

**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. :

No. 450 MD 2022

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. :

**SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES,**  
**BRYAN D. CUTLER’S APPLICATION FOR LEAVE TO INTERVENE**

Pursuant to Pennsylvania Rules of Civil Procedure 2327 through 2329, and  
Pennsylvania Rule of Appellate Procedure 1531(b), Speaker of the Pennsylvania

House of Representatives Bryan D. Cutler (“Proposed Intervenor” or “Speaker Cutler”), by and through his undersigned counsel, McNees Wallace & Nurick LLC, hereby submits this Application for Leave to Intervene as co-Respondent in this action. In support thereof, Speaker Cutler avers as follows:

## **I. BACKGROUND**

### **A. The Proposed Intervenor-Respondent**

1. Proposed Intervenor is currently serving his eighth term in the Pennsylvania General Assembly, representing the 100<sup>th</sup> Legislative District. In June 2020, he was elected by his colleagues to serve as the 139<sup>th</sup> Speaker of the House and was re-elected as such on January 5, 2021. As the Speaker of the House of Representatives, Speaker Cutler presides over legislative sessions, and performs additional administrative and procedural duties.

2. The Speaker of the House appoints all Committees of Conference, and appoints the members of select committees, unless otherwise ordered by the House. HR Res. 3, 205<sup>th</sup> Gen. Assemb., Reg. Sess., Rule 5 (Pa. 2021).

3. As the Speaker of the House, Speaker Cutler is also authorized with the “full power by the direction of the [House of Representatives] to issue to the sergeant-at-arms a warrant of commitment to the prison of Dauphin county” any person who refuses to render an answer to all legal questions duly propounded having been compelled to appear as a witness by legislative subpoena. 46 P.S. § 61.

## **B. Procedural History**

4. On June 29, 2022, with the intent to protect the people of the City of Philadelphia who are suffering from historic rising violent crime rates, House Resolution 216, Printer's No. 3313 ("HR 216") was adopted creating the Select Committee on Restoring Law and Order (the "Select Committee"). The Select Committee was authorized to investigate, review and make findings and recommendations concerning the enforcement and prosecution of violent crime in the City of Philadelphia.

5. The Select Committee consists of five members of the House of Representatives, including three members from the majority party and two members from the minority. The Speaker of the House appoints the chair of the Select Committee from its members. HR 216.

6. On July 8, 2022, pursuant to HR 216 and his authority under Rule 5 of the General Operating Rules of the House of Representatives, Speaker Cutler appointed all Members of the Select Committee. *See* Daily Session Update dated July 8, 2022 attached hereto and marked as Exhibit A.

7. Speaker Cutler appointed Representative John Lawrence as chairman of the Select Committee. *Id.*

8. The chair of the Select Committee is specifically authorized and empowered by HR 216 to subpoena witnesses and documents, administer oaths, take

testimony, conduct interviews, and prepare and file pleadings and other legal documents. HR 216.

9. On August 3, 2022, pursuant to his express authority under HR 216 as Chairman of the Select Committee, Representative Lawrence issued a Subpoena Duces Tecum directed to the Office of the District Attorney of Philadelphia, Larry Krasner (“DAO”).

10. The DAO declined service of the August 3, 2022 Subpoena; therefore, on August 8, 2022, the Select Committee issued an updated Subpoena Duces Tecum (the “Subpoena”) to the DAO requiring production of non-privileged documents by August 22, 2022. On August 9, 2022, the DAO accepted service of the updated Subpoena by email.

11. The Subpoena sought, among other things, documents intended to uncover the DAO’s overall policies regarding prosecution and enforcement of violent crimes including, but not limited to: documents related to the DAO’s policies or directives not to arrest, charge or prosecute categories of individuals or categories of crimes; policies regarding decisions to offer uniform plea bargains for categories of individuals or categories crimes; policies related to uniform reduced sentences for categories of individuals or categories of crimes; and policies related to uniform bail recommendations to categories of individuals or categories of crimes. *See* Petition for Review, Exhibit C.

12. In response, the DAO demanded that the Select Committee withdraw its Subpoena and end the investigation. The DAO also served objections and responses to the Subpoena upon the Select Committee, and indicated that pursuant to those objections, the DOA would not search for or produce any of the documents sought by the Subpoena. *See* Petition, Exhibit D.

13. The Select Committee declined to withdraw the Subpoena and demanded a revised response to the Subpoena by August 31, 2022. *See* Petition, Exhibit E.

14. The DAO, to date, has not revised its written objections and responses to the Subpoena. The DAO has, however, provided some documents responsive to some of the requests and, on September 2, 2022, the DAO and District Attorney Krasner (jointly the “Petitioners”) filed a Petition for Review pursuant to this Honorable Court’s original jurisdiction against the Select Committee, its Chairman, Representative John Lawrence, and its members, Representatives Amen Brown, Danilo Burgos, Wendi Thomas, and Torren Ecker.

15. Petitioners have asked this Court to quash the Subpoena, enter an injunction preventing the Respondents from taking any further action to enforce the Subpoena or from issuing any additional subpoenas, declare the Subpoena unenforceable, declare that any investigation performed by the Select Committee is improper, declare that the House of Representatives does not have the authority to

impeach District Attorney Krasner, and enjoin the Select Committee from conducting any investigation or any work authorized by HR 216.

