
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 450 MD 2022

THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE
and LARRY KRASNER, in his official capacity
as the District Attorney of Philadelphia,
Petitioners,

v.

THE SELECT COMMITTEE ON RESTORING LAW AND
ORDER; REPRESENTATIVE JOHN LAWRENCE, Chairman of the
Select Committee; REPRESENTATIVE AMEN BROWN, Member
of the Select Committee; REPRESENTATIVE DANILO BURGOS,
Member of the Select Committee; REPRESENTATIVE WENDI
THOMAS, Member of the Select Committee; REPRESENTATIVE
TORREN ECKER, Member of the Select Committee,
Respondents.

**PRELIMINARY OBJECTIONS OF RESPONDENTS
MEMBERS OF THE SELECT COMMITTEE**

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Counsel for Respondents
Representative Amen Brown, Member of the Select Committee,
Representative Danilo Burgos, Member of the Select Committee,
Representative Wendi Thomas, Member of the Select Committee, and
Representative Torren Ecker, Member of the Select Committee

NOTICE TO PLEAD

TO PETITIONERS:

You are hereby notified, under Pennsylvania Rule of Appellate Procedure 1516, to file a written response to the enclosed *Preliminary Objections of Respondents Members of the Select Committee* within thirty (30) days from service hereof or a judgment may be entered against you.

/s/ Karl S. Myers

Karl S. Myers

Respondents Members of the Select Committee (Representatives Amen Brown, Danilo Burgos, Wendi Thomas, and Torren Ecker) preliminarily object to the petition for review under Pennsylvania Rules of Appellate Procedure 1516 and 1517 for these reasons:

1. Petitioner commenced this action by petitioning for review on September 2, 2022. A copy of petitioner’s pleading is *Exhibit 1*.¹
2. The petition arises from an August 9, 2022 Subpoena issued by the Chairman of the Select Committee on Restoring Law and Order, on behalf of the Select Committee, as authorized by Resolution 216, which was adopted by the House of Representatives on June 29, 2022.² (Pet. ¶2.)
3. Petitioners assert that: (a) the Subpoena seeks documents protected from disclosure; (b) the Subpoena and Select Committee investigation violate the separation of powers; (c) the Subpoena and Select Committee investigation lack a

¹ When evaluating preliminary objections, the Court accepts a petition’s well-pleaded allegations of material fact, as well as reasonable inferences it can deduce from them, but “need not accept unwarranted inferences, conclusions of law, argumentative allegations, or expressions of opinion.” *Feliciano v. Pa. Dep’t of Corr.*, 250 A.3d 1269, 1274 (Pa. Commw. 2021).

² A copy of the Resolution is *Exhibit A* to the petition.

valid legislative purpose; (d) the House may not impeach the District Attorney of Philadelphia; and (e) his impeachment would violate voting rights laws. (Pet. ¶9.)

4. Petitioners seek these judicial declarations and injunctions: to prevent disclosures in response to the Subpoena based on grand jury secrecy and privileges (Count I); to prevent disclosures in response to the Subpoena based on separation of powers (Count II); that the House may not impeach the District Attorney (Count III); that the Subpoena and Select Committee investigation lack a valid legislative purpose (Count IV); and that impeachment of the District Attorney would violate voting rights laws (Count V). (Pet. ¶¶51-105.)

5. For relief, the petition asks the Court to: (a) declare the Select Committee's Subpoena invalid and unenforceable; (b) quash the Select Committee's Subpoena; (c) enjoin enforcement of the Select Committee's Subpoena and its issuance of other subpoenas; (d) declare the Select Committee's investigation and work improper; and (e) enjoin any Select Committee investigation and work or other investigation or work authorized by House Resolution 216. (Pet., pp. 38-40.)

6. The petition names as respondents the Select Committee and the Chairman of the Select Committee.

7. The petition also names as respondents the four individual Members of the Select Committee.

8. As detailed below, the petition for review should be dismissed, in whole or in part, because: (a) the Members of the Select Committee are improperly named as respondents and thus should be dismissed as parties; (b) constitutional Speech or Debate immunity and other immunities protect the Members of the Select Committee from this suit; and (c) petitioners' claims in Counts III and V are not ripe.³

**A. Preliminary objection for improper parties –
Pa.R.Civ.P. 1028(a)(2), (4), (5).**

9. The allegations above are incorporated here as if set forth at length.

10. The petition should be dismissed as to the Members of the Select Committee because they have been improperly named as respondents in this action. *See* Pa.R.Civ.P. 1028(a)(2), (4), (5); *Porter v. Commonwealth*, 2020 WL 4342721, *3 (Pa. Commw. 2020).

11. A government actor is a proper respondent in a lawsuit only where that actor has a particular interest that would be affected by the outcome beyond

³ The Members of the Select Committee join in and adopt by reference the other respondents' preliminary objections as appropriate.

the actor's customary official duties. *See Holbrook v. Commonwealth*, 2021 WL 129711, *3-*4 (Pa. Commw. 2021).

12. A government actor is an improper respondent where the actor lacks relevant legal authority, the petitioner does not assert a basis for relief against the actor, or the petitioner does not ask the Court to order relief against the actor. *See id.* at *3-*4; *Porter*, 2020 WL 4342721, at *3-*4; *Unified Sportsmen of Pa. v. Pa. Game Comm'n*, 903 A.2d 117, 129 (Pa. Commw. 2006); *see also Stedman v. Lancaster Cnty. Bd. of Comm'rs*, 221 A.3d 747, 757 (Pa. Commw. 2019).

13. Here, House Resolution 216 empowers only the Select Committee and its Chair. It does not provide authority to the individual Members of the Select Committee apart from their membership on the Select Committee. (Pet., Ex. A.)

14. None of the claims in the petition seek relief based on actions by any of the individual Members of the Select Committee aside from the bare fact of their membership on the Committee. In fact, the petition barely even references the Members. All claims are instead rooted in steps taken by the Select Committee itself or the Committee's Chairman. (Pet. ¶¶2-3, 42, 47, 51-105.)

15. The petition for review does not seek relief against the Members of the Select Committee individually. It instead requests that relief be ordered against the Select Committee and the Committee's Chairman.

16. The petition for review thus fails to state a claim against the Members of the Select Committee for which relief may be granted.

17. The Members of the Select Committee are not necessary parties to this case. If petitioners are found entitled to any relief, the Court is able to provide that relief without participation of the Members of the Select Committee as parties.

18. For at least these reasons, the Members of the Select Committee are improperly named as respondents here, and so the Court should dismiss the Members of the Select Committee from this action.

WHEREFORE, respondents Members of the Select Committee request that the Court sustain this preliminary objection and dismiss the petition for review as for them and dismiss them as parties to this action.

**B. Preliminary objection for immunity –
Pa.R.Civ.P. 1028(a)(1), (4), (5).**

19. The allegations above are incorporated here as if set forth at length.

20. The petition should be dismissed as to the Members of the Select Committee because they are protected by Speech or Debate/legislative immunity and other immunities. *See* Pa.R.Civ.P. 1028(a)(1), (4), (5); *Pilchesky v. Rendell*, 932 A.2d 287, 289-90 (Pa. Commw. 2007).

21. The Pennsylvania Constitution’s Speech or Debate Clause declares that legislators “shall not be questioned in any other Place” “for any Speech or Debate in either House.” PA. CONST. art. II, §15.

22. The Pennsylvania Supreme Court has declared that this command “must be interpreted broadly in order to protect Legislators from judicial interference with their legitimate legislative activities.” *Consumers Ed. & Protective Ass’n v. Nolan*, 368 A.2d 675, 680-81 (Pa. 1977) (citing *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491 (1975)).

23. This core constitutional privilege provides legislators with sweeping and absolute immunity from liability for their legislative work. *See Bogan v. Scott Harris*, 523 U.S. 44, 48-49 (1998).

24. Courts reject any discussion of motive when considering legislative immunity. The inquiry is focused solely on “the nature of the act, rather than on the motive or intent of the official performing it,” as it is “not consonant with our scheme of government for a court to inquire into the motives of legislators.” *Id.* at 54-55 (quoting *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951)).

25. Legislative immunity applies to resolutions passed by the Pennsylvania House of Representatives. *See Freedom from Religion Found., Inc. v. Saccone*, 894 F. Supp. 2d 573, 583 (M.D. Pa. 2012).

26. Speech or Debate privilege also applies to the actions, conduct and statements of Members in connection with a legislative committee and its hearings, investigations, and other work. *See Nolan*, 368 A.2d at 680-81; *Eastland*, 421 U.S. at 507; *Doe v. McMillan*, 412 U.S. 306, 311-12 (1973); *Tenney*, 341 U.S. at 372, 377, 379; *Youngblood v. DeWeese*, 352 F.3d 836, 840 (3d Cir. 2003); *In re Grand Jury Subpoenas*, 571 F.3d 1200, 1202-03 (D.C. Cir. 2009); *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 423 (D.C. Cir. 1995); *Porteous v. Baron*, 729 F. Supp. 2d 158 (D.D.C. 2010).

27. “It has long been held that investigation by a [legislator] regarding issues over which legislation may be had is legitimate legislative activity and, therefore, protected by the Speech or Debate Clause.” *Rusack v. Harsha*, 470 F. Supp. 285, 296 (M.D. Pa. 1978).

28. Speech or Debate privilege also applies to public statements made by Pennsylvania House Members in connection with their legislative roles. *See Firetree, Ltd. v. Fairchild*, 920 A.2d 913 (Pa. Commw. 2007).

29. Pennsylvania House Members also enjoy other, related immunities that apply here, including First Amendment protections, high public official immunity, and official immunity. *See, e.g., id.*; *Doe v. Franklin Cnty.*, 174 A.3d 593 (Pa. 2017).

30. For at least these reasons, the Members of the Select Committee are immune from this action, and so the Court should dismiss the petition as for the Members of the Select Committee, with prejudice.

WHEREFORE, respondents Members of the Select Committee request that the Court sustain this preliminary objection and dismiss the petition for review as for the Members of the Select Committee, with prejudice.

**C. Preliminary objection for lack of ripeness –
Pa.R.Civ.P. 1028(a)(1), (4), (5).**

31. The allegations above are incorporated here as if set forth at length.

32. Counts III and V of the petition for review should be dismissed because those claims are not ripe. *See* Pa.R.Civ.P. 1028(a)(1), (4), (5).

33. The ripeness doctrine bars judicial review where a claim is hypothetical, uncertain, and contingent upon future events. *See City Council of Phila. v. Commonwealth*, 806 A.2d 975, 978-79 (Pa. Commw. 2002).

34. “A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur ... or as a medium for the rendition of an advisory opinion which may prove to be purely academic.” *Id.* (quoting *Gulnac v. South Butler Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991)).

35. Consistent with the rule that courts must refrain from unnecessary constitutional rulings, our courts will postpone the resolution of a constitutional issue until circumstances arise to make the issue concrete and focused, rather than abstract and academic. *Id.*; see *In re Gross*, 382 A.2d 116, 120 (Pa. 1978); *Harris v. Rendell*, 982 A.2d 1030, 1035-36 (Pa. Commw. 2009).

36. In Counts III and V of the petition for review, petitioners ask the Court to declare that the House may not impeach the District Attorney of Philadelphia and that his impeachment would violate voting rights laws. (Pet. ¶¶76-87, 97-105.)

37. As the petition conveys, however, the Select Committee has not completed its investigation, made any findings, or issued any report. The Committee has not made an impeachment recommendation. And the House of Representatives has neither considered nor adopted any articles of impeachment. (Pet. ¶¶33-50.)

38. Given the many contingent future events here, Counts III and V are hypothetical and uncertain, and thus unripe. See *Carter v. Degraffenreid*, 2021 WL 4735059, *6-*7 (Pa. Commw. 2021); *Larsen v. Senate of Pa.*, 646 A.2d 694, 700 (Pa. Commw. 1994); *Hastings v. U.S. Senate*, 887 F.2d 332 (D.C. Cir. 1989).

39. For at least these reasons, the Counts III and V should be dismissed for lack of ripeness.

WHEREFORE, respondents Members of the Select Committee request that the Court sustain this preliminary objection and dismiss Counts III and V of the petition for review for lack of ripeness.

Respectfully submitted,

/s/ Karl S. Myers

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Counsel for Respondents

Representative Amen Brown,

Member of the Select Committee,

Representative Danilo Burgos,

Member of the Select Committee,

Representative Wendi Thomas,

Member of the Select Committee, and

Representative Torren Ecker,

Member of the Select Committee

Dated: October 6, 2022

1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE PHILADELPHIA DISTRICT
ATTORNEY'S OFFICE and
LARRY KRASNER, in his official capacity
as the District Attorney of Philadelphia,

Petitioners,

v.

