipality “shall be deemed general legislation within the meaning of this Constitution”), Article IX, Section 13(b) (local and special laws “regulating the affairs of Philadelphia and creating offices or prescribing the powers and duties of Officers of the City of Philadelphia shall be valid notwithstanding Article III, Section 32 of this Constitution”); and Article IX, Section 2 (“A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.”). According to the OAG, these constitutional provisions, which post-date the 1874 prohibition on local and special laws, create exceptions to Article III, Section 32 and broaden the General Assembly’s latitude to classify municipalities based upon population size and regulate them accordingly.

Thus, the OAG proffers that, when the General Assembly enacts legislation that is uniform with respect to all cities or counties of the same class, such laws, by definition, are general and not local; that Philadelphia, as the only city of the first class, could be regulated by the legislature without running afoul of Article III, Section 32; and home rule charter municipalities remain subject to limitations imposed by the General Assembly. Reading these constitutional provisions together, the OAG contends that: first, Act 40’s regulation of SEPTA, as an agency of the Commonwealth subject to plenary control by the legislature, is not violative of Section 32’s proscription against local or special laws; second, even if subject to Section 32, legislation is considered to be general when it is uniform as to municipalities of the same class, and, here, Philadelphia is the only county of the first class; third, local laws regulating the affairs of the City of Philadelphia’s officers are valid regardless of Section 32; and finally, Act 40 satisfies the substantial relationship test for upholding Section 32 challenges as Act 40 is related to the General Assembly’s

interest in promoting the health and safety of Pennsylvania citizens by ensuring the prosecution of crimes that occur within SEPTA.

Lastly, the OAG highlights that Appellant avoids any discussion of Article III, Section 20, which states that laws as to one class are general laws. The OAG claims that Appellant – in asserting that, as the only district attorney of the city of the first class, he should be treated the same as district attorney's in other municipal classes with respect to SEPTA prosecutions – misreads prior precedent, as such decisions all involved legislation that treated certain municipal entities or officers different than others within the same class of municipality.

SEPTA echoes the OAG, asserting that Act 40 is not a local or special law as it does not regulate the affairs of Philadelphia, but is directed at SEPTA, and warns that adopting Appellant's approach would require expansion of local or special law jurisprudence to statutes that do not directly regulate the affairs of a municipality. Like the OAG, SEPTA maintains that Article IX, Section 13 expressly permits the General Assembly to enact local or special laws relating to the City of Philadelphia, which laws are valid notwithstanding Article IX, Section 32, and highlights the impact Appellant's position would have on other laws that single out Philadelphia for regulation, such as the regulation of firearms on public streets or public property, see 18 Pa.C.S. § 6180, and union representation of public employees in Philadelphia, see 43 P.S. § 1101.2003. Moreover, SEPTA rejects Appellant's class-of-one theory, as Article III, Section 20 authorizes the legislature to pass laws with reference to county classifications and deems such laws to be general in nature, adding that the concept of a closed class for county classifications is outdated, and no longer viable in light of the adoption of Article III, Section 20. Finally, stressing that the Philadelphia District Attorney maintains the same powers and authority that other district attorneys possess, SEPTA contends that Act 40

does not treat District Attorney Krasner differently because he is the Philadelphia District Attorney, but only creates a special prosecutor in light of the General Assembly's legitimate safety concerns. As the statute is rationally related to a valid state interest in public safety, SEPTA maintains it does not violate equal protection principles.

Amici Pennsylvania Senate Republican Caucus and Pennsylvania House Republican Caucus, writing in support of the OAG, emphasize that the prohibition on treating individuals differently does not preclude the Commonwealth from creating legislative classes. *Amici* also maintain that the General Assembly may pass local or special laws relating to the affairs of Philadelphia, due to a carve-out to the prohibition on legislating local or special laws in Article IX, Section 32. Moreover, Act 40's special treatment of Philadelphia is based upon legitimate distinctions due to Appellant's failure to prosecute violent crime, and does not rest upon an artificial foundation. *Amici* remind that it is for the legislature and not the judiciary to determine the means necessary to combat public problems.