16. This case is still in its infancy. Prior to the filing of this Application for Leave to Intervene, the only pleadings of record are the Petition for Relief, Preliminary Objections filed by the Select Committee and Representative Lawrence, and the Committee Members' Preliminary Objections.

## **II. THE GOVERNING STANDARD**

17. “The right to intervention should be accorded to anyone having an interest of his own which no other party on the record is interested in protecting.” *Keener v. Zoning Hearing Bd. Of Millcreek Twp.*, 714 A.2d 1120, 1123 (Pa. Cmwlth. 1998) (citing *Bily v. Bd. of Property Assessment, Appeals and Review of Allegheny Cty.*, 44 A.2d 250 (Pa. 1945)).

18. A nonparty may file an application for leave to intervene in an original jurisdiction petition for review. Pa. R. A. P. 1531(b).

19. Pursuant to Pennsylvania Rule of Appellate Procedure 106 (“Original Jurisdiction Matters”), the general rules applicable to practice and procedure in the courts of common pleas – including the standards for intervention under Pennsylvania Rules of Civil Procedure 2326 to 2329 – apply to original jurisdiction matters. Pa. R. A. P. 106.

20. Moreover, Pennsylvania law affords a party an absolute right to intervene in an action if the party can satisfy any one of the categories specified in Pa. R. Civ. P. 2327. Pa. R. Civ. P. 2329; *see also Larock v. Sugarloaf Township Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmwlth. Ct. 1999).

21. Speaker Cutler seeks to intervene under Pennsylvania Rule of Civil Procedure 2327(3) and (4), which provide in pertinent part:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules *if*

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R. Civ. P. No. 2327(3), (4) (emphasis added); *see also Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Servs.*, No. 26 M.D. 2019, 2020 Pa. Cmwlth. LEXIS 104, 2020 WL 424866, at \*5 (Pa. Cmwlth. Ct. Jan. 28, 2020) (“Pennsylvania Rule of Civil Procedure No. 2327(4) . . . permits intervention where the determination ‘*may affect any legally enforceable interest*’ of a proposed intervenor.” (quoting Pa. R. Civ. P. 2327(4) and emphasis in original)).

22. Where the purported intervenor satisfies one of the four bases set forth in Pa. R. Civ. P. 2327, a grant of intervention is mandatory, unless there is a basis for refusal under Rule 2329. *Larock*, 740 A.2d at 313. There is no basis to refuse

Speaker Cutler's intervention as his defense is not in subordination to or in recognition of the propriety of the action, his interest is not adequately represented, and he has not unduly delayed, embarrassed or prejudiced the trial or adjudication of the rights of the parties. *See Pa. R. Civ. P. 2329.*

23. Speaker Cutler's application for intervention should be granted because he could have been joined as a party to the action, the Court's determination of this action may affect his legally enforceable interests, no exception applies under Rule 2329, and Speaker Cutler's participation will aid the Court.

### **III. BASIS FOR THE INTERVENTION**

#### **A. Speaker Cutler has a legally enforceable interest in this action.**

24. Petitioners squarely challenge the power of the Select Committee, and by extension, all committees of the House of Representatives, to conduct investigations and to issue subpoenas in furtherance of that effort. If successful, Petitioners will limit and restrict the House's legislative investigative authority.

25. Petitioners further challenge the Constitutional authority of the House of Representatives to initiate impeachment proceedings against a civil official, the district attorney. *See Petition, Claim III.*

25. Speaker Cutler has a substantial and particular interest in preserving the investigatory authority and subpoena power of the Chairman of the Select Committee and, more broadly, the House of Representatives and its Committees.



26. As Speaker of the House, Speaker Cutler has a specific and particular interest in preserving and defending the Constitutional impeachment authority of the House of Representatives, which has expressly been raised by Petitioners in this suit.

27. While used infrequently, subpoenas are an important and sometimes necessary tool utilized by committees of the House of Representatives to conduct investigations for legitimate legislative purposes.

28. The General Operating Rules of the House of Representatives provides explicit, ongoing authority to certain committees to issue subpoenas in furtherance of their investigations, and the grant of subpoena authority pursuant to resolution in other instances. HR Res. 3, 205<sup>th</sup> Gen. Assemb., Reg. Sess. (“Operating Rules”), Rule 51 (Pa. 2021); *see e.g.* Operating Rule 45A (Government Oversight Committee authorized to issue subpoenas), Operating Rule 3E (Committee on Ethics authorized to issue subpoenas), and Operating Rule 45 (Committee on Appropriations authorized with power to issue subpoenas).

29. The Pennsylvania Supreme Court has long since recognized that “[t]he power to investigate is an essential corollary of the power to legislate.” *Com. Ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 3-4 (Pa. 1974); *McGinley v. Scott*, 164 A.2d 424, 429 (Pa. 1960). Investigative power extends to legislative committees. *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 519 A.2d 408, 410 (Pa. 1986) (discussing the investigative function of committees to “find facts

and make recommendations to the legislature for remedial legislation.”); *McGinley*, 164 A.2d at 430 (discussing the purpose of legislative investigative committees).

