

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LARRY KRASNER, in his official capacity
as the District Attorney of Philadelphia;
OFFICE OF THE DISTRICT
ATTORNEY, CITY OF PHILADELPHIA,

Petitioners,

v.

MICHELLE A. HENRY, in her official
capacity as Attorney General of
Pennsylvania,

Respondent.

Docket No. _____ CD 2024

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

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

Counsel of Record for Petitioners:

John S. Summers (#41854)
Matthew A. Hamermesh (#82313)
Andrew M. Erdlen (#320260)
Michael J. Masciandaro (#329321)

Counsel for Petitioners

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NOTICE TO PLEAD

TO: Michelle A. Henry, in her official capacity as Attorney General of Pennsylvania

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

By: /s/ John S. Summers

Dated: January 11, 2024

John S. Summers (#41854)

Matthew A. Hamermesh (#82313)

Andrew M. Erdlen (#320260)

Michael J. Masciandaro (#329321)

One Logan Square, 27th Floor

Philadelphia, PA 19103

Telephone: (215) 568-6200

jsummers@hangle.com

mhamermesh@hangle.com

aerdlen@hangle.com

mmasciandaro@hangle.com

Counsel for Petitioners

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

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INTRODUCTION

1. Led by legislators from outside Philadelphia, the Commonwealth General Assembly enacted the Act of December 14, 2023, Public Law No. 40 (“Act 40”), to target and divest the authority of Petitioner District Attorney Larry Krasner and his office, the Philadelphia District Attorney’s Office (“DAO”), from prosecuting crimes within the Southeastern Pennsylvania Transportation Authority (“SEPTA”) in Philadelphia.

2. In broad, vague language, Act 40 removes from DA Krasner and the DAO their authority to prosecute crimes on, and possibly within a wide berth of, SEPTA in Philadelphia. Specifically, the Act compels the Attorney General to

appoint a Special Prosecutor to unilaterally prosecute crimes “within” SEPTA in Philadelphia for the purpose of precluding and supplanting DA Krasner’s and the DAO’s authority. Although the law does not define what “within” SEPTA means, our analysis reveals that the Special Prosecutor would have authority over approximately 89% of the geographic area of Philadelphia and 95% of the criminal incidents in the City. That is a shocking usurpation of power.

3. Act 40 specifically discriminates against Philadelphia; it favors other counties and their voters because it calls for the appointment of a Special Prosecutor who purports to have unilateral authority over DA Krasner and the DAO to prosecute crimes within SEPTA but not such unilateral authority over district attorneys in other counties for crimes within SEPTA in those other counties. Only in those other counties must the Special Prosecutor obtain written consent from the local district attorneys before prosecuting crimes within SEPTA in their counties.

4. Indisputably, Act 40 is an unconstitutional, radical, and unprecedented measure. There has been no comparable law in the history of the Commonwealth that so unconstitutionally and undemocratically seeks to undermine a single district attorney’s law enforcement authority.

5. First, as detailed in this Petition, as a matter of law, Act 40 suffers from multiple constitutional defects. The law: (a) unconstitutionally divests DA

Krasner and the DAO of their territorial jurisdiction; (b) unconstitutionally nullifies DA Krasner's and the DAO's core prosecutorial functions; (c) unconstitutionally singles out DA Krasner and the City of Philadelphia by purporting to usurp their authority to prosecute crimes in Philadelphia on SEPTA; (d) violates the Equal Protection guarantees of the Pennsylvania Constitution in treating DA Krasner and the DAO differently from the district attorneys and their offices in the surrounding counties; (e) unconstitutionally calls for the appointment of an unaccountable Special Prosecutor; (f) violates the Criminal History Record Information Act (CHRIA); and (g) impairs the prosecution of SEPTA crimes in Philadelphia by violating the rights of criminal defendants.