THE SELECT COMMITTEE ON
RESTORING LAW AND ORDER
("SELECT COMMITTEE");
REPRESENTATIVE JOHN LAWRENCE,
Chairman of the Select Committee;
REPRESENTATIVE AMEN BROWN,
Member of the Select Committee;
REPRESENTATIVE DANILO BURGOS,
Member of the Select Committee;
REPRESENTATIVE WENDI THOMAS,
Member of the Select Committee;
REPRESENTATIVE TORREN ECKER,
Member of the Select Committee,

Respondents.

Docket No. _____ MD 2022

**PETITION FOR REVIEW
IN THE NATURE OF A
COMPLAINT IN EQUITY
AND FOR DECLARATORY
JUDGMENT**

Filed on behalf of Petitioners:
The Philadelphia District Attorney's
Office and Larry Krasner, in his
official capacity as the District
Attorney of Philadelphia

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Andrew M. Erdlen (I.D. No. 320260)
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practice law in Pennsylvania*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE PHILADELPHIA DISTRICT
ATTORNEY’S OFFICE and
LARRY KRASNER, in his official capacity
as the District Attorney of Philadelphia,

Docket No. _____ MD 2022

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Member of the Select Committee;
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Member of the Select Committee;
REPRESENTATIVE WENDI THOMAS,
Member of the Select Committee;
REPRESENTATIVE TORREN ECKER,
Member of the Select Committee,

Respondents.

NOTICE TO PLEAD

TO: The Select Committee on Restoring Law and Order (the “Select Committee”);
Representative John Lawrence, Chairman of the Select Committee;
Representative Amen Brown, Member of the Select Committee;
Representative Danilo Burgos, Member of the Select Committee;
Representative Wendi Thomas, Member of the Select Committee;
Representative Torren Ecker, Member of the Select Committee;

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

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER



Dated: September 2, 2022

By: _____

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*Counsel for Petitioners working in
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NOTICE TO DEFEND

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

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

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

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

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

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE PHILADELPHIA DISTRICT
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LARRY KRASNER, in his official capacity
as the District Attorney of Philadelphia,

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("SELECT COMMITTEE");
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Chairman of the Select Committee;
REPRESENTATIVE AMEN BROWN,
Member of the Select Committee;
REPRESENTATIVE DANILO BURGOS,
Member of the Select Committee;
REPRESENTATIVE WENDI THOMAS,
Member of the Select Committee;
REPRESENTATIVE TORREN ECKER,
Member of the Select Committee,

Respondents.

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT
IN EQUITY AND FOR DECLARATORY JUDGMENT**

INTRODUCTION

1. This Petition for Review concerns an improper effort by the dominant party in the House of Representatives to cast aside legal rules and political norms by investigating and seeking the impeachment of the twice-elected district attorney of Philadelphia, petitioner Larry Krasner. It is undisputed that District Attorney

Krasner has not committed an impeachable offense. House Republicans simply disagree with his policies, and they do not respect the choice made by the Philadelphia voters who elected him or foundational principles of government.

2. More specifically, this Petition for Review arises out of the service of a Subpoena Duces Tecum (“Subpoena”) to petitioner the Philadelphia District Attorney’s Office (“the DAO”) by the chair of a House investigating committee named the “Select Committee on Restoring Law and Order” (“Select Committee”). The Select Committee was created by the House’s adoption of House Resolution No. 216, Printer’s No. 3313 (“HR 216”), nearly along party lines, on June 29, 2022.

3. The Select Committee’s goal is to investigate and recommend the impeachment of District Attorney Krasner. That is not a matter of debate. HR 216 was sponsored and introduced by House members whose stated goal is the impeachment and removal from office of District Attorney Krasner. As they explained in a magazine article titled “Philadelphia District Attorney Larry Krasner Must Go”: “Pennsylvania has no recall provision” so “we are initiating impeachment proceedings against him.”¹ To that end, HR 216 expressly authorizes

¹ Josh Kail, Torren Ecker, Tim O’Neal and Marina White, *Philadelphia District Attorney Larry Krasner Must Go*, National Review, (Jun. 23, 2022), <https://www.nationalreview.com/2022/06/philadelphia-district-attorney-larry-krasner-must-go/> (last visited Sept. 1, 2022).

the Select Committee to conduct an investigation and make “determinations” regarding the “performance” of “the district attorney” “in the City of Philadelphia” (that is, Krasner) and to make “recommendations” for his “removal from office or other appropriate discipline, including impeachment.”

4. The pretext for this investigation and potential impeachment of District Attorney Krasner is that he is “soft on crime.” Even if this were true (and it is not), this effort by politicians from outside of Philadelphia to undermine the will of voters from inside Philadelphia is improper and should not be countenanced.

5. Truth be told, the DAO under District Attorney Krasner has been very effective in prosecuting crime. For example, the DAO’s conviction rate in homicide cases at the trial level since January 2021 is just shy of 90%, which compares favorably to that of his predecessors. And the average prison sentence in illegal gun possession cases in Philadelphia is actually *higher* than that of other counties in the Commonwealth, according to a recent report by the Pennsylvania Commission on Sentencing.² While crime rates are up throughout the nation, many counties in the Commonwealth – including the counties represented by the

² Pennsylvania Commission on Sentencing, Report to the House of Representatives, *A Comprehensive Study of Violations of Pennsylvania’s Uniform Firearms Act*, HR 111, Session of 2021, at 53 (June, 2022).

sponsors of HR 216 – have experienced increases in the homicide rate far greater than that of Philadelphia.³ Yet, every Republican House member voted against proposed amendments to HR 216 that would have extended the Select Committee’s investigation beyond District Attorney Krasner and the city of Philadelphia. And the House has neglected to investigate, much less to impeach, those district attorneys who, unlike District Attorney Krasner, *have* committed impeachable acts, including sexual assault and obstruction of justice.⁴

6. What is more, despite accusations that District Attorney Krasner is “soft on crime,” the Select Committee has targeted District Attorney Krasner because of his office’s ongoing prosecution of a former Philadelphia police officer who shot a Black man twice in the back. Specifically, the Subpoena seeks the DAO’s “complete case file” and the investigating grand jury records related to the investigation and prosecution of former officer Ryan Pownall. Former officer Pownall is charged with third degree murder in connection with the shooting death of David Jones. A trial is scheduled for this fall. This effort to investigate the

³ According to Pennsylvania State Police data, the murder rates in the counties represented by the sponsors of HR 216 increased significantly from 2019 to 2021, including an 800% increase in Washington County (represented by Rep. O’Neal), a 300% increase in Adams County (represented by Rep. Ecker), and a 250% increase in Beaver County (represented by Rep. Kail). These increases dwarf the 58% increase in Philadelphia County during that same period. *See Cfense Trends Comparison Report*, CRIME IN PENNSYLVANIA ONLINE, <https://www.ucr.pa.gov/PAUCRSPUBLIC/SRSReport/CrimesIndex>, (last visited Sept. 1, 2022).

⁴ A number of district attorneys in the Commonwealth, including Jeffrey Thomas, Miles Karson, Chad Salzman, Seth Williams, and William Higgins, have been charged with crimes while in office; none faced investigative committees or impeachment proceedings.

DAO's handling of a pending (high profile) murder case, especially so close to trial, is improper. It also shows that the Select Committee's real grievance is not that District Attorney Krasner *is* "soft on crime" but that he is *not* "soft on crime" when it comes to prosecuting police officers who commit violent crimes.

7. To make matters worse, in his zeal to investigate District Attorney Krasner in connection with his office's handling of the *Pownall* case, the Chair of the so-called "Select Committee on Restoring *Law and Order*" has served a subpoena that calls on the DAO to *break the law* by producing secret investigating grand jury records that are protected, by law, from disclosure. As the Select Committee and most members of the public know, investigating grand jury records are required to be kept secret, and disclosure of such records can be a crime.

8. The Subpoena also seeks the production of the DAO's "complete case file" in the *Pownall* case as well as the DAO's prosecution "positions," "policies," and "procedures," even though these records are protected from disclosure by long-standing legal privileges. These privileges serve important governmental and litigation goals, yet the Select Committee seeks to invade these privileges, rummage through these documents, and potentially release them publicly as part of a "final report" that "shall be made available to the public." The Select Committee appears not to have considered the implications of its Subpoena. The DAO's

production and disclosure of the requested materials would be a jackpot for criminals and a disaster for everyone else.

9. Therein lies the ultimate irony in this investigation and Rep. Lawrence's Subpoena to the DAO: "The Select Committee on Restoring *Law and Order*" is engaged in an investigation that violates the law and legal principles at every turn. First, the Subpoena seeks documents that are protected by grand jury secrecy laws and long-standing legal privileges. Second, the Subpoena and the Select Committee's investigation violate the separation of powers doctrine by attempting to infringe on the power and function of the DAO. Third, the Subpoena and the Select Committee's investigation do not serve a valid legislative purpose because they do not seek information for the purpose of aiding members of legislative bodies in enacting proper legislation (the goal is, instead, simply to attack District Attorney Krasner). Fourth, the House lacks the authority to impeach District Attorney Krasner, because, under the Pennsylvania Constitution, (a) the District Attorney of Philadelphia is not a "civil officer"; and (b) District Attorney Krasner has not been accused of any impeachable offense. Finally, this impeachment effort, if allowed and ultimately successful in removing District Attorney Krasner from office, would violate the Constitutional rights of the Philadelphia citizens who elected him.

10. The DAO now files this Petition for Review, requesting that this Honorable Court quash the Subpoena, declare the Subpoena unenforceable, declare the Select Committee's investigation improper, and enjoin Rep. Lawrence and the other members of the Select Committee from conducting any investigation or performing any work authorized by HR 216 or on behalf of the Select Committee.

11. In sum, this Petition for Review is not about whether one agrees or disagrees with District Attorney Krasner's policies, effective as they are. Rather, it is about an improper and antidemocratic effort by House members to try to impeach and remove from office a duly-elected local executive official because they do not like his policies and they cannot defeat him at the ballot box. This cannot stand.

JURISDICTION

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

PARTIES

13. Petitioners are the Philadelphia District Attorney's Office (the "DAO") and Larry Krasner, in his official capacity as the District Attorney of Philadelphia and leader of the DAO.

14. Respondent The Select Committee on Restoring Law and Order (the "Select Committee") is a five-member committee of the Pennsylvania House of Representatives, established by H. Res. 2016.

15. Respondent Representative John Lawrence was elected to the Pennsylvania House of Representatives in 2010 to represent the 13th legislative district. He is the Chairman of the Select Committee.

16. Respondent Representative Amen Brown was elected to the Pennsylvania House of Representatives in 2020 to represent the 190th legislative district. He is a member of the Select Committee.

17. Respondent Representative Danilo Burgos was elected to the Pennsylvania House of Representatives in 2018 to represent the 197th legislative district. He is a member of the Select Committee.

18. Respondent Representative Wendi Thomas was elected to the Pennsylvania House of Representatives in 2018 to represent the 178th legislative district. She is a member of the Select Committee.

19. Respondent Representative Torren Ecker was elected to the Pennsylvania House of Representatives in 2018 to represent the 193rd legislative district. He is a member of the Select Committee.

STATEMENT OF FACTS

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

20. District Attorney Krasner was first elected district attorney of Philadelphia in 2017, winning the general election with more than 74% of votes after prevailing in a competitive Democratic primary election. He was then re-elected in 2021, this time winning the general election with more than 69% of votes after defeating a challenger in the primary election. Each time he ran on a reform platform and was elected (and re-elected) because of that platform.

21. Philadelphia is comprised primarily of people of color; approximately 44% are Black, 16% Latino, and 8% Asian. District Attorney Krasner is therefore the legitimate, constitutionally-elected district attorney of a majority minority city.

22. District Attorney Krasner is also the frequent target of Republican politicians in the Commonwealth, who attack him to rally their base and/or raise their profile in an election year merely because he pursues a reform agenda. Earlier this year, for example, State Senator Jake Corman tried (and failed) to obtain the Republican nomination for governor by calling for the impeachment of District Attorney Krasner on the (baseless) grounds that “crime” is the “result” of

his “policies.”⁵ Former United States Attorney William McSwain promised to “rid the city of Larry Krasner” in his unsuccessful campaign in the Republican primary for governor.⁶ And the winner of the Republican primary for the U.S. Senate, candidate Mehmet Oz, has publicly attacked District Attorney Krasner, even targeting Krasner in his own television campaign ads, while trailing the Democratic candidate in the polls.⁷

B. The Select Committee Was Created as Part of a Republican Effort to Impeach District Attorney Krasner for Political Gain.