30. In addition to compelling attendance of witnesses, if authorized, committees, subcommittees and select committees can issue subpoenas for the production of documents. Those subpoenas have the full force and effect of subpoenas issued by the courts of this Commonwealth. Operating Rule 51.

31. The Speaker is an ex-officio member of all standing committees of the House of Representatives and appoints the chair and vice-chair of each standing committee when the standing committee has no subcommittees. *Id.* at Rule 43.

32. Speaker Cutler is the only member of the House of Representatives authorized with full power to issue a warrant of commitment to prison when a person refuses to respond to a subpoena issued by the House. 46 P.S. § 61.

33. As the Constitutional Officer of the House of Representatives (which is not a party to this litigation), Speaker Cutler has legally enforceable interests in preserving and defending the authority of all committees of the House of Representatives to conduct legislative investigations, to issue subpoenas in furtherance of that process, and the Speaker’s authority to penalize persons refusing to comply with those subpoenas; interests that may be bound by a judgment in this action.

34. The Select Committee was also authorized by HR 216 to make “*recommendations* for removal [of public officials, including the District Attorney] from office or other appropriate discipline, including impeachment.” HR 216 (emphasis added). However, the House of Representatives is the sole legislative body authorized to investigate and institute impeachment proceedings against government and civil officials. Pa. Const. art. VI, § 6, 7; *McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960).

35. As the Constitutional Officer of the House of Representatives (which is not a party to this litigation), Speaker Cutler has a legally enforceable interest in preserving and defending the impeachment authority of the House of Representatives; an interest that may be bound by a judgment in this action.

**B. There is no basis to deny the application for intervention.**

36. Pennsylvania Rule of Civil Procedure 2329 provides that an application for intervention may be refused if: (1) the petitioner’s claim or defense “is not in subordination to and in recognition of the propriety of the action”; (2) the petitioner’s interest is already adequately represented; or (3) “the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa. R. Civ. P. 2329.

37. None of these factors applies to Speaker Cutler.

38. First, Speaker Cutler's defense in this action is in subordination to and in recognition of the action's propriety.

39. Second, no existing party adequately represents Speaker Cutler's particularized interests. *See* Pa. R. Civ. P. No. 2329(2). The members of the Select Committee are not members of every standing committee for the House of Representatives, nor do they have the authority to penalize persons who refuse to respond to legislative subpoenas. Further, the Select Committee is authorized to make recommendations regarding impeachment proceedings, whereas the House of Representatives has the sole authority to institute impeachment proceedings. Pa. Const. art. VI, § 6, 7. Therefore, the members do not represent the unique interests of Speaker Cutler.

40. Third, Speaker Cutler has not unduly delayed the submission of his application to intervene in this action, which remains in its infancy. The Respondents have, only days ago, filed their Preliminary Objections to the Petition. Thus, Speaker Cutler's intervention will not cause any undue delay, embarrassment, or prejudice to any party, but it will instead aid the court in resolving the important legal and factual questions before it.

#### **IV. CONCLUSION**

41. For the reasons set forth above, Speaker Cutler has a clear right to intervene in this case challenging important state laws governing the authority of the House of Representatives and its legislatively enabled committee.

42. Speaker Cutler seeks to intervene as a Respondent in this action and will assert various defenses to the Petition but will not raise claims against Respondents.

43. The Select Committee and Representative John Lawrence have been consulted and support Speaker Cutler's intervention.

44. Select Committee Members, Representatives Brown, Burgos, Thomas and Ecker were consulted and take no position regarding Speaker Cutler's application for intervention.

45. If granted leave to intervene, Speaker Cutler intends to seek dismissal of the Petition for Review by filing preliminary objections for lack of standing, lack of ripeness, immunity of the individual members of the Select Committee, and pursuant to the separation of powers doctrine. A copy of Speaker Cutler's proposed preliminary objections is attached as Exhibit B.

WHEREFORE, Speaker Cutler respectfully requests that this Honorable Court enter an Order granting this Application to Intervene in this matter together with any other relief the Court deems appropriate or necessary.

**McNEES WALLACE & NURICK LLC**

By: \_\_\_\_\_

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Date: October 14, 2022

*Attorneys for Speaker of the  
Pennsylvania House of  
Representatives Bryan D. Cutler*

**PROOF OF SERVICE**

I certify that I have caused a true and correct copy of the foregoing document to be served on this 14th day of October 2022, upon the persons below via the Court's PACFile System, which satisfies Pennsylvania Rule of Appellate Procedure 121, Pa.R.A.P. 121:

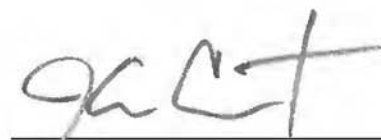
John S. Summers, Esquire  
Cary L. Rice, Esquire  
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Thomas, and Ecker*

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

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*Counsel for Respondents the Select  
Committee on Restoring Law and Order  
and Representative John Lawrence*

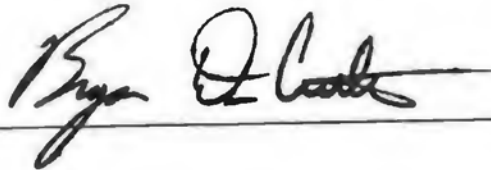


\_\_\_\_\_  
Drew Crompton

**VERIFICATION**

I, Bryan D. Cutler, Speaker of the House of Representatives hereby aver that the statements of fact contained in the attached Application for Leave to Intervene are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. Cons. Ann. § 4904 relating to unsworn falsification to authorities.