6. Any one of these deficiencies dooms the law; taken together, they make Act 40 a constitutional train wreck.

7. Second, Act 40 is an indisputably brazen effort by legislators from outside of Philadelphia to disenfranchise the voters of the City of Philadelphia. Philadelphia citizens elected DA Krasner in 2017 and re-elected him in 2021, when he carried 66% of the vote in a contested primary and 72% of the vote in the general election. There can be no doubt about DA Krasner's overwhelming popular support in Philadelphia. Yet the principal sponsor of the law, Republican Sen. Wayne Langerholc, Jr. (Cambria, Centre (part), and Clearfield Counties), made clear that Act 40 and its Special Prosecutor are designed to target DA

Krasner and the DAO specifically, and to take over their prosecutorial authority.

8. The law is not just unconstitutional for the reasons alleged in detail below, but also because it discourages voters in Philadelphia – Pennsylvania’s most urban, diverse, and populated county – from believing their votes will truly be counted. Democracy is in a perilous position in Pennsylvania and the rest of the country. In just a few short months, a landmark election will test the strength of our Republic. Laws like Act 40, at their very core, undermine the will of Philadelphia’s million-plus voters, many of whom come from marginalized groups who do not agree with the views of its sponsors.

9. Indisputably, as the opponents of the law (including legislators actually from Philadelphia) repeatedly stated, Act 40 in effect – if not in intent – erases the votes of all Philadelphia citizens. There has been substantial public criticism of the proponents of the law – and the Governor for having signed it – for this reason. See Solomon Jones, *The Racist Message at the Heart of Pennsylvania’s New Act 40*, Phila. Inquirer (Dec. 28, 2023), <https://www.inquirer.com/opinion/pennsylvania-general-assembly-act-40-philadelphia-septa-racism-larry-krasner-josh-shapiro-20231228.html> (op-ed comparing Act 40 to similar controversial legislation in Jackson, Mississippi); Denise Clay-Murray, *A Question of Trust*, Phila. Sun (Dec. 29, 2023), <https://www.philasun.com/local/a-question-of-trust/> (op-ed); Michael Coard,

Republicans Disenfranchise Black Philly Voters by Attacking Krasner, Phila.

Tribune (Dec. 15, 2023)

[https://www.phillytrib.com/commentary/michaelcoard/republicans-disenfranchise-black-philly-voters-by-attacking-krasner/article_733b5187-b295-531a-ae23-](https://www.phillytrib.com/commentary/michaelcoard/republicans-disenfranchise-black-philly-voters-by-attacking-krasner/article_733b5187-b295-531a-ae23-772458cba03a.html)

[772458cba03a.html](https://www.phillytrib.com/commentary/michaelcoard/republicans-disenfranchise-black-philly-voters-by-attacking-krasner/article_733b5187-b295-531a-ae23-772458cba03a.html) (“That law [Act 40] claims to be an anti-crime initiative but it’s actually a pro-disenfranchisement insult.”). Copies of these articles are attached as Exhibits A-C to Exhibit 5 hereto.

10. Politicians can’t nullify a lawful election because they don’t like the outcome. Likewise, politicians can’t do that indirectly by appointing a special prosecutor to supersede a district attorney’s constitutional authority to prosecute crimes in his or her county.

11. Third, Act 40 is based on false “alternative” facts. Sen. Langerholc represented to the Senators during the floor debates that Act 40 was justified because: “The problem is [DA Krasner] is not prosecuting; he is not doing his job.” 2023 Pa. Leg. J. - Senate 357 at 364 (May 2, 2023).

12. To the contrary, the evidence shows that DA Krasner, and the DAO under his leadership, has charged those whom SEPTA has arrested at the same rate as his predecessor district attorney and at a rate comparable to the charging of comparable crimes in all of Philadelphia. *See infra* Statement of Facts, Part B.