23. On June 27, 2022, Representative Josh Kail (R) introduced HR 216. See Exhibit A, HR 216. Representative Kail issued a press release that same day, stating that the introduction of HR 216 is “part of the ongoing effort to impeach District Attorney Larry Krasner.”⁸

24. Just two weeks prior to the introduction of HR 216, Representative Kail, along with Representatives Torren Ecker and Tim O’Neal, convened a press

⁵ Letter from Pennsylvania State Senator Jake Corman, Office of the President Pro Tempore, to the Honorable Bryan Cutler, Jerry Benninghoff, and Rob Kauffman, regarding Impeachment of Philadelphia DA Larry Krasner at 1 (Jan. 18, 2022).

⁶ Tom Waring, *McSwain, in Mayfair, vows to oust Krasner*, Northeast Times, (Feb. 18, 2022), <https://northeasttimes.com/2022/02/18/mcswain-in-mayfair-vows-to-oust-krasner/> (last visited Sept. 1, 2022).

⁷ Dr. Mehmet Oz (@DrOz), TWITTER (July 15, 2022, 12:27 PM), <https://twitter.com/DrOz/status/1547981276153384964>.

⁸ Press Release, Pennsylvania State Representative Josh Kail, *As a Continuation of Krasner Impeachment Effort, Kail Announces Introduction of Resolution Creating Investigative Select Committee* (June 27, 2022), <https://www.repkill.com/News-Print/29978/Latest-News/As-a-Continuation-of-Krasner-Impeachment-Effort,-Kail-Announces-Introduction-of-Resolution-Creating-Investigative-Select-Committee> (last visited Sept. 1, 2022).

conference to announce that they “are starting the process of impeachment of Philadelphia Larry Krasner.”⁹

25. On the same day as their press conference, Representatives Kail, Ecker, and O’Neal sent an e-mail to all House members, titled, “Impeaching Philadelphia District Attorney Larry Krasner.”¹⁰ In it, they blame District Attorney Krasner for violent crime in Philadelphia and explicitly seek “support for Articles of Impeachment we plan to file against Philadelphia District Attorney Larry Krasner in the near future.”¹¹ They also cite the recent recall of District Attorney Chesa Boudin in San Francisco before declaring: “It is incumbent upon us to stop District Attorney Larry Krasner.”¹²

26. At their June 13, 2022 press conference and also in their June 13, 2022 e-mail, Representatives Kail, Ecker, and O’Neal announced their creation of a website, StopKrasner.com, hosted by the House Republican Caucus.¹³ The

⁹ Press Release, Pennsylvania House Republican Caucus, *House Republicans Start Impeachment Process of Philadelphia District Attorney Larry Krasner*, (June 13, 2022) <https://www.pahousegop.com/News/28905/Latest-News/House-Republicans-Start-Impeachment-Process-of-Philadelphia-District-Attorney-Larry-Krasner> (last visited Sept. 1, 2022).

¹⁰ Email from Pennsylvania State Representatives Joshua D. Kail, Torren C. Ecker and Timothy J. O’Neal, to All House members, Regarding Impeaching Philadelphia District Attorney Larry Krasner (June 13, 2022, 10:31 AM), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=37457> (last visited Sept. 1, 2022).

¹¹ *Id.*

¹² *Id.*

¹³ Press Release, Pennsylvania House Republican Caucus, *House Republicans Start Impeachment Process of Philadelphia District Attorney Larry Krasner*, (June 13, 2022).

website asks victims of crime to share “stor[ies]” critical of District Attorney Krasner’s “policies.” It also states their intention to impeach District Attorney Krasner.¹⁴

27. On June 23, 2022, Representatives Kail, Ecker, O’Neal, and Martina White wrote an op-ed in the conservative *National Review*, titled “Philadelphia District Attorney Larry Krasner Must Go.”¹⁵ The article begins by attacking “Soros-funded – and so-called progressive – district attorneys” throughout the country and then criticizes District Attorney Krasner for his “soft-on-crime position.”¹⁶ It concludes by stating that since “Pennsylvania has no recall provision,” “we are initiating impeachment proceedings against [District Attorney Krasner].”¹⁷

C. It Is Undisputed that District Attorney Krasner Has Not Committed an Impeachable Offense.

28. The effort to investigate and try to impeach District Attorney Krasner is not premised on any allegation that he has committed an impeachable offense.

¹⁴ StopKrasner.com, <https://www.pahousegop.com/stopkrasner> (last visited Sept. 1, 2022).

¹⁵ Josh Kail, Torren Ecker, Tim O’Neal and Marina White, *Philadelphia District Attorney Larry Krasner Must Go*, *National Review*, (Jun. 23, 2022), <https://www.nationalreview.com/2022/06/philadelphia-district-attorney-larry-krasner-must-go/> (last visited Sept. 1, 2022).

¹⁶ *Id.*

¹⁷ *Id.*

29. District Attorney Krasner has not committed any impeachable offense. By way of example, he has not committed any crimes, engaged in political corruption, or done anything plausibly warranting impeachment.¹⁸

30. HR 216 does not allege that District Attorney Krasner has committed any crimes, engaged in political corruption, or done anything plausibly warranting impeachment. House Republicans seeking to impeach District Attorney Krasner have not accused him of committing an impeachable act.

31. House Republicans implicitly concede that District Attorney Krasner has not committed an impeachable offense by focusing on his policies and his approach to criminal justice, not on his specific conduct or actions.

32. Since the founding of this Commonwealth, the only time an official has been impeached under the Pennsylvania Constitution is for having committed crimes;¹⁹ that is plainly not so here. Indeed, no official has been impeached by the House for policy differences like those that are the subject of efforts to impeach District Attorney Krasner.

¹⁸ Article VI, Section 6 of the Pennsylvania Constitution permits impeachment of “civil officers” that have engaged in “misbehavior in office,” which refers to the common law criminal offense by a public official of “fail[ing] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an *improper or corrupt motive*.” *In re Braig*, 527 Pa. 248, 252, 590 A.2d 284, 286 (1991) (emphasis added).

¹⁹ See, e.g., *In re Larsen*, 571 Pa. 457, 467, 812 A.2d 640, 646 (Pa. Spec. Trib. 2002) (former Justice of the Pennsylvania Supreme Court Rolf Larsen convicted of two felonies, then impeached).

D. The Select Committee’s Purpose Is to Investigate and Recommend the Impeachment of District Attorney Krasner.

33. HR 216 expressly authorizes the Select Committee to make “determinations” regarding the “performance” of “the district attorney” “in the City of Philadelphia” (that is, Krasner) and to make “recommendations” for his “removal from office or other appropriate discipline, including impeachment.” *See* Ex. A, HR 216 at 2.

34. HR 216 requires the Select Committee to submit a “final report” to the House of Representatives with its “findings and recommendations.” The report “shall be made available to the public.” *Id.* at 3.

35. No other district attorney may be investigated by the Select Committee, and no other district attorney is subject to a “performance” review or “recommendations for removal from office or other appropriate discipline, including impeachment.” No other district attorney will be the subject of a “report” to the House that will be made “public.” *Id.* at 2.

36. Other district attorneys (not Krasner), in other parts of the Commonwealth, have recently committed impeachable acts, including sexual assault and obstruction of justice, but the House formed no committee nor issued any subpoenas to investigate impeaching them.²⁰

²⁰ District attorneys in the Commonwealth who were charged with crimes but never faced investigative committees or impeachment proceedings include Jeffrey Thomas, Miles Karson, Chad Salzman, Seth Williams, and William Higgins.

37. HR 216 has been drafted to make it appear that the Select Committee’s mandate goes beyond investigating and recommending the impeachment of District Attorney Krasner. Indeed, HR 216 talks about “rising rates of crime,” the “use of public funds” in connection with “prosecuting crime,” the “enforcement of crime victim rights,” and the “use of public funds . . . benefiting crime victims.” *Id.* at 1-2. But it does so only in the context of “the City of Philadelphia.”

38. HR 216 expressly requires inquiry into these areas to be limited to “the City of Philadelphia.” *Id.* That the Select Committee may inquire into these areas in “the City of Philadelphia” – areas that all relate to criminal prosecution in “the City of Philadelphia – is a veiled way of saying that the Select Committee is empowered to investigate District Attorney Krasner.

39. The Select Commission’s mandate to investigate District Attorney Krasner is also evident from House Republicans’ rejection of proposed amendments to HR 216 that would have extended the investigation beyond District Attorney Krasner and “the City of Philadelphia.” Prior to the House’s vote on HR 216, proposed amendments to HR 216 were introduced that proposed to strike out “the City of Philadelphia” in each of the six places it appears in HR 216 and to

replace it with “this Commonwealth.”²¹ The amendments would have authorized the Select Committee to conduct a state-wide investigation. *See* Exhibit B, Proposed Exhibits to HR 216. All House Republicans voted against the proposed amendments so they did not pass.²²

40. As a result of House Republicans’ defeat of the proposed amendments, the Select Committee’s investigation is expressly limited to the “district attorney” in “the City of Philadelphia” (Krasner) and prosecution-related areas in “the City of Philadelphia.” No other district attorney in the Commonwealth may be investigated by the Select Committee. No other county, city, or municipality in the Commonwealth may be a target of an investigation about “rising rates of crime,” “use of public funds” in connection with “prosecuting crime,” “enforcement of crime victim rights,” and “use of public funds . . . benefiting crime victims.” That is so, even though crime has increased throughout the nation and the Commonwealth and many counties in the Commonwealth – including the counties represented by the sponsors of HR 216 –

²¹ Proposed Amendments to HR 216, A05217 (June 28, 2022), <https://www.legis.state.pa.us/CFDOCS/Legis/HA/Public/HaCheck.cfm?txtType=HTM&sYear=2021&sInd=0&body=H&type=R&bn=0216&pn=3313&aYear=2021&an=05217>, (last visited Sept. 2, 2022).

²² Details for House RCS No. 1067, HR 216, A5217, https://www.legis.state.pa.us/cfdocs/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=H&rc_nbr=1067, (last visited Sept. 2, 2022).

have experienced increases in the homicide rate that are far greater than that of Philadelphia.²³

41. House Republicans' singling out of District Attorney Krasner and "the City of Philadelphia" shows that they are not interested in undertaking a legitimate investigation to aid legislative bodies in the enactment of laws that would benefit the citizens of the Commonwealth. Rather, they are interested only in attacking District Attorney Krasner for political gain.

E. Respondent Lawrence Has Served a Subpoena Duces Tecum on the DAO for Privileged and Legally Protected Documents.

1. The Subpoena

42. On August 9, 2022, counsel for Respondent Lawrence, the Chair of the Select Committee, issued and served a Subpoena Duces Tecum on the DAO through its counsel. *See* Exhibit C, Subpoena Duces Tecum addressed to Philadelphia District Attorney's Office (Aug. 8, 2022).

43. The Subpoena includes eleven document requests.

44. One document request (Request 9) seeks the DAO's "complete case file" of a currently pending murder case in the Philadelphia Court of Common

²³ According to Pennsylvania State Police data, the murder rates in the counties represented by the sponsors of HR 216 increased significantly from 2019 to 2021, including an 800% increase in Washington County (represented by Rep. O'Neal), a 400% increase in Adams County (represented by Rep. Ecker), and a 250% increase in Beaver County (represented by Rep. Kail). These increases dwarf the 58% increase in Philadelphia County during that same period. *See Cfense Trends Comparison Report*, CRIME IN PENNSYLVANIA ONLINE, <https://www.ucr.pa.gov/PAUCRSPUBLIC/SRSReport/CrimesIndex>, (last visited Sept. 1, 2022).

Pleas: *Commonwealth v. Ryan Pownall*, Docket Number CP-51-CR-0007307-2018. This case is scheduled for a jury trial this fall. Former Philadelphia police officer Ryan Pownall is charged with third degree murder in connection with the shooting death of David Jones. Former officer Pownall is accused of shooting Mr. Jones twice in the back.

45. One document request (Request 10) seeks the secret investigating grand jury records related to the investigating grand jury's investigation of Ryan Pownall and the shooting of David Jones.

46. Nine document requests seek the "positions," "policies," and "procedures" of the DAO or District Attorney Krasner in core prosecutorial areas, including charging decisions (Request 1), plea bargains (Request 2), sentencing recommendations (Request 3), bail recommendations (Request 4), prosecution of law enforcement officers (Request 5), use of investigative grand juries in homicide crimes (Request 6), calling of law enforcement officers as witnesses (Request 7), notice to victims of sentencing hearings (Request 8), and service and acceptance of subpoenas (Request 11).