Date: 10/13/22

By: 



# Exhibit A

**House of Representatives  
Daily Session Update  
Prepared by the Office of the Parliamentarian  
July 8, 2022  
Convened at 9 A.M.  
Adjourned at 10:03 P.M.**

**Opening Prayer by Representative Brett Miller.**

**Communications Received**

**Communication received from Governor Tom Wolf, Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 1420, Printer's Number 3371.**

---

**Communication received from Governor Tom Wolf, Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 72, Printer's Number 2886.**

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**The Speaker submitted for the record a copy of the 1<sup>st</sup> Annual Report from the Rural Health Redesign Center Authority - 2020 Annual Report.**

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**July 8, 2022**

**In the House of Representatives**

**Pursuant to House Resolution 216 of 2022, The Speaker of the House appointed the following members to the Select Committee on Restoring Law and Order, including three members of the majority party and two members of the minority party of the House of Representatives:**

**Representative John Lawrence – Chair**

**Representative Wendi Thomas**

**Representative Torren Ecker**

**Representative Amen Brown**

**Representative Danilo Burgos**

**Communications Received From the Senate**

**The Clerk of the Senate being introduced, returned bills from the House of Representatives numbered and entitled as follows, viz:**

**HB 2702**

**HB 2709**

With information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

---

The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to the Senate Bills numbered and entitled as follows, viz:

SB 1093  
SB 1100  
SB 1171  
SB 1222  
SB 1284

---

The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to the Senate amendments to House Bill numbered and entitled as follows, viz:

HB 1642

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

---

The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives by amending said amendments to House Bill numbered and entitled as follows, viz:

HB 1421

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

---

The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives by amending said amendments to Senate Bills numbered and entitled as follows, viz:

SB 106  
SB 982

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

---

The Clerk of the Senate being introduced, presented the following extract from the Journal of the Senate, which was read as follows, viz:

In the Senate,  
July 8, 2022

RESOLVED, (the House of Representatives concurring), Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the Senate recesses this week, it reconvene on

Monday, September 19, 2022, unless sooner recalled by the President Pro Tempore; and be it further

RESOLVED, Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the House of Representatives recesses this week, it reconvene on Monday, September 12, 2022, unless sooner recalled by the Speaker of the House of Representatives; and be it further

RESOLVED, Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the House of Representatives recesses this week, it reconvene on Monday, September 19, 2022, unless sooner recalled by the Speaker of the House of Representatives.

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

### **Adopted Voice Vote**

---

**Motion to Adjourn until  
September 12, 2022, at  
12 Noon (McClinton)            92 - 107    (Failed)**

### **Concurrence in Senate Amendments**

**HB 2702 PN 3372        198 - 1**

**HB 2709 PN 3378        199 - 0**

### **Concurrence in Senate Amendments to House Amendments**

#### **SB 106 PN 1857**

**Motion to Suspend the Rules  
for Late Filed Amendment  
A05421 (Cephas)                            86 - 114    (Failed)**

**Motion to Suspend the Rules  
for Late Filed Amendment  
A05440 (Daley)                            86 - 113    (Failed)**

**Motion to Move to Previous  
Question on Motion to Adjourn  
(Benninghoff)                            110 - 89**

**Motion to Adjourn until  
September 12, 2022, at  
12 NOON (Bradford)                    90 - 109    (Failed)  
107 - 92**

**SB 982 PN 1856                        103 - 96**

**Concurrence in Senate Amendments to House Amendments as further Amended by the Senate**

**Motion to Proceed with**

**HB 1421, PN 3379**

**(Benninghoff/McClinton) 192 - 7**

**HB 1421 PN 3379 185 - 14**

**Bills on Second Consideration**

**SB 736 PN 0840**

**A05318 (METZGAR) 108 - 91**

**Bill Agreed to on Second Consideration as Amended**

**Bills on Third Consideration**

**Bills Signed by the Speaker**

**HB 1421**

**HB 1642**

**HB 2702**

**HB 2709**

**SB 106**

**SB 382**

**SB 982**

**SB 1093**

**SB 1100**

**SB 1171**

**SB 1222**

**SB 1284**

**Bills Referred**

**HR 220 Agriculture and Rural Affairs**

**HB 2739 Labor and Industry**

**SB 676 Insurance**

**SB 1123 Transportation**

**SB 1201 Insurance**

**SB 1299 Transportation**

**Bills Recommitted**

**SB 736 To Appropriations**

## **Bills ReReferred**

### **Bills Reported from Committee**

HB 1421 From Rules Re-Reported as Committed  
HB 2702 From Rules Re-Reported as Committed  
HB 2709 From Rules Re-Reported as Committed  
SB 106 From Rules Re-Reported as Committed  
SB 982 From Rules Re-Reported as Committed