13. Petitioners file this action seeking declaratory and permanent and preliminary injunctive relief to stop the implementation of the law. The law directs Respondent Michelle A. Henry, Attorney General, to appoint a Special Prosecutor not later than January 13 (*i.e.*, thirty days after December 14.) *See* Act 40, at § 1786(a).

14. As of the filing of this Petition, she has not appointed a Special Prosecutor and therefore this lawsuit seeks, among other things, the preservation of the status quo.

JURISDICTION

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

PARTIES

16. Petitioners are Larry Krasner, in his official capacity as the District Attorney of Philadelphia, and Office of the District Attorney of the City of Philadelphia (“DAO”).

17. Respondent Michelle A. Henry is sued only in her official capacity as the Attorney General of the Commonwealth of Pennsylvania. Attorney General

Henry is in charge of, and has control over, the Pennsylvania Office of Attorney General.

STATEMENT OF FACTS

A. DA Krasner Is the Philadelphia District Attorney, Accountable to the Voters of the City of Philadelphia Who Elected and Re-elected Him

18. For over a century, the Philadelphia District Attorney, like all other District Attorneys statewide, has been an elected official vested with substantial discretion over the enforcement of our Commonwealth's criminal laws. Broadly, the Pennsylvania Constitution and its laws provide that voters elect local, county-wide District Attorneys who are responsible for prosecuting crime in the county in which the District Attorney is elected. Law enforcement in a county is thus subject to, and accountable to, the electorate of that county.

19. As our Supreme Court has explained, “[t]he District Attorney of Philadelphia County . . . is the sole public official charged with the legal responsibility of conducting ‘in court all criminal and other prosecutions, in the name of the Commonwealth.’ The District Attorney must be allowed to carry out this important function without hindrance or interference from any source.” *Commonwealth ex rel. Specter v. Bauer*, 261 A.2d 573, 576 (Pa. 1970) (internal citation omitted).

20. Petitioner Larry Krasner is the District Attorney of Philadelphia

County and its chief law enforcement officer. As a matter of Pennsylvania Constitutional law since 1874 – 150 years – the territorial jurisdiction of the Philadelphia District Attorney is coextensive with Philadelphia County. *See* Pa. Const., Art. IX, § 4.

B. DA Krasner’s Prosecution of Crimes Within SEPTA

21. As part of his duties as Philadelphia’s chief law enforcement officer, DA Krasner and the DAO have prosecutorial authority over all crimes in Philadelphia.

22. No law provides for different chief law enforcement officers to prosecute crimes committed in some parts of Philadelphia as compared to others. DA Krasner and the DAO are the only prosecutorial authorities responsible for enforcing the laws throughout the City of Philadelphia, including SEPTA or anywhere else.¹

23. And DA Krasner vigorously charges and prosecutes SEPTA crimes.

24. The Table below depicts the number of arrests by SEPTA police for felonies and misdemeanors occurring within SEPTA:²

¹ SEPTA is a public transportation authority which, as one of the nation’s major regional transit providers, serves millions of people in and around Philadelphia, including the four surrounding suburban counties.

² The figures in the Table and those cited *infra* exclude arrests for summary offenses and for outstanding bench warrants pursuant to 18 Pa. C.S. § 5124. Section 5124(a) states that a person required to appear in court “commits a misdemeanor of the second degree if, without lawful excuse, he fails to appear at

Year	Total Arrests	Total Arrests Charged	Charging Rate
2018	275	240	87%
2019	176	156	89%
2020	161	150	93%
2021	144	137	95%
2022	165	155	94%
2023	110	103	94%

25. These data demonstrate several things. First, arrests by SEPTA police have fallen sharply (*e.g.*, from 275 to 110) in the years from 2018 to 2023. But Act 40 does not provide SEPTA and its police force with greater resources. That would be a genuine way to enhance law enforcement and increase the number of arrests. The law is instead misdirected to attack DA Krasner and the DAO, who play no role in SEPTA arrests.