47. The Subpoena is signed by Representative Lawrence in his capacity as Chair of the Select Committee.

2. The DAO's Response to the Subpoena

48. On August 22, 2022, counsel for the DAO informed Rep. Lawrence in writing and through his counsel that the Select Committee is not entitled to the subpoenaed documents. *See* Exhibit D, Letter from M. Satin to Representative Lawrence (Aug. 22, 2022). Specifically, the DAO informed Representative Lawrence that the Subpoena seeks documents that are protected by legal privileges and grand jury secrecy, that the Subpoena violates the separation of powers doctrine, that the Select Committee's investigation and the Subpoena do not serve a proper, legislative purpose, that District Attorney Krasner is not subject to impeachment, and that the Select Committee's efforts to impeach District Attorney Krasner would, if permitted to go forward and successful, violate the constitutional rights of the citizens of Philadelphia who elected him. *See id.* The DAO further urged Rep. Lawrence to withdraw the Subpoena and to end the Select Committee's investigation. *See id.*

49. Along with its August 22, 2022 letter, the DAO submitted formal Responses and Objections to the Subpoena Duces Tecum Served on the DAO. *Id.* at 8.

3. Representative Lawrence's Response to the DAO's August 22, 2022 Letter

50. On August 24, 2022, counsel for Representative Lawrence responded to the DAO's August 22, 2022 letter with his own letter. *See* Exhibit E, Letter

from M. Rush to M. Satin (Aug. 24, 2022). In his letter, Representative Lawrence’s counsel stated that the “Select Committee declines to withdraw the Subpoena” and end its investigation. *See id.* Counsel further stated that the Select Committee “reserves the right to compel compliance, including by, among other reasons, contempt proceedings.” *Id.*

CLAIM I
Declaratory Judgment and Injunctive Relief
(Unlawful Demand for Material Protected by Grand Jury Secrecy
Laws and Legal Privileges)

51. Petitioners incorporate herein the preceding allegations.

A. The Investigating Grand Jury Records in the Ryan Pownall Case

52. Subpoena Request 10 seeks the production of “all Documents related to the investigating grand jury’s investigation and prosecution of Ryan Pownall and the shooting death of David Jones, including, but not limited to, the Notice of Submission, all written materials provided to the investigating grand jury, and the transcript of all grand jury proceedings, related to the investigation of Ryan Pownall.” Ex. C.

53. The Pennsylvania Supreme Court has “repeatedly” affirmed the importance of grand jury secrecy. *See In re 2014 Allegheny Cnty. Investigating Grand Jury*, 656 Pa. 589, 615, 223 A.3d 214, 230 (2019). The Court explained, quoting the United States Supreme Court, that “the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.” *See id.* (quoting

Press-Enter. Co. v. Superior Court of California for Riverside Cnty., 478 U.S. 1, 8-9 (1978) (internal quotation marks omitted)).

54. The Investigating Grand Jury Act, title 42 Pennsylvania Consolidated Statute section 4541-4553, preserves and codifies the traditional rule of secrecy in grand jury proceedings. Subsection (b) of section 4549, titled “Disclosures of proceedings by participants other than witnesses,” addresses disclosure of grand jury proceedings. It does not authorize a district attorney or any member of a prosecution team to produce grand jury records to a House committee in response to a subpoena. *See id.* § 4549(b).

55. The Pennsylvania Supreme Court’s procedural rules further ensure the secrecy of investigating grand jury proceedings. *See* tit. 234 Pa. Code § 231(C) (2013) (“All persons who are to be present while the grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose any information pertaining to the grand jury except as provided by law.”); tit. 234 Pa. Code § 556.10(A)(1) (2012) (“All evidence, including exhibits and all testimony presented to the grand jury, is subject to grand jury secrecy, and no person may disclose any matter occurring before the grand jury,

except as provided in paragraph (B).”).²⁴ “A violation of grand jury secrecy rules may be punished as a contempt of court.” tit. 234 Pa. Code § 556.10(A)(2) (2012).

56. Petitioners therefore may not disclose the investigating grand jury records of a criminal case to a House committee, particularly as the House committee has been authorized to “submit a final report . . . that shall be made available *to the public.*” Ex. A, HR 216 at 4 (emphasis added). To do so is contrary to law and could subject Petitioner to criminal prosecution for contempt of court. *See* tit. 42 Pa. Cons. Stat. § 4549(b); *see also* tit. 234 Pa. Code § 556.10(A)(2) (2012).

57. Accordingly, the Subpoena should be quashed because it requests documents that the DAO is prohibited from producing and it would force Petitioner to break the law in order to comply with it.

B. The Prosecution’s “Complete Case File” in the Ryan Pownall Case.

58. Subpoena Request 9 seeks the production of “the complete case file and all Documents related to the investigation and prosecution of Ryan Pownall, Docket Number CP-51-CR-0007307-2018, including, but not limited to, Documents related to or referring to the investigative grand jury proceedings.” Ex. C.

²⁴ None of the exceptions in subsection (B) permits disclosure of grand jury material in response to a subpoena from a House committee. *See* tit. 234 Pa. § 556.10(B) (2012).

59. The DAO's "complete case file" in the *Pownall* case may not be produced because it is protected by both the executive privilege and the work product doctrine.

60. The executive privilege, often referred to as the governmental privilege, "protects documents that, if disclosed, would 'seriously hamper the function of government' or contravene the public interest." *Van Hine v. Dep't of State*, 856 A.2d 204, 208 (Pa. Commw. 2004) (quoting *Chladek v. Commonwealth*, No. 97-civ-0355, 1998 WL 126915, at *1 (E.D. Pa. Mar. 10, 1998)).

61. The DAO's "complete case file" in the *Pownall* case is protected by executive privilege because production of the "complete case file" to a House committee that will submit a "final report . . . [that] shall be made available to the public" would "seriously hamper the function of government" and "contravene the public interest." *Van Hine*, 856 A.2d at 208.

62. The DAO's prosecution of former officer Pownall would be compromised if its "complete case file" were in the public domain. Potential jurors, witnesses, and the defendant himself would have access to all kinds of confidential information. The prosecution would be at significant disadvantage if the defense had access to its "complete case file," including notes and memoranda on strategies, strengths and weaknesses of the case, and other mental impressions that are not subject to disclosure to the defense. In addition, the safety and

integrity of witnesses could not be guaranteed if the names, addresses, and statements of witnesses were in the public domain. Finally, disclosure of the “complete case file” in the *Pownall* case would undermine, not only the DAO’s prosecution of former officer Pownall, but the DAO’s prosecution of other pending and future defendants as well. Witnesses in other cases might be afraid to come forward if they knew that their names, addresses, and statements could end up in the public domain.

63. The work product doctrine prohibits disclosure “of the mental impressions of a party’s attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories.” tit. 231 Pa. Cons. Stat. § 4003.3 (1999). “The purpose of the work product doctrine is to protect the mental impressions and processes of an attorney on behalf of a client, regardless of whether the work product was prepared in anticipation of litigation.” *BouSamra v. Excelsa Health*, 653 Pa. 365, 383, 210 A.3d 967, 976 (2019). Unlike the attorney-client privilege, the protection from the work product doctrine belongs to the attorney, not the client. *Id.* at 975.

64. The DAO’s “complete case file” includes documents that are protected by the work product doctrine because they contain the prosecutor’s impressions, conclusions, opinions, memoranda, notes or summaries, legal research, and legal theories.

65. Accordingly, the Subpoena should be quashed because its requests for the “complete case file” are protected by the executive privilege and the work product doctrine.

C. The DAO’s Prosecution “Positions,” “Policies,” and “Procedures.”

66. Subpoena Requests 1-8 and 11 seek the production of the DAO’s “positions,” “policies,” and “procedures” in core prosecution areas, including charging decisions (Request 1), plea bargains (Request 2), sentencing recommendations (Request 3), bail recommendations (Request 4), prosecution of law enforcement officers (Request 5), use of investigative grand juries in homicide crimes (Request 6), calling of law enforcement officers as witnesses (Request 7), notice to victims of sentencing hearings (Request 8), and service and acceptance of subpoenas (Request 11).

67. A district attorney’s office’s “positions,” “policies,” and “procedures” on matters related to prosecution of criminal offenses are protected by the work product doctrine. *See Nat’l Ass’n of Criminal Def. Lawyers v. U.S. Dep’t of Justice (“NACDL v. DOJ”)*, 844 F.3d 246, 250 (D.C. Cir. 2016) (denying FOIA request for production of “Blue Book” manual created by the Department of Justice to guide prosecutors in discovery in criminal prosecutions because it was attorney work product, even where manual was created in contemplation of

litigation generally rather than in anticipation of a specific case).²⁵ Like the “Blue Book” manual at issue in *NACDL v. DOJ*, the DAO’s prosecution policies were created in contemplation of litigation and are therefore protected by the work product doctrine. And, as discussed further below, it is improper for a legislative committee to seek the internal “positions,” “policies,” and “procedures” of an independent and co-equal branch of government, especially where, as here, disclosure of that information would undermine its important work.

68. Accordingly, the Subpoena should be quashed because the requests for the DAO’s “positions,” “policies,” and “procedures” in core prosecution areas are protected by the work product doctrine and may not be produced.

CLAIM II
Declaratory Judgment and Injunctive Relief
(Violation of Separation of Powers Doctrine)

69. Petitioners incorporate herein the preceding allegations.

70. The separation of powers doctrine is “essential to our tripartite governmental framework.” *Renner v. Court of Common Pleas of Lehigh Cnty.*, 234 A.3d 411, 419 (Pa. 2020). It is “inherent” in the Pennsylvania Constitution and makes clear that the three branches of government are “co-equal and

²⁵ The Pennsylvania Supreme Court has relied on the D.C. Circuit’s analysis of privilege issues in other contexts. *See, e.g., In re Thirty-Third Statewide Investigating Grand Jury*, 624 Pa. 361, 86 A.3d 204, 221 (2014) (discussing favorably the D.C. Circuit’s privilege analysis in *In re Lindsey*, 158 F.3d 1263 (D.C. Cir. 1998)).

independent.” *Id.* (further noting that separation of powers protects against “the danger inherent in the concentration of power in any single branch or body” and prohibits any branch from “exercise[ing] the functions delegated to another branch”).

71. The United States Supreme Court and the Pennsylvania Supreme Court have long held that the district attorney, who is part of the executive branch, enjoys broad discretion as to whether, whom, and how to prosecute cases. *See Wayte v. United States*, 470 U.S. 598, 607-08 (1985) (describing the breadth of the prosecutor’s discretion, and explaining why that broad discretion is not subject to review, including that any encroachment upon it “threatens to chill law enforcement . . . and may undermine prosecutorial effectiveness by revealing the Government’s enforcement policy”); *see also United States v. Armstrong*, 517 U.S. 456, 464 (1996); *Commonwealth v. Clancy*, 648 Pa. 179, 194, 192 A.3d 44, 53 (2018) (describing the unique “role of the prosecutor” as “an officer of the court” and “an administrator of justice” – with “the power to decide whether to initiate formal criminal proceedings, to select those charges which will be filled against the accused, to negotiate plea bargains, to withdraw charges where appropriate, and, ultimately, to prosecute or dismiss charges at trial”).²⁶ The prosecutor’s broad

²⁶ *See also McKleskey v. Kemp*, 481 U.S. 279 (1987), *Commonwealth v. Brown*, 649 Pa. 293, 196 A.3d 130, 145 (2018); *Commonwealth v. Eisemann*, 276 Pa. Super. 543, 419 A.2d 591, 592 (1980).

prosecutorial discretion is not subject to review by another branch of government. *See Wayte*, 470 U.S. at 607-08.

72. Petitioners' significant discretionary power as prosecutor "may well depend on matters of *policy* wholly separate and apart from the existence or nonexistence of probable cause." *Eisemann*, 419 A.2d at 592 (emphasis added). Indeed, "the special deference extended to a *policy* decision not to prosecute stems from the deference afforded the discretionary use of executive powers granted to the district attorney." *Commonwealth v. McGinley*, 449 Pa. Super. 130, 139, 673 A.2d 343, 347 (1996) (emphasis added).

73. The Select Committee's *request* for the DAO's prosecution "positions," "policies," and "procedures" as well as the "complete case file" and "investigating grand jury records" of a pending murder case infringes on the power and function of the DAO (and also asks the DAO to violate grand jury secrecy laws, as discussed above).

74. Moreover, were the DAO to produce the requested materials, the Select Committee's *use* of these documents would infringe on the power and function of the DAO.

75. Were the DAO to produce the requested material related to the prosecution of former officer Ryan Pownall, the Select Committee's *use* of that information in legislative action *in that case* would infringe on the power and

function of the DAO (and would also violate the constitutional rights of the defendant). The Select Committee may not interfere with the prosecution of a pending murder case, and the Subpoena should be quashed.

CLAIM III

Declaratory Judgment and Injunctive Relief (District Attorney Krasner Is Not Subject to Impeachment Power)

76. Petitioners incorporate herein the preceding allegations.

77. The Select Committee’s investigation of District Attorney Krasner and Representative Lawrence’s Subpoena are based on the false premise that the House has the power to impeach District Attorney Krasner.