We begin our analysis of this issue by reviewing the language of Article III, Section 32. This section provides:

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:*

1. *Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:*
2. Vacating roads, town plats, streets or alleys:
3. Locating or changing county seats, erecting new counties or changing county lines:
4. Erecting new townships or boroughs, changing township lines, borough limits or school districts:
5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
6. Exempting property from taxation:
7. Regulating labor, trade, mining or manufacturing:

8. Creating corporations, or amending, renewing or extending the charters thereof:

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Pa. Const. art. III, § 32 (emphasis added).¹¹

Turning to the impact of this provision on Act 40, we find that the statute regulates the affairs of SEPTA, a Commonwealth agency, as it aims to protect SEPTA's employees and the Commonwealth's citizenry to whom SEPTA provides public transportation in and around the greater Philadelphia region. The Commonwealth controls and operates SEPTA; indeed, SEPTA's enabling statute, as noted above, provides: "An authority shall

¹¹ While maintaining that Appellant's Section 32 arguments fail on their own terms, the OAG requests that we clarify that Article III, Section 32 is not conterminous with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. OAG's Brief at 58. Specifically, the OAG rejects our case law that treats Section 32 as an equal protection provision and calls for the rejection of the class-of-one theory at least with respect to municipal self-governance and the powers of municipal officers pursuant to Section 32. The OAG seeks the overruling of our decision in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985), which it contends first combined Article I, Section 1 and Article III, Section 32 for equal protection purposes, and presumed Section 32 was an equal protection provision. OAG's Brief at 60-62. We recognize that our Court has signaled that there is a significant issue regarding whether Article III, Section 32 implicates notions of equal protection, or should be limited to federal equal protection guarantees. See *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 309 A.3d 808, 923 (Pa. 2024) (explaining that Section 32 was adopted in a much different historical context than the federal Equal Protection Clause, and offering that we did not foreclose the possibility that Section 32 secured broader protection for Pennsylvanians than the federal clause, but finding the advocacy in that case lacking). While the OAG sets forth a full-throated argument as to why federal equal protection principles should not be engrafted onto Section 32 and that our decision in *Fischer* should be overruled, Appellant fails to offer any meaningful advocacy on this issue. As in *Allegheny Reproductive Health Center*, we believe the parties have not provided the necessary advocacy to delve into this significant question, and neither party offers the detailed analysis of the four prongs set forth in *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), that is typically required to allow our Court to fully consider the interplay between state and federal constitutional rights. Therefore, we save for another day the question of whether Article III, Section 32 is independent of state and federal equal protection clause principles or secures broader protection of our citizens rights than the federal Equal Protection Clause.

in no way be deemed to be an instrumentality of any city or county or other municipality or engaged in the performance of a municipal function, but shall exercise the public powers of the Commonwealth as an agency and instrumentality thereof.” 74 Pa.C.S. § 1711(a). Therefore, to the extent Act 40 regulates the affairs of SEPTA, as a Commonwealth agency, Act 40 is general legislation and not a local or special law, and, thus plainly does not violate Article III, Section 32.

However, we also find that Act 40 regulates the affairs of Philadelphia and the duties of Philadelphia officers. This regulation implicates distinct questions under Section 32, and so we turn to other constitutional provisions to resolve them.

While, as noted above, Article III, Section 32 prohibits the enactment of local or special laws generally, and specifically prohibits the passage of a local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts, Pa. Const. art. III, § 32(1), the Constitution contains exceptions to this prohibition, all of which post-date the adoption of Section 32. Specifically, Article IX, Section 13, provides:

(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 32 of Article III of this Constitution.*

(c) All laws applicable to the County of Philadelphia shall apply to the City of Philadelphia.

(d) The City of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the County of Philadelphia.

(e) The provisions of section 2 of this article shall apply with full force and effect to the functions of the county government hereafter to be performed by the city government.

(f) 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.

Id. art. IX, § 13 (emphasis added).

Section 13(b), highlighted above, is relevant here, and its language is 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. In short, such laws are constitutionally permitted.