26. Second, the data show that what DA Krasner and the DAO are actually doing – taking SEPTA’s arrests and charging those defendants – has remained essentially unchanged. During DA Krasner’s tenure, the charging rate has stood at approximately 92 percent, which is consistent with the charging rate of the prior DAO administration in Philadelphia. Specifically, over the four years

that time and place.” A violation of this statute is therefore a nonviolent crime which does not occur within SEPTA.

from 2014 to 2017, the charging rate for such SEPTA crimes was 97, 94, 88, and 89 percent respectively, with an average of 92 percent. That is the same rate as during DA Krasner's tenure.

27. Third, Petitioners cannot be criticized for casting a blind eye towards SEPTA crimes. The 92% charging rate is consistent with the average charging rates for citywide felony and misdemeanor arrests by all agencies (93.2 percent for the period 2018 to 2023).

28. Contrary to fact, Sen. Langerholc and colleagues baselessly criticized DA Krasner and the DAO for supposedly failing to prosecute crime on SEPTA. DA Krasner cannot be faulted for any lack of arrests by police or for SEPTA and police decisions to use civil remedies and charge summary offenses rather than pursue misdemeanor charges. Simply put, there is no basis for concluding that there is any problem with prosecutions within SEPTA. Act 40 is a targeted political measure made up by a legislator in a county far from Philadelphia.

29. Though the facts apparently don't matter to the proponents of Act 40, facts matter in Philadelphia. And on the basis of real facts – DA Krasner's and the DAO's actual record of charging of SEPTA crimes (as well as his other policies and track record) – DA Krasner was reelected in 2021. Overwhelmingly.

30. Undeterred by actual facts and the citizens of Philadelphia's strong support for DA Krasner, Sen. Langerholc and other legislators voted for Act 40 to

erase the votes of the citizens of Philadelphia by stripping DA Krasner and the DAO of its exclusive authority to prosecute crimes everywhere in Philadelphia, including on SEPTA.

C. The Terms and Legislative History of Act 40

1. Summary of Act 40's Terms

31. On December 14, 2023, Act 40, titled “An Act Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in Metropolitan Transportation Authorities, Providing for Special Prosecutor for Mass Transit” came into effect. A copy of Act 40 is attached as Exhibit 1. The law includes the following pertinent provisions.

(a) The Unelected Special Prosecutor Has Broad General Authority and Jurisdiction

32. Section 1 states, “[w]ithin 30 days of the effective date of this section [*i.e.*, by January 13, 2024], the Attorney General shall appoint a special prosecutor to investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class in accordance with this section.” *See* Ex. 1, Section 1, at § 1786(a).

33. Act 40 further provides:

Notwithstanding any other provision of law or regulation, a special prosecutor shall have the authority to investigate and prosecute, and has jurisdiction over, any

criminal matter involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The special prosecutor's prosecutorial jurisdiction shall include the power and independent authority to exercise all investigative and prosecutorial functions and powers of an office of the district attorney of a county of the first class and any other officer or employee of the office of the district attorney in the county of the first class.

Id. § 1786(a)(2).

34. Such "investigative and prosecutorial functions" are extensive and encompass the traditional roles and functions of a county district attorney.

35. For example, they include "Conducting proceedings before grand juries and other investigations"; "Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special prosecutor considers necessary"; "Initiating and conducting prosecutions in any court of competent jurisdiction, appealing any decision of a court in a proceeding in which the special prosecutor participates and handling all aspects of any case in the name of the Commonwealth"; "Reviewing all documentary evidence available from any source"; and "Making applications to a State court for a grant of immunity to a witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders." *Id.* § 1786(a)(2)(i)(A)-(E).

36. The Special Prosecutor is empowered to "use facilities, resources and

personnel of the Attorney General” and “may request assistance from the Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction.” *Id.* § 1786(a)(3). In turn, “any law enforcement agency with appropriate jurisdiction may provide assistance, which may include the use of resources and personnel necessary to perform the duties of the special prosecutor.”