78. District Attorney Krasner is not subject to impeachment by the Pennsylvania House of Representatives.

79. Article VI, Section 6 of the Pennsylvania Constitution, titled “Officers liable to impeachment,” states: “The Governor and all other *civil officers* shall be liable to impeachment for any *misbehavior in office . . .*” *Id.* (emphasis added).

A. The District Attorney of Philadelphia Is Not a “Civil Officer” Subject to Impeachment by the Pennsylvania House of Representatives.

80. The House has no authority under the Pennsylvania Constitution to impeach the Philadelphia district attorney – a local, Philadelphia officer.

81. The Pennsylvania Constitution’s impeachment powers do not apply to locally-elected officials. In *Burger v. School Board of McGuffey School*

District, former Chief Justice Saylor concluded that Article VI does not apply to local officials, and that “state-level officials were almost exclusively in view when then-Section 4 of Article VI was framed.” 592 Pa. 194, 213, 923 A.2d 1155, 1167 (2007) (Saylor, J., concurring).²⁷

82. Consistent with former Chief Justice Saylor’s opinion, Article VI, Section 6 states: “judgment in [impeachment] cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under *this Commonwealth*.” *Id.* (emphasis added). Thus, the consequences of a “civil officer[’s]” impeachment is his removal and disqualification from holding *state-wide office*, demonstrating that only state-wide office holders are subject to impeachment. *Cf.* Pa. Const. art. IX, § 13(f) (referencing “officers of the City of Philadelphia”); Pa. Const. art. VII, § 3 (referencing “county, city, ward, borough, and township officers”); *see also Emhardt v. Wilson*, 20 Pa. D. & C. 608, 609 (Com. Pl. 1934) (holding local office not to be an office “under the Commonwealth” under art. II, § 6).

83. The process for impeachment of the Philadelphia District Attorney is governed by statute. *See* Pa. Const., Art. VI, s.1; *id.* Art. IX, s.13(a), (f). Pursuant to these provisions, the General Assembly has exercised its power to establish by

²⁷ Chief Justice Saylor distinguished prior decisions applying the removal provisions to municipal officers because they did not address this distinction. *See Burger*, 923 A.2d at 1167 (Saylor, J., concurring).

statute the conditions for the Philadelphia District Attorney’s impeachment and removal. *See id.*; 53 Pa. C.S. §§ 12199-12205; *see also Weiss v. Ziegler*, 372 Pa. 100, 104, 193 A. 642, 644 (Pa. 1937); *In re Marshall*, 360 Pa. 304, 307, 62 A.2d 30, 32 (1948). These provisions mandate that the City of Philadelphia – not the Pennsylvania House and Senate – has exclusive oversight over any impeachment and removal of a Philadelphia District Attorney.

B. District Attorney Krasner Has Not Been Accused of “Misbehavior in Office.”

84. Under the Pennsylvania Constitution, a “civil officer” (which the Philadelphia district attorney is not, as discussed above) may be impeached for “misbehavior in office.” “Misbehavior in office” refers to the common law criminal offense by a public official of “fail[ing] to perform a positive ministerial duty of the office or the performance of a discretionary duty with an improper or corrupt motive.” *In re Braig*, 527 Pa. at 252. The discretionary acts of a public official may constitute “misbehavior in office” only with the showing of “evil or corrupt design,” including a “charge of fraud, dishonesty, or corruption.” *Commonwealth v. Hubbs*, 137 Pa. Super. 244, 248, 250, 8 A.2d 618, 620-21 (1939).

85. The Select Committee’s investigation of District Attorney Krasner is not based on any alleged “misbehavior” in office, as the courts have interpreted that term. The Select Committee’s investigation of District Attorney Krasner is, at most, based on policy differences.

86. All prior article VI impeachment or removal proceedings have concerned a public official who has been accused of engaging in corrupt or criminal misconduct. Since the founding of the Commonwealth, no official has been impeached for policy differences like those that are the subject of the Select Committee's investigation and Subpoena.

87. In sum, the Subpoena is unenforceable and should be quashed because it is based on the false premise that the House of Representatives has the power to impeach District Attorney Krasner. The House lacks the power to impeach District Attorney Krasner because, under article VI, Section 6 of the Pennsylvania Constitution, District Attorney Krasner is not a "civil officer" and he is not even accused of engaging in "misbehavior in office."

CLAIM IV
Declaratory Judgment and Injunctive Relief
(The Select Committee's Investigation is Not in Furtherance of a Proper Legislative Purpose)

88. Petitioners incorporate herein the preceding allegations.

89. The Subpoena should be declared unenforceable and quashed because the Select Committee's investigation does not serve a proper legislative purpose.

90. First, the Select Committee's investigation of District Attorney Krasner is "beyond the constitutional power" of the House to authorize, because it does not seek information to "formulat[e], draft[] and enact[] remedial or other beneficial law." *McGinley v. Scott*, 401 Pa. 310, 322, 164 A.2d 424, 430 (1960).

A legislative committee may undertake an investigation only where it seeks to make recommendations to the legislature for proper, remedial legislation. *See Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 513 Pa. 236, 239, 519 A.2d 408, 410 (1986); *Commw. ex rel. Carcaci v. Brandmore*, 459 Pa. 48, 53, 327 A.2d 1, 4 (1974); *McGinley*, 164 A.2d at 430. When a legislative resolution directs committee members to investigate matters that are “beyond the constitutional power” of the legislative body to authorize, it is the “bounden duty of the judiciary, to so declare.” *McGinley*, 164 A.2d at 430.

91. The Select Committee’s investigation does not seek to make recommendations to the legislature for proper, remedial purpose. Rather, the Select Committee seeks to investigate District Attorney Krasner as part of an ongoing effort to impeach him.

92. In *McGinley*, the Pennsylvania State Senate adopted a resolution that created a committee to “conduct[] an investigation into alleged election law frauds in Philadelphia and the conduct of the *District Attorney of Philadelphia County* in respect of such putative offenses.” *Id.* at 426 (emphasis added). Like HR 216, the resolution in *McGinley* “empowered the committee to hold hearings, take testimony and subpoena witnesses and records” and to “report its findings and recommendations . . . for remedial legislation or other appropriate action.” *Id.* at 427. The court unequivocally rejected the Senate committee’s investigation into

the conduct of the Philadelphia District Attorney: “The clause in the Senate resolution which assumes to direct the committee members to investigate ‘into the actions of the District Attorney of Philadelphia County with respect [to charges of alleged election frauds in that county]’ is beyond the constitutional power of the State Senate to authorize.” *Id.* at 430.

93. The court reasoned that the investigation of the district attorney does not meet the “justification for a legislative investigation,” namely, “the ascertainment of facts and other relevant information to aid members of legislative bodies in formulating, drafting and enacting remedial or other beneficial law.” *Id.*

The court added:

Moreover, the legislature could not constitutionally enact any law to suspend or remove from office or otherwise punish in any way the district attorney of any county even if an investigation should happen to reveal that the district attorney was in some manner derelict in his duty.

Id. at 431. The court concluded by stating that since the Senate is “without constitutional power to investigate the conduct of a particular district attorney, the proposed investigation of the district attorney of Philadelphia County . . . if carried out, would not only serve no useful purpose but would do violence to the principles of our constitutional form of government.” *Id.*

94. Here, the Select Committee’s investigation of District Attorney Krasner is “beyond the constitutional power” of the House to authorize. The

legislature could not enact any law to suspend or remove District Attorney Krasner from office even if he were in “derelict in his duty” (which he is not). Like in *McGinley*, this investigation, if carried out, would do “violence to the principles of our constitutional form of government.” *Id.*

95. Second, the Select Committee’s investigation is improper because it targets District Attorney Krasner for impeachment, even though he cannot be impeached by the House. As discussed above, under article VI, Section 6 of the Pennsylvania Constitution, District Attorney Krasner is not a “civil officer” and he has not been accused of (nor has he engaged in any) “misbehavior in office.”

96. Finally, the Select Committee’s investigation is improper because it has attempted to cloak its (improper) investigation of District Attorney Krasner under the pretext that it is conducting a legitimate investigation about “rising rates of crime” and “use of public funds.” *See Greenfield v. Russel*, 292 Ill. 392, 394, 127 N.E. 102,103 (1920).

CLAIM V
Declaratory Judgment and Injunctive Relief
(Violations of the Voting Rights of Citizens of Philadelphia Under the U.S.
and Pennsylvania Constitutions)

97. Petitioners incorporate herein the preceding allegations.

98. Although there is no legal or factual basis for the impeachment of District Attorney Krasner, his impeachment and removal from office, were it to

occur, would violate the fundamental rights of the citizens of Philadelphia who elected him.

A. Violations of Voting Rights Under the U.S. Constitution.

99. Under the U.S. Constitution, “all qualified voters have a constitutionally protected right to vote.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). The right to vote is fundamental and is protected by the Equal Protection clause of the U.S. Constitution. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966); *see also Petition of Berg*, 552 Pa. 126, 132, 713 A.2d 1106, 1109 (1998) (“voting is of the most fundamental significance under our constitutional structure”). The Equal Protection clause affords a person the “right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

100. The voters of Philadelphia would not have a vote on “an equal basis with other” Pennsylvanians if District Attorney Krasner were impeached and removed from office based on partisan policy differences. *Id.* Indeed, the voters of Philadelphia would clearly be “treated differently from other individuals similarly situated.” *Strickland v. Bocchinfusco*, No. CIV. A. 83-1085, 1991 WL 205016, at *3 (E.D. Pa. Oct. 2, 1991) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

101. The circumstances surrounding this effort to impeach District Attorney Krasner make clear that the Select Committee's efforts are motivated by discriminatory animus. *See Cross v. State of Ala., State Dep't of Mental Health & Mental Retardation*, 49 F.3d 1490 (11th Cir. 1995) (to establish a violation of the Equal Protection clause, discriminatory motive or purpose must be shown); *see also Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 257-58 (1979) (discussing factors in determining discriminatory animus, including (a) the disparate impact of the official action; (b) the historical background of the decision; (c) the specific sequence of events leading up to the challenged decision; and (d) the legislative or administrative history).

102. HR 216 targets District Attorney Krasner and the City of Philadelphia. House Republicans expressly rejected proposed amendments to broaden the investigation to the entire Commonwealth, even though crime has risen in large swathes of the Commonwealth.

103. The Select Committee's investigation and the Subpoena are part of an effort to deprive the voters of Philadelphia from their constitutionally-elected district attorney. The impeachment and removal of District Attorney Krasner would nullify their votes, render them second class citizens, and deny them Equal Protection of the laws.

B. Violations of Voting Rights Under the Pennsylvania Constitution.

104. The right to vote in democratic elections is also protected by the Pennsylvania Constitution. *See Banfield v. Cortes*, 631 Pa. 229, 265, 110 A.3d 155, 176(2015). The Pennsylvania Constitution states: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Cons. art. I, § 5. The “free and equal” clause safeguards against acts that “shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise.” *League of Women Voters v. Commonwealth*, 645 Pa. 1, 108-09, 178 A.3d 737, 809 (2018) (citation omitted).

105. The impeachment and removal from office of District Attorney Krasner based on policy differences would “impair the right of suffrage” of the citizens of Philadelphia who elected him, and would thus violate the Pennsylvania Constitution’s “free and equal” clause.

PRAYER FOR RELIEF

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

- (A) Declare that the Subpoena *Duces Tecum* issued by the Select Committee on Restoring Law and Order on August 8, 2022 is invalid and unenforceable because:
 - (i) The Subpoena constitutes an unlawful demand for materials protected by Grand Jury secrecy laws and legal privileges;

- (ii) The Subpoena violates the separation of powers doctrine;
 - (iii) Petitioner is not subject to impeachment, which is the ultimate goal of the Select Committee's investigation;
 - (iv) The Subpoena is not in furtherance of a proper legislative purpose; and
 - (v) The impeachment and removal from office of District Attorney Krasner would violate the rights of the Philadelphia citizens who elected him under both the U.S. Constitution and the Pennsylvania Constitution.
- (B) Quash the Subpoena *Duces Tecum* issued by the Select Committee on Restoring Law and Order on August 8, 2022.
- (C) Enjoin Respondents from taking any further action to enforce the Subpoena *Duces Tecum* issued by the Select Committee on Restoring Law and Order on August 8, 2022, or from issuing any additional subpoenas.
- (D) Declare that any investigation or work performed by the Select Committee on Restoring Law and Order is improper because:
- (vi) The Select Committee's investigation seeks materials protected by Grand Jury secrecy laws and legal privileges;
 - (vii) The Select Committee's investigation violates the separation of powers doctrine;
 - (viii) Petitioner is not subject to impeachment, which is the ultimate goal of the Select Committee's investigation;
 - (ix) The Select Committee's investigation is not in furtherance of a proper legislative purpose; and
 - (x) The impeachment and removal from office of District Attorney Krasner would violate the rights of the Philadelphia citizens who elected him under both the U.S. Constitution and the Pennsylvania Constitution.