Appellant's submission to the contrary, that Section 13(b) must be limited to its historical context – that is, to facilitate the consolidation of the county and city of Philadelphia in 1951 – and the lack of evidence that the drafters of that provision ever intended a perpetual “Philadelphia exception” to the ban on local or special laws, is belied by the provision's plain and unmistakable language. Additionally, while that governmental consolidation is complete, the offices persist and the duties of City officers remain subject to the General Assembly's modification. Indeed, as forcefully offered by the OAG, the citizenry preserved this language without amendment in the Pennsylvania Constitution of 1968, over a decade after the consolidation of the city and county Philadelphia governments, undercutting Appellant's suggestion there was a temporal limit on this constitutional provision.

Thus, finding the exception persists, we turn to whether Act 40 “regulat[es] the affairs” of Philadelphia and the duties of its officers. Although Act 40 primarily prescribes the power of the SEPTA special prosecutor, we find that it also regulates the affairs of Philadelphia, as it impacts Philadelphians by allowing a special prosecutor to assume jurisdiction over SEPTA-related crimes within Philadelphia. Additionally, it prescribes the duties of the Philadelphia District Attorney to enforce criminal laws. Via Act 40, the

General Assembly empowered the special prosecutor to enforce the criminal laws within SEPTA, and, while sharing concurrent jurisdiction generally, the enactment precludes Appellant from acting in cases where the special prosecutor in its discretion chooses to act in Philadelphia. Further, Act 40 mandates:

When a special prosecutor asserts preemptive prosecutorial jurisdiction under this subparagraph, *the office of the district attorney in a county of the first class shall suspend all investigations and proceedings regarding the matter and shall turn over to the special prosecutor all materials, files and other data relating to the matter.*

74 Pa.C.S. § 1786(4)(iv) (emphasis added). In this way, Act 40 prescribes both the special prosecutor’s and Appellant’s duties. Because Act 40 regulates the affairs of Philadelphia County and prescribes Appellant’s duties, Article IX, Section 13(b) is directly applicable, and, by its clear terms, exempts Act 40 from the prohibitions on local and special laws in Section 32.¹² Thus, we hold that Act 40 does not violate Article III, Section 32.

Moreover, and given that we must interpret our Constitution as an integrated whole, we find that this conclusion is buttressed by the later-enacted provisions in Article III, Section 20 and Article IX, Section 2. Section 20 provides that legislation relating to each class of municipality “shall be deemed general legislation within the meaning of this Constitution.” Pa. Const. art. III, § 20. This provision enshrines the General Assembly’s power to classify municipalities based upon population size and regulate them accordingly. See *Haverford Township*, 28 A.2d at 790 (the “purpose and effect” of [Article III, Section 20] is to “broaden[] the latitude allowed in classification, and to eliminate the

¹² As we find Act 40 both regulates the affairs of Philadelphia County as well as prescribes Appellant’s duties, we need not address Appellant’s contention that a statute must impact both of these areas to trigger Section 13’s exception to Section 32’s prohibition against local and special laws.

continuing controversy about such matters as the subjects on which classification by population was appropriate”). Moreover, Article IX, Section 2 expands the right to adopt home rule governance, but provides that the powers of home rule municipalities are limited by their home rule charter, the Pennsylvania Constitution, and the legislature: “[a] municipality which has a home rule charter may exercise any power or perform any function *not denied by this Constitution, by its home rule charter or by the General Assembly at any time.*” Pa. Const. art. IX, § 2 (emphasis added). Thus, Section 2 makes clear that a municipality’s power through home rule sovereignty is subject to limitations imposed by the General Assembly. *City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1*, 161 A.3d 160, 170 (Pa. 2017).

Here, because Act 40 is uniform in its treatment of all counties of the same class – albeit Philadelphia is the only first-class county – it is, by definition, general and not local. Moreover, as provided in Article IX, Section 2, the powers of a municipality governed by home rule charters are subservient to limitations imposed by the legislature. *Id.* Accordingly, Act 40 does not run afoul of Article III, Section 32’s prohibition on local and special laws, and this conclusion is supported by the subsequently-enacted provisions in Article III, Section 20 and Article IX, Section 2. In sum, applying the above constellation of unambiguous constitutional provisions, and considering them together as we must, we conclude that Appellant has failed to establish that Act 40 violates the Constitution’s prohibition against local or special legislation.¹³

¹³ It is for these same reasons that Appellant’s arguments that Act 40 impermissibly creates a closed class of one fails. Given the legislature’s ability to regulate Philadelphia and its officers without violating the prohibition on local and special laws, we reject Appellant’s contention that it matters that Philadelphia is the only county of the first class. *Accord Haverford Township*, 28 A.2d at 790 (the “purpose and effect” of [Article III, Section 20] is to “broaden[] the latitude allowed in classification, and to eliminate the continuing controversy about such matters as the subjects on which classification by population was appropriate *and the creation of classes containing only one member.*” (emphasis added)).