### **Bills Removed from the Tabled Calendar and Placed on the Active Calendar**

HB 1151  
HB 2580  
SB 347  
SB 564  
HR 117

### **Bill Removed from the Active Calendar and Placed on the Tabled Calendar**

HB 1151  
HB 2580  
SB 347  
SB 562  
HR 117

### **House Resolutions Adopted**

**This is not an official record of the day's legislative activity.  
The House of Representatives adjourned  
Until Monday, September 12, 2022 at 12 Noon,  
unless sooner recalled by the Speaker.**

# Exhibit B

**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. :

No. 450 MD 2022

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, :

BRYAN D. CUTLER, Speaker of the :  
House of Representatives, :

Intervenor Respondent. :

**PROPOSED ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2022, upon  
consideration of the Preliminary Objections filed by Intervenor Respondent Bryan  
D. Cutler, Speaker of the House of Representatives, the supporting brief, and the



responses thereto, it is hereby ORDERED that the Preliminary Objections are granted.

Petitioner's Petitioner for Review is dismissed in its entirety, with prejudice.

---

J.

**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,	:	
	:	No. 450 MD 2022
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,	:	
	:	
BRYAN D. CUTLER, Speaker of the	:	
House of Representatives,	:	
	:	
Intervenor Respondent.	:	

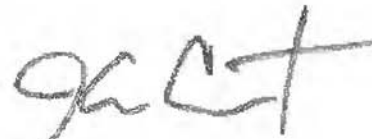
**NOTICE TO PLEAD**

Petitioners, the Philadelphia District Attorney’s Office and Larry Krasner are hereby notified to file a written response to these preliminary objections within thirty (30) days, or a judgment may be entered against them.

**MCNEES WALLACE & NURICK LLC**

Date: October 14, 2022

By:



J. Andrew Crompton

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*Counsel for Intervenor Respondent*

*Bryan D. Cutler, Speaker of the*

*Pennsylvania House of*

*Representatives*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

THE PHILADELPHIA DISTRICT :  
ATTORNEY’S OFFICE and LARRY :  
KRASNER, in his official capacity as the :  
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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, :

BRYAN D. CUTLER, Speaker of the :  
House of Representatives, :

Intervenor Respondent. :

**PRELIMINARY OBJECTIONS OF**  
**INTERVENOR BRYAN D. CUTLER, SPEAKER OF THE**  
**PENNSYLVANIA HOUSE OF REPRESENTATIVES**

Pursuant to Pennsylvania Rules of Civil Procedure 1028, Speaker of the  
Pennsylvania House of Representatives Bryan D. Cutler (“Intervenor” or “Speaker

Cutler”), by and through his undersigned counsel, McNees Wallace & Nurick LLC, hereby preliminarily objects to the Petition for Review filed by Petitioners on September 2, 2022, and states as follows:

### **RELEVANT BACKGROUND**

1. On June 29, 2022, with the intent to protect the people of the City of Philadelphia who are suffering from historic rising violent crime rates, House Resolution 216, Printer’s No. 3313 (“HR 216”) was adopted creating the Select Committee on Restoring Law and Order (the “Select Committee”). The Select Committee was authorized to investigate, review, and make findings and recommendations concerning the enforcement and prosecution of violent crime in the City of Philadelphia.

2. The Select Committee consists of five members of the House of Representatives, including three members from the majority party and two members from the minority. Speaker Cutler appointed all Members of the Select Committee. *See Daily Session Update* dated July 8, 2022, is attached hereto, and marked as Exhibit A.

3. Speaker Cutler appointed Representative John Lawrence as chairman of the Select Committee. *Id.*

4. The chair of the Select Committee is specifically authorized and empowered by HR 216 to subpoena witnesses and documents, administer oaths, take

testimony, conduct interviews, and prepare and file pleadings and other legal documents. HR 216.

5. On August 3, 2022, pursuant to his express authority under HR 216 as Chairman of the Select Committee, Representative Lawrence issued a Subpoena Duces Tecum directed to the Office of the District Attorney of Philadelphia, Larry Krasner (“DAO”).

6. The DAO declined service of the August 3, 2022 Subpoena; therefore, on August 8, 2022, the Select Committee issued an updated Subpoena Duces Tecum (the “Subpoena”) to the DAO requiring production of non-privileged documents by August 22, 2022. On August 9, 2022, the DAO accepted service of the updated Subpoena by email.

7. The Subpoena sought, among other things, documents intended to uncover the DAO’s overall policies regarding prosecution and enforcement of violent crimes including, but not limited to: documents related to the DAO’s policies or directives not to arrest, charge or prosecute categories of individuals or categories of crimes; policies regarding decisions to offer uniform plea bargains for categories of individuals or categories crimes; policies related to uniform reduced sentences for categories of individuals or categories of crimes; and policies related to uniform bail recommendations to categories of individuals or categories of crimes. *See* Petition for Review, Exhibit C.

8. In response, the DAO demanded that the Select Committee withdraw its Subpoena and end the investigation. The DAO also served objections and responses to the Subpoena upon the Select Committee, and indicated that pursuant to those objections, the DAO would not search for or produce any of the documents sought by the Subpoena. *See* Petition for Review, Exhibit D.