- (E) Enjoin Respondents from conducting any investigation or performing any work authorized by HR 216 or on behalf of the Select Committee.
- (F) Grant any other such relief as appropriate.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER



Dated: September 2, 2022

By: _____

John S. Summers (I.D. No. 41854)
Cary L. Rice (I.D. No. 325227)
Andrew M. Erdlen (I.D. No. 320260)

One Logan Square, 27th Floor
Philadelphia, PA 19103
Telephone: (215) 568-6200
jsummers@hanglely.com
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Counsel for Petitioners

MILLER & CHEVALIER CHARTERED
Michael J. Satin
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Washington, D.C. 20006
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msatin@milchev.com
totoole@milchev.com
mrochon@milchev.com

*Counsel for Petitioners working in association with
counsel admitted to practice law in Pennsylvania*

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

In compliance with Pennsylvania Rule of Appellate Procedure 127, I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 2, 2022

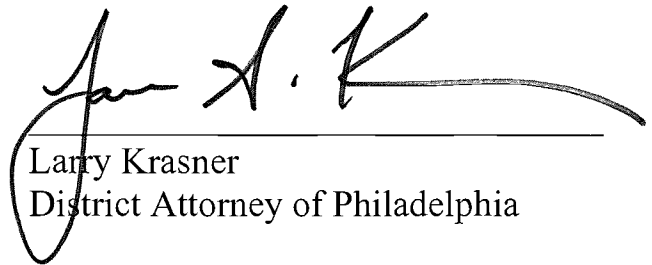
A handwritten signature in blue ink, appearing to read "John S. Summers", written over a horizontal line.

John S. Summers

VERIFICATION

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

Dated: September 2, 2022



Larry Krasner
District Attorney of Philadelphia

CERTIFICATE OF SERVICE

I, John S. Summers, hereby certify that on this 2nd day of September, 2022, I am serving the foregoing Petition for Review in the Nature of a Complaint in Equity and for Declaratory Judgment upon the following persons by certified mail, which service satisfies the requirements of Pa. R. App. P. 121:

Mark Rush, Esquire
K&L Gates
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222-2613

Counsel for Respondent
Representative John Lawrence

Select Committee on Restoring
Law and Order
c/o Representative John
Lawrence, Committee Chairman
211 Ryan Office Building
P.O. Box 202013
Harrisburg, PA 17120-2013
Respondent

Representative John Lawrence
211 Ryan Office Building
P.O. Box 202013
Harrisburg, PA 17120-2013
Respondent

Representative Amen Brown
27A East Wing
P.O. Box 202190
Harrisburg, PA 17120-2190
Respondent

Representative Danilo Burgos
105B East Wing
P.O. Box 202197
Harrisburg, PA 17120-2197
Respondent

Representative Wendi Thomas
153A East Wing
P.O. Box 202178
Harrisburg, PA 17120-2178
Respondent

Representative Torren Ecker
161B East Wing
P.O. Box 202193
Harrisburg, PA 17120-2193
Respondent



John S. Summers

EXHIBIT A

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 216 Session of
2022

INTRODUCED BY KAIL, JUNE 27, 2022

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 27, 2022

A RESOLUTION

1 Establishing, authorizing and empowering the Select Committee on
2 Restoring Law and Order to investigate, review and make
3 findings and recommendations concerning rising rates of
4 crime, law enforcement and the enforcement of crime victim
5 rights.

6 RESOLVED, That the House of Representatives establish,
7 authorize and empower the Select Committee on Restoring Law and
8 Order to investigate, review and make findings and
9 recommendations concerning:

10 (1) The rising rates of crime, including, but not
11 limited to, the enforcement and prosecution of violent crime
12 and offenses involving the illegal possession of firearms, in
13 the City of Philadelphia.

14 (2) The use of public funds intended for the purpose of
15 enforcing the criminal law and prosecuting crime in the City
16 of Philadelphia.

17 (3) The enforcement of crime victim rights, including,
18 but not limited to, those rights afforded to crime victims by
19 statute or court rule, in the City of Philadelphia.

20 (4) The use of public funds intended for the purpose of

1 benefiting crime victims, including, but not limited to,
2 crime victim compensation and crime victim services, in the
3 City of Philadelphia;

4 and be it further

5 RESOLVED, That the findings and recommendations of the select
6 committee may include, but are not limited to, any of the
7 following:

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

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

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

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

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

26 and be it further

27 RESOLVED, That the select committee consist of five members
28 of the House of Representatives, including three members from
29 the majority party of the House of Representatives and two
30 members from the minority party of the House of Representatives;

1 and be it further

2 RESOLVED, That the Speaker of the House of Representatives
3 appoint the chair of the select committee from among the members
4 of the select committee; and be it further

5 RESOLVED, That the chair of the select committee, on behalf
6 of the select committee, be authorized and empowered to do all
7 of the following:

8 (1) send for individuals and papers and subpoena
9 witnesses, documents, including electronically stored
10 information, and any other materials under the hand and seal
11 of the chair;

12 (2) administer oaths to witnesses;

13 (3) take testimony;

14 (4) conduct interviews, take statements and any other
15 investigative steps as determined by the chair;

16 (5) prepare and file pleadings and other legal
17 documents; and

18 (6) employ counsel and staff for the use of the chair or
19 the select committee;

20 and be it further

21 RESOLVED, That the Sergeant-at-Arms or a deputy, or other
22 competent adult authorized by the chair, serve the process and
23 execute the order of the select committee; and be it further

24 RESOLVED, That the select committee be authorized to sit
25 during the sessions of the House of Representatives; and be it
26 further

27 RESOLVED, That the expenses of the select committee
28 investigation be paid by the Chief Clerk from appropriation
29 accounts under the Chief Clerk's exclusive control and
30 jurisdiction upon a written request approved by the Speaker of

1 the House of Representatives, the Majority Leader of the House
2 of Representatives or the Minority Leader of the House of
3 Representatives; and be it further

4 RESOLVED, That the Pennsylvania Commission on Sentencing
5 assist the select committee to the extent requested by the chair
6 of the select committee; and be it further

7 RESOLVED, That the Judiciary Committee of the House of
8 Representatives assist the select committee to the extent
9 requested by the chair of the select committee; and be it
10 further

11 RESOLVED, That the select committee submit a final report to
12 the House of Representatives with its findings and
13 recommendations, which shall be made available to the public.

EXHIBIT B

AMENDMENTS TO HOUSE RESOLUTION NO. 216

Sponsor: REPRESENTATIVE HOHENSTEIN

Printer's No. 3313

1 Amend Resolution, page 1, line 13, by striking out "the City
2 of Philadelphia" and inserting

3 this Commonwealth

4 Amend Resolution, page 1, lines 15 and 16, by striking out
5 "the City of Philadelphia" and inserting

6 this Commonwealth

7 Amend Resolution, page 1, line 19, by striking out "the City
8 of Philadelphia" and inserting

9 this Commonwealth

10 Amend Resolution, page 2, lines 2 and 3, by striking out "the
11 City of Philadelphia" and inserting

12 this Commonwealth

13 Amend Resolution, page 2, lines 9 and 10, by striking out
14 "the City of Philadelphia" and inserting

15 this Commonwealth

16 Amend Resolution, page 2, line 25, by striking out "the City
17 of Philadelphia" and inserting

18 this Commonwealth

EXHIBIT C

JOHN A. LAWRENCE
CHAIRMAN
SELECT COMMITTEE ON
RESTORING LAW AND ORDER



CAPITOL OFFICE
211 RYAN OFFICE BUILDING
HARRISBURG, PA 17120
(717) 260-6117
JENNERVILLE OFFICE
1 COMMERCE BLVD, SUITE 200
WEST GROVE, PA 19390
(610) 869-1602

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

August 8, 2022

District Attorney Larry Krasner
Philadelphia District Attorney's Office
3 S. Penn Square
Philadelphia, Pennsylvania 19107

Dear District Attorney Krasner,

Please take notice that, pursuant to House Resolution No. 216, Printer's No. 3313 ("HR 216"), the Pennsylvania House of Representatives has established and authorized the Select Committee on Restoring Law and Order (the "Select Committee") to review, among other things, "the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney[.]" I write as the appointed Chair of the Select Committee to request your immediate and thorough attention to the within matters.

In accordance with the Select Committee's express authority under HR 216, enclosed please find a Subpoena Duces Tecum ("Subpoena") directed to the Philadelphia District Attorney's Office. Please timely respond to the Subpoena as directed therein.

In addition, no later than August 12, 2022, please contact the below counsel to the Chair to coordinate an interview of a person or persons from the District Attorney's Office with the necessary knowledge to discuss the production process and the documents and/or information subject to the Subpoena:

Mark Rush, Esq.
K&L Gates LLP
K&L Gates Center
210 Sixth Ave.
Pittsburgh, Pennsylvania 15222
mark.rush@klgates.com
412-355-8333

District Attorney Larry Krasner
August 8, 2022
Page 2

The Select Committee appreciates your cooperation. Please feel free to contact me directly or through the above-listed counsel with any questions.

Best regards,

A handwritten signature in black ink, appearing to read "John Lawrence", with a long, sweeping horizontal line extending to the right.

Representative John Lawrence
Chairman, Select Committee on Restoring Law and Order

BY THE AUTHORITY OF THE HOUSE OF REPRESENTATIVES

COMMONWEALTH OF PENNSYLVANIA

SUBPOENA DUCES TECUM

TO:

Philadelphia District Attorney's Office
3 S. Penn Square
Philadelphia, Pennsylvania 19107

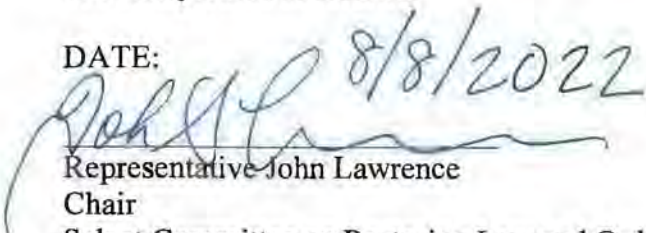
YOU ARE ORDERED to produce the documents described on Attachment A hereto, which is incorporated in its entirety herein by reference, for inspection by the House of Representatives Select Committee on Restoring Law and Order (the "Select Committee") pursuant to its authority under House Resolution No. 216, Printer's No. 3313 ("HR 216"), no later than **August 22, 2022**, to counsel for the Chair of the Select Committee at the place specified below:

Mark Rush, Esq.
K&L Gates LLP
K&L Gates Center
210 Sixth Ave.
Pittsburgh, Pennsylvania 15222
mark.rush@klgates.com
412-355-8333

If you fail to produce the documents or things required by this Subpoena, you may be subject to the sanctions authorized by Article 2, Section 11 of the Pennsylvania Constitution, by the act of June 13, 1842, P.L. 491, 46 P.S. Section 61, and Section 61(a) and by Section 5110 of the Pennsylvania Crimes Code.

WITNESS our hands and the seal of the House of Representatives of the Commonwealth of Pennsylvania as follows:

DATE:


8/8/2022
Representative John Lawrence
Chair
Select Committee on Restoring Law and Order

ATTACHMENT A

Produce the information requested herein in accordance with the directive of the Subpoena Duces Tecum to which this Attachment A is affixed, and which is incorporated in its entirety herein by reference. For purposes of the below requests, please provide all responsive information for the period **January 1, 2018, to the present.**

DEFINITIONS

As used herein, the words below shall have the following meanings:

1. "And" shall also mean "or" and vice versa.
2. "Any" shall also mean "all" and vice versa.
3. "Philadelphia District Attorney's Office" or "DAO" shall mean the Philadelphia District Attorney's Office, and its employees, officers, investigators, attorneys, and representatives.
4. "You" shall mean the Philadelphia District Attorney's Office, and its employees, officers, investigators, attorneys, and representatives.
5. "D.A. Krasner" shall mean Mr. Larry Krasner, the Philadelphia District Attorney.
6. "Communication" means any contact, whether in person, in writing, by telephone, by e-mail, or by any other method whereby knowledge, facts, opinions, or information is imparted or transmitted from one person or entity to another or to a file.
7. Unless the context indicates otherwise, the term "Document" is used in its customary broad sense and includes all written, typed, printed, recorded, or graphic statements, communications or other matters, however produced or reproduced, including, without limitation, any letter, memorandum, correspondence, telex, notes, intra- or inter-office communication, minutes, log, electronically created data, computer disks, e-mail, text message, contract,

agreement, proposal, report, analysis, ledger, book of accounts, audit, financial statement, work sheet, book, brochure, pamphlet, publication, printed form, list, manual, print, photograph, drawing, plan, blueprint, application, registration statement, annual statement, prospectus, file, telephone bill, invoice, receipt, canceled check, affidavit, pleading, calendar, journal, diary, notebook, report or filing within any state or federal court or regulatory body, or any other writing, typing, printing, or electronic or magnetic record of whatever kind or form, and any draft, non-identical copy, reproduction, microfilm, microfiche, CD-ROM or magnetic or electronic record of any of the foregoing, prepared by, received by, and/or in the possession, custody or control of, your current or former officers, employees, agents, attorneys, or other representatives.