While we find that Appellant has not demonstrated that Act 40 constitutes a local or special law in violation of Section 32, we nevertheless address Appellant's additional claim that Act 40 violates equal protection principles that, he contends, are incorporated in Article III, Section 32. We conclude 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.

Generally, pursuant to Act 40, the special prosecutor and the district attorneys in the counties served by SEPTA share concurrent jurisdiction, and these district attorneys have the same powers and authority. With respect to Philadelphia County, however, as noted above, when the special prosecutor assumes jurisdiction over a prosecution, the Philadelphia District Attorney must suspend his investigations and proceedings and turn over to the special prosecutor all materials relating to the matter.

The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly. *Commonwealth v. Albert*, 758 A.2d 1149, 1151 (Pa. 2000); *Laudenberger v. Port Authority of Allegheny County*, 436 A.2d 147 (Pa. 1981). However, these protections do not require that all persons under all circumstances enjoy identical protection under the law, see *James v. SEPTA*, 477 A.2d 1302 (1984), nor do they prohibit the Commonwealth from classifying individuals for the purpose of receiving distinct treatment, *Albert*, 758 A.2d at 1151. However, a classification must rest upon some difference which justifies the classification. *Id.* Furthermore, the government is not prohibited from employing a legislative classification if the classification is "reasonable, not arbitrary, and rests upon a difference having a fair and substantial relation to the object of the legislation." *Commonwealth v. Parker White Metal Co.*, 515 A.2d 1358, 1365 (Pa. 1986).

A classification, though discriminatory, is not arbitrary or in violation of the equal protection clause if any state of facts reasonably can be conceived to sustain that classification. *Albert*, 758 A.2d at 1151-52. Indeed, in considering an equal protection challenge, a reviewing court is free to hypothesize reasons the legislature might have had for the classification. *Id.* at 1152. Moreover, different types of statutory classifications are to be weighed by different standards:

The types of classifications are: (1) classifications which implicate a “suspect” class or a fundamental right; (2) classifications implicating an “important” though not fundamental right or a “sensitive” classification; and (3) classifications which involve none of these. Should the statutory classification in question fall into the first category, the statute is strictly construed in light of a “compelling” governmental purpose; if the classification falls into the second category, a heightened standard of scrutiny is applied to an “important” governmental purpose; and if the statutory scheme falls into the third category, the statute is upheld if there is any rational basis for the classification.

Id. (citation and internal citations omitted).

As Appellant does not allege that the classification regarding the special prosecutor’s powers *vis-a-vis* the Philadelphia District Attorney is based upon a fundamental right or a suspect class, nor argue that the classification implicates an important or sensitive classification, we apply rational basis review. In applying the rational basis test, we have adopted a two-prong framework. First, we must determine whether the challenged legislation seeks to promote a legitimate state interest. If so, we must then consider whether the classification is rationally related to accomplishing that articulated state interest. *Id.* Again, under a rational basis analysis, “the government need not have articulated the purpose or rationale supporting its action; it is enough that some rationale ‘may conceivably . . . have been the purpose and policy of the relevant government decisionmaker.’” *Small v. Horn*, 722 A.2d 664, 672 (Pa. 1998).

Applying rational basis review, we have no hesitation in concluding that Act 40 serves a legitimate state interest: promoting public safety through the protection of SEPTA employees and riders by supporting the prosecution of crimes within SEPTA, and specifically, SEPTA-related crimes in Philadelphia. We believe that Act 40 reasonably serves that interest, as it authorizes appointment of a special prosecutor to prosecute certain crimes occurring in all counties served by SEPTA, and provides additional resources for those law enforcement activities. Furthermore, public safety concerns regarding increased SEPTA-related crime in Philadelphia, and the belief that such crimes were not being sufficiently prosecuted, renders Act 40's specific preemption of the Philadelphia District Attorney's jurisdiction in the sole discretion of the special prosecutor rationally related to addressing these concerns. Thus, we hold that Act 40 satisfies rational basis review.