9. The Select Committee declined to withdraw the Subpoena and demanded a revised response to the Subpoena by August 31, 2022. *See* Petition, Exhibit E.

10. The DAO, to date, has not revised its written objections and responses to the Subpoena. The DAO has, however, provided some documents responsive to some of the requests and, on September 2, 2022, the DAO and District Attorney Krasner (jointly the “Petitioners”) filed the within action against the Select Committee, its Chairman, Representative John Lawrence, and its members, Representatives Amen Brown, Danilo Burgos, Wendi Thomas, and Torren Ecker.

11. Petitioners ask that this Court quash the Subpoena, enter an injunction preventing the Respondents from taking any further action to enforce the Subpoena or from issuing any additional subpoenas, declare the Subpoena unenforceable, declare that any investigation performed by the Select Committee is improper, declare that the House of Representatives does not have the authority to impeach

District Attorney Krasner, and enjoin the Select Committee from conducting any investigation or any work authorized by HR 216.

12. In response, on October 6, 2022, the Select Committee and Representative John Lawrence filed preliminary objections to the Petition for Review alleging that the Petitioners lack standing, their claims are not ripe, and the separation of powers prevents this Court from interfering with the legislative process.

13. Also on October 6, 2022, the four members of the Select Committee filed preliminary objections to the Petition for Review alleging that they were improperly named as Respondents, constitutional speech or debate immunity and other immunities protect them from the suit, and that Counts III and V are not ripe.

14. Speaker Cutler sought intervention as the Constitutional Officer of the House of Representatives and because he has a special and particular interest in protecting legislative investigative and subpoena powers, and impeachment authority of the House of Representatives and its Committees.

15. As set forth more fully below, Speaker Cutler files the within preliminary objections, joining with Respondents in their objections seeking dismissal based upon ripeness, immunity, and lack of standing, and because the House of Representatives' powers to investigate and issue subpoenas and its



Constitutional authority to hold impeachment proceedings lies squarely within the legislative process with which this Court may not interfere.<sup>1</sup>

**First Preliminary Objection**  
**Legal Insufficiency of a Pleading – Pa.R.Civ.P. 1028(a)(4)**

16. Speaker Cutler incorporates by reference Paragraphs 1-15 above as if set forth herein in full.

17. Under the Pennsylvania Rules of Civil Procedure, a party may file preliminary objections in the nature of a demurrer, asserting the legal insufficiency of a pleading. Pa. R. Civ. P. 1028(a)(4). Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. *Feingold v. Hendrzak*, 15 A.3d 937, 941 (Pa. Super. Ct. 2011). A demurrer presents the question of “whether on the facts averred, the law says with certainty that no recovery is possible.” *Commonwealth v. E. Brunswick Twp.*, 980 A.2d 720, 726 (Pa. Cmwlth. 2009) (citation omitted).

18. In considering preliminary objections in the nature of a demurrer, the Court must accept as true all material facts set forth in the challenged pleading, as well as all inferences reasonably deductible therefrom. *Id.* Conclusions or averments of law should not be considered. *Santiago v. Pennsylvania Mut. Ins. Co.*, 613 A.2d 1235, 1238-39 (Pa. Super. Ct. 1992). Where the complaint fails to set forth a valid

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<sup>1</sup> Speaker Cutler adopts by reference the preliminary objections filed by the Respondents as appropriate.

cause of action, a preliminary objection in the nature of a demurrer is properly sustained. *Lerner v. Lerner*, 954 A.2d 1229, 1234-35 (Pa. Super. Ct. 2008).

19. Petitioners' claims must be dismissed because the House of Representatives' legislative power, including the power to conduct investigations, issue subpoenas, and undertake impeachment proceedings is vested exclusively in the General Assembly by the Constitution. A court may not interfere with this legislative process.

20. The separation of powers doctrine provides that the executive, legislative, and judicial branches of government are equal, and none should exercise powers exclusively committed to another branch. *Germantown Cab Co., v. Philadelphia Parking Auth.*, 171 A.3d 315, 330 (Pa. Cmwlth. 2017).

21. A legislative action that impairs the independence of the judiciary violates the doctrine of separation of powers, and its corollary is that a judicial action that infringes upon the legislative function violates the separation of powers doctrine. *Thomas v. Grimm*, 155 A.3d 128, 138 n. 15 (Pa. Cmwlth. 2017).

22. Legislative power of this Commonwealth is vested in the General Assembly. PA. Const. art. 2, § 1. The legislative power is the power to make, alter and repeal laws; judicial action infringing on the legislative function violates the separation of powers. *Pennsylvania State Assn. of Jury Comrs. v. Com.*, 78 A.3d 1020, 1033 (Pa. 2013).

23. The Pennsylvania Supreme Court has long since recognized that “[t]he power to investigate is an essential corollary of the power to legislate.” *Com. Ex rel. Carcaci v. Brandamore*, 327 A.2d 1, 3-4 (Pa. 1974); *McGinley v. Scott*, 164 A.2d 424, 429 (Pa. 1960). Investigative power extends to legislative committees. *Lunderstadt v. Pennsylvania House of Representatives Select Comm.*, 519 A.2d 408, 410 (Pa. 1986) (discussing the investigative function of committees to “find facts and make recommendations to the legislature for remedial legislation.”); *McGinley*, 164 A.2d at 430 (discussing the purpose of legislative investigative committees).