Id.

(b) The Special Prosecutor Has Broad Pre-Emptive and Targeted Authority Over DA Krasner and the DAO – But Not Over Suburban District Attorneys

37. Within the Special Prosecutor’s “sole discretion,” the Special Prosecutor may assert “preemptive prosecutorial jurisdiction over any criminal actions or proceedings involving alleged violations of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.” *Id.* § 1786(a)(4).

38. No prior approval by the Philadelphia District Attorney’s Office is required for the special prosecutor to initiate criminal proceedings. *Id.* § 1786(a)(4)(v).

39. And the Philadelphia District Attorney’s Office must notify a Special Prosecutor of “any arrest or other criminal action or proceeding involving an alleged violation of the laws of this Commonwealth occurring within a public

transportation authority” within 48 hours. *Id.* § 1786(a)(7).

40. The Special Prosecutor’s powers include not only the power to investigate and bring prosecutions, but to stop ongoing investigations and prosecutions (regardless of their stage), and to take the Philadelphia District Attorney’s Office’s files that the special prosecutor deems related to an investigation in his/her jurisdiction. *Id.* § 1786(a)(4)(iv).

41. Act 40’s preemptive jurisdiction is targeted at only the Philadelphia District Attorney – Philadelphia is the only first-class county in Pennsylvania – even though SEPTA serves counties other than Philadelphia (and even though SEPTA is not the only Pennsylvania transit service).

42. Notably, the Special Prosecutor “may not assert preemptive prosecutorial jurisdiction . . . in a case where jurisdiction also exists in a county other than a county of the first class unless the special prosecutor requests in writing to the district attorney in the county other than the county of the first class to assert preemptive prosecutorial jurisdiction and the district attorney in the county other than the county of the first class accepts the request in writing.” *Id.* § 1786(a)(4)(iii).

43. Act 40 imposes certain requirements for the Special Prosecutor, including that such person shall “[n]ot have been employed by the district attorney’s office in a county of the first class or the Office of Attorney General

within six years of the effective date of this section.” *Id.* § 1786(a)(1)(iii).

44. Because DA Krasner’s first term began in 2018, Act 40’s six-year bar on any person serving as special prosecutor who was employed in the Philadelphia District Attorney’s Office is coextensive with DA Krasner’s term. In effect, this provision says that no one can be selected who has ever worked as an ADA while Larry Krasner was DA.

(c) The Special Prosecutor’s Territorial Authority to Prosecute Potentially Broadens to 500 Yards from Any SEPTA Property

45. Act 40 sets aside broad territorial jurisdiction for the appointed Special Prosecutor, who will “investigate and institute criminal proceedings for a violation of the laws of this Commonwealth *occurring within a public transportation authority.*” *Id.* § 1786(a) (emphasis added).

46. Although Act 40 repeatedly uses the phrase “occurring within a public transportation authority,” it does not define that phrase. *See, e.g., id.* § 1786(a) & (a)(2). The law also does not identify who (i.e., the Special Prosecutor, the Attorney General, DA Krasner, or someone else) is to determine whether a crime occurred “within” a public transportation authority.

47. It does, however, state that “[e]ach *law enforcement agency* with jurisdiction in a county of the first class shall notify a special prosecutor of any arrest or other criminal action or proceeding involving an alleged violation of the

laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation.” *Id.*

§ 1786(a)(7) (emphasis added).

48. This suggests that the Special Prosecutor has jurisdiction coextensive with that of any “law enforcement agency,” which is defined to include “[a] public agency . . . having general police powers and charged with making arrests,” “[a] campus police or university police department,” or “[a] railroad or street railway police department” under Title 22, “[a]n airport authority police department,” or “[a] county park police force.” *See id.* § 1786(b)(1)-(5).