C. Notice

Next, we address Appellant's contention that, even if Act 40 is an otherwise permissible local or special law, it is still unconstitutional as it was enacted without the notice required by Article III, Section 7. Article III, Section 7 provides that "[n]o local or special bill shall be passed unless notice . . . shall have been published in the locality . . . which notice shall be at least 30 days prior to the introduction into the General Assembly of such bill." Pa. Const. art. III, § 7. Furthermore, it requires that "the evidence of such notice having been published, shall be exhibited in the General Assembly, before such act shall be passed." *Id.* Appellant emphasizes that there is no dispute that the General Assembly failed to provide such notice. Furthermore, Appellant rejects the Commonwealth Court's conclusion that he waived this issue because it was first raised in his memorandum of law in support of his application for summary relief, suggesting that it was sufficient to preserve the issue. In addition, Appellant claims that SEPTA and

the Commonwealth had a full and fair opportunity to respond to this argument on the merits. Thus, Appellant submits that Act 40 is unconstitutional because the notice requirements of Article III, Section 7 were violated.

In response, the OAG maintains that this claim is waived, as Appellant failed to raise the argument in his petition for review or application for summary relief, but, rather, first raised his present Section 7 claim in his brief in support of his application for summary relief. Even if the claim is preserved, the OAG submits that Appellant failed to demonstrate a violation of Section 7's notice requirement, as that requirement pertains only to local or special bills, which Act 40 is not. Further, the OAG emphasizes that compliance with Section 7's notice requirement is presumed absent an affirmative showing of non-compliance by a challenger, OAG's Brief at 71 (citing *Perkins v. City of Philadelphia*, 27 A. 356, 362 (Pa. 1893)), and submits such a showing is absent in this matter.

We need not delve into the merits of Appellant's notice claim because we agree with the OAG that it is waived. When asserting constitutional challenges to a statute, including compliance with procedural enactment requirements, the burden is on the challenging party to preserve the issue for judicial review. Thus, it was incumbent upon Appellant to raise the issue below, and he failed to do so in his petition for review or in his application for summary relief. Rather, he raised this Article III, Section 7 challenge for the first time in his memorandum of law in support of his application for summary relief. *Krasner*, 319 A.3d at 83 n.28. Accordingly, we agree with the Commonwealth Court that Appellant failed to properly preserve this issue. *Id.*; Pa.R.A.P. 302. Moreover, we note that when a law passes both houses of the General Assembly and is signed into law by the Governor, compliance with Article III, Section 7 is presumed. *Perkins*, 27 A. at 362. When Appellant and the OAG stipulated in the Commonwealth Court that there were no

factual disputes between the parties, but only questions of law, Appellant precluded the development of a factual record that could have addressed the notice question. Thus, for this additional reason, the notice issue is not properly before our Court on appeal.

D. Appellant's Standing To Raise Defendants' Constitutional Claims

Finally, we address whether Appellant has standing to challenge Act 40 as unconstitutional under the theory that it deprives criminal defendants of their right to raise arguments in their defense and denies courts the power to consider challenges by criminal defendants to the authority of the Act 40 special prosecutor. We conclude he does not.

Subsection (a)(5) of Act 40 provides that “[n]o person charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.” 74 Pa.C.S. § 1786(a)(5).