24. In addition to compelling attendance of witnesses, if authorized, committees, subcommittees and select committees can issue subpoenas for the production of documents. Those subpoenas have the full force and effect of subpoenas issued by the courts of this Commonwealth. HR Res. 3, 205<sup>th</sup> Gen. Assemb., Reg. Sess., Rule 51 (Pa. 2021).

25. Furthermore, the House of Representatives is the sole legislative body authorized to investigate and institute impeachment proceedings against government and civil officials. PA. Const. art. VI, § 6, 7; *McGinley* at 431.

26. In this matter, Petitioners request that this Court infringe upon the powers of the Select Committee and substitute its judgment for that of the Committee in its process investigating the criminal prosecutions and enforcement of sentencing of violent crimes in the City of Philadelphia, issuing subpoenas in

furtherance of that process, and potentially recommending impeachment of a government official.

27. Petitioners further request that the Court quash the Subpoena on the basis that the House of Representatives lacks authority to institute impeachment proceedings against a civil official – District Attorney Krasner.

28. Not only would such action by this Court infringe on the Select Committee’s legislative powers, but it would also have immediate and irreparable impact upon the independence of the House of Representatives and the General Assembly to carry out their legislative and constitutionally authorized powers. It would thus be judicial action directly infringing upon these important legislative functions, making such relief nonjusticiable. *Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939).

29. Accordingly, in light of the separation of powers principals, and the broader impact of enjoining the Select Committee or issuing a declaration limiting the powers of the Select Committee to conduct investigations, issues subpoenas, and recommend impeachment proceedings, this Court should decline to interfere with the ongoing legislative process and dismiss Petitioner’s complaint.

**Second Preliminary Objection**  
**Lack of Jurisdiction (Standing) – Pa.R.Civ.P. 1028(a)(1)**  
**Legal Insufficiency of a Pleading – Pa.R.Civ.P. 1028(a)(4)**

30. Speaker Cutler incorporates by reference the preliminary objection filed by the Select Committee and Representative Lawrence seeking dismissal of the Petition for Review because the Petitioners lack standing.

**Third Preliminary Objection**  
**Lack of Jurisdiction (Immunity) – Pa.R.Civ.P. 1028(a)(1)**  
**Legal Insufficiency of a Pleading – Pa.R.Civ.P. 1028(a)(4)**  
**Lack of Capacity to Sue, Nonjoinder of a Necessary Party – Pa.R.Civ.P. 1028(a)(5)**

31. Speaker Cutler incorporates by reference the preliminary objection filed by the Members of the Select Committee alleging that they should be dismissed from the action because they are entitled to immunity.

**Fourth Preliminary Objection**  
**Legal Insufficiency of a Pleading – Pa.R.Civ.P. 1028(a)(4)**  
**Lack of Capacity to Sue, Nonjoinder of a Necessary Party – Pa.R.Civ.P. 1028(a)(5)**

32. Speaker Cutler incorporates by reference the preliminary objection filed by the Members of the Select Committee alleging that they have been improperly named as respondents in this action.

**Fifth Preliminary Objection**  
**Lack of Jurisdiction (Ripeness) – Pa.R.Civ.P. 1028(a)(1)**  
**Legal Insufficiency of a Pleading – Pa.R.Civ.P. 1028(a)(4)**

33. Speaker Cutler incorporates by reference the preliminary objection filed by the Members of the Select Committee seeking dismissal of the Petition for Review for lack of a ripe controversy.

WHEREFORE, Speaker Cutler respectfully requests that this Honorable Court sustain his preliminary objections and dismiss the Petition for Review in its entirety.

**McNEES WALLACE & NURICK LLC**

By: \_\_\_\_\_

  
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Date: October 14, 2022

*Attorneys for Speaker of the  
Pennsylvania House of  
Representatives Bryan D. Cutler*

# Exhibit A

**House of Representatives  
Daily Session Update  
Prepared by the Office of the Parliamentarian  
July 8, 2022  
Convened at 9 A.M.  
Adjourned at 10:03 P.M.**

**Opening Prayer by Representative Brett Miller.**

**Communications Received**

**Communication received from Governor Tom Wolf, Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 1420, Printer's Number 3371.**

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**Communication received from Governor Tom Wolf, Pursuant to Article IV, Section 15 of the Pennsylvania Constitution, I am returning herewith, without my approval, House Bill 72, Printer's Number 2886.**

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**The Speaker submitted for the record a copy of the 1<sup>st</sup> Annual Report from the Rural Health Redesign Center Authority - 2020 Annual Report.**

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**July 8, 2022**

**In the House of Representatives**

**Pursuant to House Resolution 216 of 2022, The Speaker of the House appointed the following members to the Select Committee on Restoring Law and Order, including three members of the majority party and two members of the minority party of the House of Representatives:**