8. The terms “referring to,” “refer to,” “relating to,” “relate to,” “reflect,” or “reflecting” mean all information or documentation which is relevant in any way to the specified subject matter, including, without limitation, all information or documentation which contains, records, reflects, summarizes, evaluates, comments upon, transmits, or discusses the subject matter of any request.

INSTRUCTIONS

1. You are requested to furnish all Documents in Your possession and all Documents available to You, not merely such Documents as You know from Your own personal knowledge or from business records, but also information and knowledge that is available to You, Your employees, officers, agents, attorneys, investigators, etc., by reason or inquiry, including inquiry of Your representatives.

2. Should You assert a privilege with respect to any Document requested herein, You are requested to provide the following as to each such Document or item of information:

- a. the type of Document or information (e.g., letter, notebook, telephone, conversation, etc.);

- b. the date of Document or transaction involving the information;
- c. identification of the author and/or all participants with respect to the information;
- d. identification of the signatory or signatories of the Document, if any;
- e. identification of the Document's current custodian;
- f. the present whereabouts of the Document and/or names of all persons with personal knowledge with respect to the information; and
- g. a statement of the grounds on which the claim of privilege rests with respect to each such Document or piece of information withheld.

3. These document requests shall be deemed to be continuing so as to require further and supplemental responses to any document requests in the event that any information comes to Your attention subsequent to the date of Your initial responses. Thus, supplemental production of any Documents is required if You subsequently obtain any Documents falling within the scope of a request.

4. If a Document is no longer in Your possession, custody, or control, or the possession, custody, or control of Your attorney, agent, employee, investigator, or representative, state whether such Document is missing or lost, has been destroyed, has been transferred, whether voluntarily or involuntarily, to others, or otherwise has been disposed of and, in each instance, explain in detail the circumstances surrounding any authorization to make such disposition of the Document and the date thereof.

5. Whenever a document request is framed in the conjunctive, it also shall be taken in the disjunctive and vice versa.

6. Whenever a term is framed in the singular, it also shall be considered to be plural and vice versa.

7. The use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb.

REQUESTS

1. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions not to enforce or charge certain provisions of the Crimes Code, 18 Pa. C.S. § 101, *et seq.*, including, but not limited to, any blanket or other policies or procedures, or any directives, not to (a) arrest, charge, or prosecute any individuals or categories of individuals; or (b) arrest, charge, or prosecute any crimes or categories of crimes.

2. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to offer standard, systematic, across-the-board, or uniform plea bargains for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

3. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to offer standard, systematic, across-the-board, or uniform reduced sentences for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

4. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to make standard, systematics, across-the-board, or uniform bail recommendations for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

5. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding the investigation or prosecution of law enforcement officers.

6. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding use of investigative grand juries in homicide crimes.

7. Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding (a) the placement of law enforcement officers on any do-not-testify list or (b) the process for deciding what law enforcement officers cannot be called as witness for the Commonwealth.

8. Produce all Documents containing, referring to, or relating to any policies or procedures of, or trainings by, the DAO or D.A. Krasner regarding compliance with the Crime Victims Act, 18 P.S. § 11.101, *et seq.*, including, but not limited to, policies, procedures, or trainings related to notice of actions and proceedings, including, without limitation, sentencing hearings, required to be given to victims.

9. Produce the complete case file and all Documents related to the investigation and prosecution of Ryan Pownall, Docket Number CP-51-CR-0007307-2018, including, but not limited to, Documents related or referring to the investigative grand jury proceedings.

10. Produce all Documents related to the investigating grand jury's investigation of Ryan Pownall and the shooting of David Jones including, but not limited to, the Notice of Submission, all written materials provided to the investigating grand jury, and the transcript of all grand jury proceedings, related to the investigation of Ryan Pownall.

11. Produce all Documents containing, referring to, or relating to any policies or procedures of the DAO or D.A. Krasner regarding the DAO's service of subpoenas on third parties and the DAO's acceptance of subpoenas served on the DAO, including, but not necessarily limited to, the appointment of a particular employee of the DAO as a person who may accept service.

EXHIBIT D

August 22, 2022

Rep. John A. Lawrence
Chairman, Select Committee on Restoring Law and Order
c/o Mark Rush, Esq.
K&L Gates LLP
via email: mark.rush@klgates.com

Re: Subpoena Duces Tecum to Philadelphia District Attorney's Office

Dear Chairman Lawrence:

We write on behalf of District Attorney Lawrence Krasner and the Philadelphia District Attorney's Office ("the District Attorney's Office") in response to the Subpoena Duces Tecum ("Subpoena"), dated August 8, 2022, that the "Select Committee on Restoring Law and Order" ("Select Committee") served on the District Attorney's Office on August 9, 2022. This letter and the accompanying Response and Objection to the Subpoena constitute the District Attorney's Office's response to the Subpoena.

As the legal institution responsible for the enforcement of laws in Philadelphia, the District Attorney's Office has great respect for the rule of law and legal process, including the subpoena power. As explained below, the Select Committee's efforts and its Subpoena repudiate the law of this Commonwealth – as well as the rule of law more generally – by serving no valid legislative purpose, violating the separation of powers, invading legal privileges, and seeking to deny the constitutional rights of Philadelphia's citizens, especially their democratic right to vote and choose their local leaders. We therefore call on you to withdraw the Subpoena and to end this investigation.

District Attorney Krasner is the twice-elected District Attorney of Philadelphia. He was first elected in 2017, winning the general election with more than 74% of votes after prevailing in a competitive Democratic primary election. He was then re-elected in 2021, this time winning the general election with more than 69% of votes after defeating a challenger in the primary election. Each time he ran on a progressive law enforcement platform and was elected (and re-elected) because of that platform. Unlike the rest of the Commonwealth of Pennsylvania, Philadelphia is comprised primarily of people of color; approximately 44% are Black, 16%

Latino, and 8% Asian. District Attorney Krasner is therefore the legitimate, constitutionally-elected District of Attorney of a majority minority city.

District Attorney Krasner is also the frequent target of Republican politicians in the Commonwealth, who attack him to rally their base and/or raise their profile in an election year merely because he pursues a progressive agenda. Earlier this year, for example, State Senator Jake Corman tried (and failed) to obtain the Republican nomination for governor by calling for the impeachment of District Attorney Krasner on the (baseless) grounds that crime is the result of his policies. Former United States Attorney William McSwain also called for “getting rid of Krasner” in his similarly unsuccessful campaign in the Republican primary for governor. And the winner of the Republican primary for the U.S. Senate, candidate Mehmet Oz, has also publicly attacked District Attorney Krasner, even targeting Krasner in his own television campaign ads, while trailing the Democratic candidate in the polls.

The Select Committee’s investigation of District Attorney Krasner and its Subpoena to the District Attorney’s Office are another example of Republican politicians’ attack of District Attorney Krasner for political gain in and around the current midterm election cycle. The House resolution that created the Select Committee, House Resolution 216 (“H.R. 216”), was introduced by Republican House members “as part of the ongoing effort to impeach District Attorney Larry Krasner” because he was not defeated at the ballot box and “we don’t have recall elections . . . here in Pennsylvania.” The prime sponsor of H.R. 216, State Rep. Josh Kail, and other Republican members declared their intention to file Articles of Impeachment against District Attorney Krasner “in the near future.” They set up a website hosted by the House Republican Caucus, StopKrasner.com, and wrote an op-ed in the conservative National Review, titled “Philadelphia District Attorney Larry Krasner Must Go,” where they disparaged “progressive” district attorneys generally and District Attorney Krasner specifically. Rep. Kail even described H.R. 216 “as a continuation of Krasner impeachment effort.”

This effort to investigate and try to impeach District Attorney Krasner does not even pretend to be based on his having committed any impeachable offense. For good reason: District Attorney Krasner has not committed any impeachable offense. He has not committed any crimes, engaged in self-dealing, or used his power to punish political opponents. House Republicans implicitly concede as much by seeking information about his policies and his approach to criminal justice, not on his specific conduct or actions. Since the founding of this Commonwealth, the only time an official has been impeached is for having committed crimes; that is plainly not so here. Indeed, no official has been impeached for policy differences like those that are the subject of the Select Committee and its Subpoena. Whether the House Republicans driving the impeachment effort like it or not, the citizens of Philadelphia have spoken at the polls; it is not up to House Republicans to try to effectively overturn that election.

What is more, H.R. 216's singling out of District Attorney Krasner and the City of Philadelphia reveals that House Republicans are not interested in investigating and impeaching district attorneys who actually break the law. Other district attorneys (not Krasner), in other parts of the Commonwealth, have recently committed impeachable acts, including sexual assault and obstruction of justice, but the House formed no committee nor issued any subpoenas to investigate impeaching them. Nor are House Republicans actually interested in addressing recent increases in crime throughout the Commonwealth of Pennsylvania; many counties in the Commonwealth – including the counties represented by the sponsors of HR 216 – have experienced increases in the homicide rate that are far greater than that of Philadelphia.¹ Nonetheless, House Republicans all voted against proposed amendments to H.R. 216 that would have extended the “investigation” beyond District Attorney Krasner and the city of Philadelphia, which further proves that this “investigation” seeks only to attack the twice-elected District Attorney of a majority minority city for political gain.

The Select Committee's Subpoena is improper for multiple reasons, including the following:

First, the Select Committee's “investigation” and the Subpoena do not serve a proper legislative purpose. A legislative committee may undertake an investigation only where it seeks to make recommendations to the legislature for proper, remedial legislation. Here, as noted above, the Select Committee seeks no such thing; it was created to gin up support for the impeachment of District Attorney Krasner, even though District Attorney Krasner has done nothing to warrant impeachment.

Second, the Select Committee's “investigation” and its Subpoena violate the separation of powers between the legislative and the executive branches of the government by seeking information about the District Attorney Office's prosecution “positions or policies” and its “complete case file” and grand jury records of a currently pending case. The prosecutor in any jurisdiction is an “administrator of justice,” who has the power to decide whether to initiate criminal charges, to select which charges will be filed, to negotiate plea bargains, to withdraw or dismiss charges, and to make sentencing recommendations. The United States Supreme Court has recognized the executive branch's “exclusive authority and absolute discretion to decide

¹ According to Pennsylvania State Police data, the murder rates in the counties represented by the sponsors of HR 216 increased significantly from 2019 to 2021, including an 800% increase in Washington County (represented by Rep. O'Neal), a 400% increase in Adams County (represented by Rep. Ecker), and a 250% increase in Beaver County (represented by Rep. Kail). These increases dwarf the 58% increase in Philadelphia County during that same period.

whether to prosecute a case” and the Pennsylvania Supreme Court has noted that “the ultimate discretion to file criminal charges lies in the district attorney.”

There is no doubt the Committee seeks to gather information that would show that District Attorney Krasner is not following some “tough on crime” playbook of his predecessors (a playbook that actually decreased public safety, contributed to mass incarceration, and drained resources from effective anti-crime efforts, including public education, treatment, and modern law enforcement tools such as forensics). The very name of the committee, “Select Committee on Restoring Law and Order,” confirms that the “investigation” is, at most, a disagreement about the exercise of prosecutorial discretion. House members are, of course, free to disagree with District Attorney Krasner’s policies and his exercise of prosecutorial discretion, and they may even campaign against him in a free and fair election should he seek office again in 2025. But the Select Committee may not do what it is trying to do here – to subpoena non-public information about a district attorney’s exercise of prosecutorial discretion in order to generate support for the impeachment and removal from office of that district attorney. This is not a valid legislative purpose, and the Select Committee has no power to undertake it.

The Subpoena’s requests for information about a currently pending murder case is especially problematic. The Subpoena seeks “the complete case file and all Documents related to the investigation and prosecution of Ryan Pownall” as well as “all Documents related to the investigating grand jury’s investigation of Ryan Pownall.” Mr. Pownall’s case is scheduled for trial on November 8, 2022. That the Select Committee is seeking the “complete” prosecution file of a currently pending criminal case as well as the secret, grand jury records related to the investigation of Mr. Pownall is improper and illegal. That the Select Committee would seek either to interfere with the prosecution of that case or to use information from that case to impeach District Attorney Krasner demonstrates just how rogue and improper is its “investigation.”