Appellant argues that this provision is unconstitutional as it deprives criminal defendants of the right to raise arguments in their defense, in violation of Article I, Section 9 of the Pennsylvania Constitution, which provides that “[i]n all criminal prosecutions the accused hath a right to be heard by himself and his counsel.” Pa. Const. art. I, § 9. Appellant notes that the Commonwealth Court did not address the merits of Appellant's constitutional challenge to Act 40, finding that he lacked standing to raise it. Appellant asserts this was error, contending that, under federal principles of third-party standing, he has standing to vindicate the right of third persons if: “(1) the relationship of the litigant to the third party is such that enjoyment of the right by the third party is inextricably bound up with the activity the litigant seeks to pursue; and (2) there is some obstacle to the third party's assertion of his own right.” Appellant's Brief at 57 (quoting *Philadelphia Facilities*

Management Corporation v. Biester, 431 A.2d 1123, 1131-32 (Pa. Cmwlth. 1981)). Appellant claims that denying a criminal defendant's standing to challenge the special prosecutor is "inextricably bound up" with Appellant's prosecution of SEPTA-related crimes. Specifically, Appellant contends that preventing a criminal defendant from challenging the special prosecutor and limiting judicial review will "vastly complicate the prosecution of SEPTA crimes in Philadelphia." *Id.* at 58. Appellant claims that every prosecution the special prosecutor engages in would be open to challenge by a criminal defendant, "leading to years of litigation in state and federal courts, and possibly post-conviction litigation." *Id.* According to Appellant, Act 40 also "strips courts of jurisdiction to hear such challenges." *Id.* While Appellant acknowledges that criminal defendants may still attempt to bring such challenges in a given prosecution, he contends these limitations nevertheless present an obstacle to doing so.

The OAG counters that Appellant lacks standing to assert the constitutional rights of the criminal defendants that they are prosecuting. Specifically, the OAG asserts that Section 1786(a)(5)'s prohibitions are not an injury to Appellant, but only to the criminal defendants they are "supposed to be prosecuting." OAG's Brief at 64. Related thereto, the OAG rejects Appellant's claim that Section 1786(a)(5) will "complicate" Appellant's prosecution of SEPTA-related crimes against criminal defendants in Philadelphia, as Act 40 is not implicated when Appellant is prosecuting an offense. *Id.* at 65. Moreover, the OAG refutes Appellant's federal third-party standing claim, first, on the foundational basis that our Court has determined that the federal test has no application under the Pennsylvania Constitution. *Id.* (citing *Allegheny Reproductive Health Center*, 309 A.3d at 839 ("The lower court's application of the federal third-party standing doctrine cannot be reconciled with our three-prong approach that solely asks whether the plaintiff is aggrieved.")). To this end, the OAG adds that, recently, the United States Supreme Court

explained that the federal constitution's injury-in-fact requirement prevents courts from becoming a "vehicle for the vindication of the value interests of concerned bystanders." *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 382 (2024). The OAG emphasizes that, in applying this principle, the high Court curtailed a plaintiff's right to challenge a law's "regulation of others." *Id.* at 385 (emphasis original). In any event, the OAG submits that, even if Appellant had standing in this regard, his claim would be without merit as criminal defendants have no constitutional right to choose the identity of the prosecuting body or attorney, and, even if such provision were deemed to be unconstitutional, it could be severed from Act 40.

SEPTA adds that Appellant has not been aggrieved by this provision of Act 40 and, thus, he fails to satisfy traditional standing requirements. Moreover, as to third-party standing under federal law, SEPTA maintains that Appellant failed to meet the two elements necessary for establishing such standing: first, the relationship of Appellant to the criminal defendants whose rights he seeks to assert are not inextricably bound up with Appellant's interests; and, second, criminal defendants have the ability to assert constitutional rights under Article I, Section 9 and may argue that Act 40 unconstitutionally deprives them of their right to raise an argument in their defense. Indeed, SEPTA avers that, just because Act 40 states that criminal defendants lack standing to challenge a prosecutor's authority does not mean a constitutional challenge to that statutory provision by a defendant will be dismissed. Thus, according to SEPTA, as Act 40 does not constitute an obstacle to future criminal defendants challenging the constitutionality of Act 40, Appellant lacks standing to challenge to Section 1786(a)(5) on their behalf.

As we explained in *Allegheny Reproductive Health Center*, although it is constitutionally compelled, "our standing doctrine . . . has a long venerable history as a useful tool in regulating litigation." 309 A.3d at 832 (quoting *In re Hickson*, 821 A.2d 1238,

1243 n.5 (Pa. 2003)). Indeed, Pennsylvania's standing doctrine is judicially created, and, thus, is distinct from its federal counterpart, which is derived from Article III of the United States Constitution. *Johnson v. American Standard*, 8 A.3d 318, 330 (Pa. 2010); *Fumo v. City of Philadelphia*, 972 A.2d 487, 500 n.5 (Pa. 2009).