**Representative John Lawrence – Chair**

**Representative Wendi Thomas**

**Representative Torren Ecker**

**Representative Amen Brown**

**Representative Danilo Burgos**

**Communications Received From the Senate**

**The Clerk of the Senate being introduced, returned bills from the House of Representatives numbered and entitled as follows, viz:**

**HB 2702**

**HB 2709**



With information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

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The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to the Senate Bills numbered and entitled as follows, viz:

SB 1093  
SB 1100  
SB 1171  
SB 1222  
SB 1284

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The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to the Senate amendments to House Bill numbered and entitled as follows, viz:

HB 1642

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

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The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives by amending said amendments to House Bill numbered and entitled as follows, viz:

HB 1421

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

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The Clerk of the Senate being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives by amending said amendments to Senate Bills numbered and entitled as follows, viz:

SB 106  
SB 982

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

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The Clerk of the Senate being introduced, presented the following extract from the Journal of the Senate, which was read as follows, viz:

In the Senate,  
July 8, 2022

RESOLVED, (the House of Representatives concurring), Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the Senate recesses this week, it reconvene on

Monday, September 19, 2022, unless sooner recalled by the President Pro Tempore; and be it further

RESOLVED, Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the House of Representatives recesses this week, it reconvene on Monday, September 12, 2022, unless sooner recalled by the Speaker of the House of Representatives; and be it further

RESOLVED, Pursuant to Article II, Section 14 of the Pennsylvania Constitution, that when the House of Representatives recesses this week, it reconvene on Monday, September 19, 2022, unless sooner recalled by the Speaker of the House of Representatives.

*Ordered*, That the Clerk present the same to the House of Representatives for its concurrence.

### **Adopted Voice Vote**

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**Motion to Adjourn until  
September 12, 2022, at  
12 Noon (McClinton)            92 - 107     (Failed)**

### **Concurrence in Senate Amendments**

**HB 2702 PN 3372        198 - 1**

**HB 2709 PN 3378        199 - 0**

### **Concurrence in Senate Amendments to House Amendments**

#### **SB 106 PN 1857**

**Motion to Suspend the Rules  
for Late Filed Amendment  
A05421 (Cephas)                            86 - 114   (Failed)**

**Motion to Suspend the Rules  
for Late Filed Amendment  
A05440 (Daley)                            86 - 113   (Failed)**

**Motion to Move to Previous  
Question on Motion to Adjourn  
(Benninghoff)                            110 - 89**

**Motion to Adjourn until  
September 12, 2022, at  
12 NOON (Bradford)                    90 - 109     (Failed)  
107 - 92**

**SB 982 PN 1856                        103 - 96**

**Concurrence in Senate Amendments to House Amendments as further Amended by the Senate**

Motion to Proceed with  
HB 1421, PN 3379  
(Benninghoff/McClinton) 192 - 7  
    HB 1421 PN 3379 185 - 14

**Bills on Second Consideration**

SB 736 PN 0840  
    A05318 (METZGAR) 108 - 91  
    Bill Agreed to on Second Consideration as Amended

**Bills on Third Consideration**

**Bills Signed by the Speaker**

HB 1421  
HB 1642  
HB 2702  
HB 2709  
SB 106  
SB 382  
SB 982  
SB 1093  
SB 1100  
SB 1171  
SB 1222  
SB 1284

**Bills Referred**

HR 220 Agriculture and Rural Affairs  
  
HB 2739 Labor and Industry  
  
SB 676 Insurance  
SB 1123 Transportation  
SB 1201 Insurance  
SB 1299 Transportation

**Bills Recommitted**

SB 736 To Appropriations

## **Bills Referred**

### **Bills Reported from Committee**

HB 1421 From Rules Re-Reported as Committed  
HB 2702 From Rules Re-Reported as Committed  
HB 2709 From Rules Re-Reported as Committed  
SB 106 From Rules Re-Reported as Committed  
SB 982 From Rules Re-Reported as Committed

### **Bills Removed from the Tabled Calendar and Placed on the Active Calendar**

HB 1151  
HB 2580  
SB 347  
SB 564  
HR 117

### **Bill Removed from the Active Calendar and Placed on the Tabled Calendar**

HB 1151  
HB 2580  
SB 347  
SB 562  
HR 117

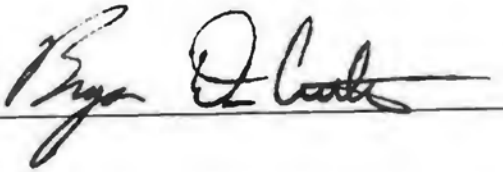
### **House Resolutions Adopted**

**This is not an official record of the day's legislative activity.  
The House of Representatives adjourned  
Until Monday, September 12, 2022 at 12 Noon,  
unless sooner recalled by the Speaker.**

**VERIFICATION**

I, Bryan D. Cutler, Speaker of the House of Representatives hereby aver that the statements of fact contained in the attached Preliminary Objections are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 10/13/22

By: 

## PROOF OF SERVICE

I certify that I have caused a true and correct copy of the foregoing document to be served on this 14th day of October 2022, upon the persons below via the Court's PACFile System, which satisfies Pennsylvania Rule of Appellate Procedure 121, Pa.R.A.P. 121:

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\_\_\_\_\_  
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