Third, the Subpoena’s requests sweep broadly and call for plainly privileged documents and information. For example, the prosecution’s files in the Pownall case are covered by executive privilege and the work product doctrine. The documents related to the investigating grand jury’s investigation of Mr. Pownall are covered by investigative privilege. The non-public policies of the District Attorney’s Office are also covered by executive privilege and the work product doctrine. Notably, that the Subpoena seeks to invade these foundational privileges is in addition to the objection that the Select Committee is not engaged in a proper investigation.

Finally, the Select Committee’s efforts to impeach District Attorney Krasner, if successful, would violate the constitutional rights of the citizens of Philadelphia who elected him. District Attorney Krasner is the elected district attorney of the citizens of Philadelphia. The impeachment and removal of District Attorney Krasner by politicians from outside of

Rep. John A. Lawrence

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Philadelphia would nullify their votes and render them second class citizens. And the fact that this “investigation” has targeted only District Attorney Krasner and the “City of Philadelphia,” a majority minority city, despite the fact that crime has risen throughout the Commonwealth, would indicate that they have been denied Equal Protection of the laws.

Attached is a specific Response and Objection to the Subpoena. We take seriously our obligations to meet and confer regarding discovery issues and therefore suggest that, to the extent the Select Committee disagrees with any of the foregoing or the Response and Objection, that we promptly arrange for a meet and confer. Should you have any questions, please feel free to reach out to discuss them.

Sincerely,



Michael J. Satish

Timothy P. O'Toole

Mark J. Rochon

*Counsel for District Attorney Lawrence
Krasner and the Philadelphia District
Attorney's Office, working in association
with counsel admitted to practice law in
Pennsylvania*

s/John S. Summers

John S. Summers (ID No. 41854)

Cary L. Rice (ID No. 325227)

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**RESPONSES AND OBJECTIONS OF THE PHILADELPHIA DISTRICT ATTORNEY'S
OFFICE TO SUBPOENA DUCES TECUM SERVED BY THE SELECT COMMITTEE
ON RESTORING LAW AND ORDER**

The Philadelphia District Attorney's Office (the "District Attorney's Office" or "Office") responds to the Subpoena Duces Tecum ("Subpoena") of the "Select Committee on Restoring Law and Order" ("Select Committee"), dated August 8, 2022, as follows.

In responding and objecting to the Requests, the District Attorney's Office does not (a) agree to or accept the characterization of the conduct or activities described in the Requests; or (b) admit or acknowledge that it possesses or is aware of documents responsive to the Requests. The District Attorney's Office reserves its rights to assert additional objections as well as to supplement, clarify, revise, or correct any objection or response.

If the Select Committee believes that any response or objection is unclear or does not comport with the District Attorney's Office's obligations, counsel for the Office is available to meet and confer with counsel for the Select Committee.

GENERAL OBJECTIONS

1. The District Attorney's Office incorporates herein the attached letter dated August 22, 2022, sent by its counsel to counsel to Chairman John A. Lawrence. The letter provides an overview of the District Attorney's Office's objections which include, but are not limited to, that the Select Committee's Investigation and Subpoena Requests do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens.

OBJECTIONS TO INSTRUCTIONS

1. Instruction 1 requests that the District Attorney's Office furnish the Select Committee documents in the Office's possession and available to it, from among others, "the

Office's employees, officers, agents, attorneys, investigators, etc." The District Attorney's Office objects to this instruction on the grounds set forth in General Objection 1, as well as that it imposes obligations that are unduly burdensome and beyond that required by law.

2. Instructions 2 and 4 request the preparation of specified logs. The District Attorney's Office objects to these instructions on the grounds that: (a) the Requests do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens; (b) the Requests are subject to Specific Objections set forth below; and (c) these Instructions are unduly burdensome and oppressive.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS

REQEUST No. 1:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions not to enforce or charge certain provisions of the Crimes Code, 18 Pa. C.S. § 101, *et seq.*, including, but not limited to, any blanket or other policies or procedures, or any directives, not to (a) arrest, charge, or prosecute any individuals or categories of individuals; or (b) arrest, charge, or prosecute any crimes or categories of crimes.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 2:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to offer standard, systematic, across-the-board, or uniform plea bargains for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 3:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to offer standard, systematic, across-the-board, or uniform reduced sentences for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that

this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 4:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding decisions to make standard, systematics, across-the-board, or uniform bail recommendations for certain individuals or categories of individuals, or for individuals charged with certain crimes or categories of crimes.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 5:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding the investigation or prosecution of law enforcement officers.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 6:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding use of investigative grand juries in homicide crimes.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request..

REQUEST NO. 7:

Produce all Documents containing, referring to, or relating to positions or policies of the DAO or D.A. Krasner regarding (a) the placement of law enforcement officers on any do-not-testify list or (b) the process for deciding what law enforcement officers cannot be called as witness for the Commonwealth.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 8:

Produce all Documents containing, referring to, or relating to any policies or procedures of, or trainings by, the DAO or D.A. Krasner regarding compliance with the Crime Victims Act, 18 P.S. § 11.101, *et seq.*, including, but not limited to, policies, procedures, or trainings related to notice of actions and proceedings, including, without limitation, sentencing hearings, required to be given to victims.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the

attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to these objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 9:

Produce the complete case file and all Documents related to the investigation and prosecution of Ryan Pownall, Docket Number CP-51-CR-0007307-2018, including, but not limited to, Documents related or referring to the investigative grand jury proceedings.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine. Additionally, the District Attorney's Office objects to this request on the basis that it seeks documents subject to grand jury secrecy protections.

Pursuant to its objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

REQUEST NO. 10:

Produce all Documents related to the investigating grand jury's investigation of Ryan Pownall and the shooting of David Jones including, but not limited to, the Notice of Submission, all written materials provided to the investigating grand jury, and the transcript of all grand jury proceedings, related to the investigation of Ryan Pownall.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine. Additionally, the District Attorney's Office objects to this request on the basis that it seeks documents subject to grand jury secrecy protections.

Pursuant to its objections, the District Attorney's Office will not search for or produce documents in response to this Request.

REQUEST NO. 11:

Produce all Documents containing, referring to, or relating to any policies or procedures of the DAO or D.A. Krasner regarding the DAO's service of subpoenas on third parties and the DAO's acceptance of subpoenas served on the DAO, including, but not necessarily limited to, the appointment of a particular employee of the DAO as the person who may accept service.

OBJECTIONS and RESPONSE:

The District Attorney's Office objects to this Request on the grounds that the Select Committee's Investigation and this Request do not serve a proper legislative purpose, violate separation of powers, invade legal privileges, and seek to deny the constitutional rights of Philadelphia's citizens. Additionally, the District Attorney's Office objects on the ground that this request is overly broad and unduly burdensome. The District Attorney's Office further objects to this request to the extent that it seeks documents and information protected by the attorney-client privilege, executive privilege, deliberative privilege, investigative privilege, and work product doctrine.

Pursuant to its objections, the District Attorney's Office will not search for or produce any documents in response to this Request.

Dated: August 22, 2022

Respectfully submitted,

s/John S. Summers

John S. Summers (ID No. 41854)

Cary L. Rice (ID No. 325227)

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EXHIBIT E



August 24, 2022

Mark Rush
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Via Electronic Mail

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Re: Subpoena Duces Tecum to Philadelphia District Attorney's Office

Dear Attorney Satin:

K&L Gates LLP represents Representative John Lawrence, Chairman of the Select Committee on Restoring Law and Order ("Select Committee") established by House Resolution No. 216, Printer's No. 3313 ("HR 216"), approved by a bi-partisan majority of the Pennsylvania House of Representatives ("House") in June 2022. We write in reply to your August 22, 2022 letter in which the Philadelphia District Attorney's Office ("DAO") outright refused to search for and produce a single document responsive to any of the requests contained in the August 8, 2022 Subpoena Duces Tecum ("Subpoena") duly served on August 9, 2022 on the DAO by the Select Committee pursuant to its authority under HR 216. The DAO's resort to political rhetoric and baseless objections is disappointing and unsupported by decided Pennsylvania law. The Select Committee urges the DAO to reconsider its response and reserves the right to compel compliance, including by, among other means, contempt proceedings.

HR 216 empowered the Select Committee to conduct an investigation into the following four areas of inquiry, each of which is the proper subject of legislative action and, thus, investigation by the House:

- (1) The rising rates of crime, including, but not limited to, the enforcement and prosecution of violent crime and offenses involving the illegal possession of firearms, in the City of Philadelphia.
- (2) The use of public funds intended for the purpose of enforcing the criminal law and prosecuting crime in the City of Philadelphia.

(3) The enforcement of crime victim rights, including, but not limited to, those rights afforded to crime victims by statute or court rule, in the City of Philadelphia.

(4) The use of public funds intended for the purpose of benefitting crime victims, including, but not limited to, crime victim compensation and crime victim services, in the City of Philadelphia[.]

HR 216, p.1 at line 6–p.2 at line 3. The investigation aims to, *inter alia*, ensure proper appropriations of state funds and identify potential legislative actions aimed at improving victim rights and increasing the safety of Pennsylvania citizens who reside in or visit the Commonwealth's sole City of the First Class. The DAO asserts no legitimate grounds to avoid compliance with the Subpoena for records relevant to these areas of inquiry.

More than 40 years ago, the Pennsylvania Supreme Court upheld the constitutionality of a house resolution establishing a committee "to examine, investigate and make a complete study of any and all matters pertaining to," *inter alia*:

(1) the administration, activities, methods of operation, use of appropriations, use of funds and expenditures thereof, policies, accomplishments and results, deficiencies or failures, efficiency and effectiveness of law enforcement within the Commonwealth and, (2) the work and functioning of law enforcement agencies, departments, commissions, boards, committees, groups, organizations and entities within the Commonwealth . . .

Commonwealth ex rel. Carcaci v. Brandamore, 327 A.2d 1, 2 n.2 (Pa. 1974). In so doing, the Court explained:

The power to investigate is an essential corollary of the power to legislate. The scope of this power of inquiry extends to every proper subject of legislative action. . . .

* * *

It can hardly be doubted that law enforcement and the administration of justice are proper subjects for legislative action.

Id. at 4 (emphasis added; citations omitted). In the face of this language from our state's highest Court, the DAO's bullish position that the investigation under HR 216 "serv[es] no valid legislative purpose" is incredible and is rejected by the Select Committee.

The Select Committee further rejects the DAO's narrative (which we understand to have been publicly shared the day of or following delivery to the Select Committee) that the Select Committee's investigation under HR 216 is being conducted for the sole purpose of impeaching current District Attorney Krasner. The breadth of the Select Committee's work is apparent both from the face of HR 216 and the scope of the investigation being conducted. However, the DAO is correct that the Select Committee's findings and recommendations under HR 216 "**may include** . . . [d]eterminations regarding the performance of public officials empowered to enforce the law

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in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment." HR 216, p.2 at lines 5-12 (emphasis added). This alone is a legitimate subject of investigation.

The Pennsylvania Constitution confers the "sole power of impeachment" to the House. Pa. Const. Art. VI § 4. The House's investigation into matters potentially relevant to impeachment of an elected official is a legitimate and prudent exercise of legislative authority that necessarily does not infringe on the constitutional rights of the electorate. To claim otherwise would eviscerate the impeachment mechanism that is designed to protect the electorate from "any misbehavior in office" subsequently committed by their chosen official. *Id.* § 6. The Subpoena is not, as the DAO contends, a "violat[ion of] the separation of powers" between the executive and the legislature; rather, it is a means of execution of a power constitutionally granted **exclusively to the legislature**. The DAO has no legal grounds upon which not to comply.

For all of these reasons, the Select Committee declines to withdraw the Subpoena and end its important work toward making Philadelphia a safer home and destination for residents and visitors alike. The Select Committee urges the DAO to promptly provide substantive responses to the Subpoena, including, but not limited to, a log of any responsive documents withheld on the basis of any claimed legal privilege, as expressly contemplated in Instruction No. 2 of the Subpoena, which, contrary to the DAO's contention, limited the Select Committee's requests to non-privileged documents. The log should set forth the information requested in Instruction No. 2 sufficient to identify each document withheld, the privilege being asserted, and the basis for its assertion, so as to permit evaluation of and a ruling upon the propriety of the DAO's privilege claims. The Select Committee reserves all rights. The DAO's revised response to the Subpoena is requested within seven days.

We thank you in advance for your prompt reply. Please contact me with any questions.

Sincerely,



Mark Rush

cc: Representative John Lawrence, Chairman, Select Committee on Restoring Law and Order (via electronic mail)