Standing is a matter of justiciability, which implicates our Court's ability to adjudicate a matter. *Firearm Owners Against Crime v. Papenfus*, 261 A.3d 467, 481 (Pa. 2021). Therefore, prior to judicial resolution of a dispute, a plaintiff must, as a threshold matter, establish that he has standing to bring the action. *Bergdoll v. Kane*, 731 A.2d 1261, 1268 (Pa. 1999). The standing doctrine embodies the idea that a person must be adversely impacted by the matter he seeks to challenge. See *William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975) (plurality). The standing requirement aims to ensure courts resolve real and concrete issues, and avoid advisory or abstract opinions. *Markham*, 136 A.3d at 140.

A person who is not adversely impacted by the matter he or she is litigating does not possess standing to initiate the court's dispute resolution machinery. *William Penn Parking Garage*, 346 A.2d at 280-81. Unless the plaintiff has a legally sufficient interest in a matter – that is, they are “aggrieved” – courts cannot be assured that there is a legitimate controversy. *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659-60 (Pa. 2005); see also *In re Hickson*, 821 A.2d at 1243; *City of Philadelphia*, 838 A.2d at 577.

To be aggrieved, a plaintiff must have a substantial, direct, and immediate interest in the outcome of the litigation. *Id.* at 660. A plaintiff's interest is substantial if it surpasses the interests of all citizens in having others comply with the law. *William Penn Parking Garage*, 346 A.2d at 282. A plaintiff's interest is direct when the asserted violation shares a causal connection with the alleged harm. *Firearm Owners Against Crime*, 261 A.3d at

473. Finally, a plaintiff's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative. *Pennsylvania State Education Association v. Public School Employees' Retirement Board*, 311 A.3d 1017, 1029 (Pa. 2024).

We reject Appellant's contention that he is aggrieved such that he may vindicate the rights of future criminal defendants under Article I, Section 9. The allegation that Act 40 violates future criminal defendants' right to raise arguments in their defense is not an injury to Appellant, but only to the criminal defendants that are prosecuted – not by him, but by the special prosecutor. Indeed, Act 40 would not be implicated when *Appellant* is prosecuting an offense. Thus, it is unclear how Act 40 impacts Appellant in any way. Accordingly, we find that Appellant has not been aggrieved.

Moreover, generally, a plaintiff lacks standing to vindicate the rights of a third party. *Singleton v. Wulff*, 428 U.S. 106 (1976). This is for good reason, as courts are wary about “adjudicat[ing] . . . rights unnecessarily, [because] it may be that in fact the holders of those rights either do not wish to assert them [] or will be able to enjoy them regardless of whether the in-court litigant is successful or not.” *Id.* at 113-14 (citation omitted). The *Singleton* Court, however, recognized an exception to this general rule, upon which Appellant relies, proving that third-party standing is permitted where: (1) the relationship between the plaintiff and the person whose right he seeks to assert are inextricably bound up with the activity that the plaintiff is pursuing; and (2) the third party has no ability to assert his or her own right. *Id.* at 115-16.

Importantly, criminal defendants may assert the rights which serve as the basis for Appellant's Article I, Section 9 challenge in this matter. Indeed, as explained by SEPTA, criminal defendants *are* able to bring a constitutional challenge to Section 1786 for an alleged violation of Article I, § 9. That is, simply because Act 40, by its terms, asserts that

criminal defendants lack standing to do so, does not mean that a *constitutional* challenge to such legislation will be dismissed by the courts.

Accordingly, we hold that Appellant does not have standing to vindicate the constitutional rights of future criminal defendants in this matter.

V. Conclusion

Accordingly, we hold that Appellant has failed to establish that Act 40 is violative of the Pennsylvania Constitution, and, thus, affirm the order of the Commonwealth Court.

Order affirmed.¹⁴

Justices Donohue, Dougherty, Mundy, Brobson and McCaffery join the opinion.

Justice Wecht files a concurring opinion in which Justice McCaffery joins.

¹⁴ The OAG's Application to File a Post-Submission Communication is denied.