49. If this were so, the jurisdiction of such “law enforcement agencies” would be even broader and include up to 500 yards from the agency’s property. *See, e.g., Commonwealth v. Bloom*, 979 A.2d 368, 371 (Pa. Super. Ct. 2009); *Commonwealth v. Firman*, 813 A.2d 643 (Pa. 2002); 71 P.S. § 646.1(a)(6) (campus police have jurisdiction “within 500 yards of the grounds of the college or university”); *see also* 22 Pa. C.S. § 3303.

50. If the Special Prosecutor’s preemptive authority extends to any crime occurring on or within 500 yards of SEPTA property, the Special Prosecutor’s territory would dwarf the jurisdiction of the District Attorney’s Office, usurping its constitutional function and running roughshod over the traditional authority of county district attorneys and their extensive prosecutorial discretion. This would

effectively allow the Special Prosecutor to assert preemptive jurisdiction *over approximately 89%* of the territory of the City of Philadelphia, which encompasses *over 95%* of criminal incidents in Philadelphia.

(d) Act 40 Has No Procedure for Removal or Mechanism for Oversight of the Special Prosecutor

51. Act 40 contains no mechanism for oversight of the Special Prosecutor. Act 40 has no procedure for removing the Special Prosecutor.

52. And it prescribes no limits on the Special Prosecutor’s discretion or authority in Philadelphia. Instead, Act 40 authorizes “preemptive prosecutorial jurisdiction” over Petitioners in the Special Prosecutor’s “sole discretion.” *See* Ex. 1, at § 1786(a)(4) & (a)(4)(i).

53. Further, the Special Prosecutor’s authority expires at the end of 2026, at which time “[n]o new action or proceeding may be initiated” by the special prosecutor. *Id.* § 1786(a)(8). This “sunset” occurs one year after the end of DA Krasner’s current term, likely to allow the Special Prosecutor to complete any prosecutions initiated by the end of DA Krasner’s term.

54. Moreover, nothing in Act 40 requires the Special Prosecutor to swear an oath of office to uphold the Constitution or laws of the Commonwealth, as all District Attorneys and other public officials must do. *See id.* § 1786(a)(1) (setting forth requirements for Special Prosecutor).

55. Finally, Act 40 on its face creates steep administrative problems that

could allow the Special Prosecutor, apparently in its sole discretion, to expand the prosecutor's authority. For example, Act 40 does not authorize challenges to the Special Prosecutor's jurisdiction, though the law does not define what it means to occur "within" SEPTA and other authorities suggest that territorial jurisdiction could be within 500 yards of SEPTA property. And Act 40 provides no basis for determining what exactly the Special Prosecutor's jurisdiction is. To the contrary, Act 40 limits the right of municipalities to take official action with respect to the enforcement of Act 40 and, further, strips criminal defendants of standing to challenge the statute.

**(e) Act 40 Prohibits Criminal Defendants from
Challenging the Law**

56. Act 40 states that no person "charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge." *Id.* § 1786(a)(5). Accordingly, Act 40 purports to strip the judiciary of its right to review the authority of the Special Prosecutor and denies a criminal defendant the constitutional right to raise arguments in his/her defense.

57. This provision would normalize the statutory elimination of judicial review by the courts, running roughshod over centuries of case law and

fundamental tenets of separation of powers.

(f) The Act’s Fiscal Provisions Require Philadelphia to Bear the Special Prosecutor’s Costs and Deny Philadelphia Its Statutory Right to Reimbursement for DA Krasner’s Salary

58. Act 40 requires Philadelphia County to “reimburse” the Special Prosecutor for any expenses incurred in performing the Special Prosecutor’s duties. The Special Prosecutor shall be compensated by the Office of Attorney General, at a per diem rate equivalent to the District Attorney’s salary. The Commonwealth shall not reimburse Philadelphia County for any portion of DA Krasner’s salary, even though it is otherwise obligated to do so by statute. *See id.* § 1786(10)-(12).

2. Act 40’s Legislative History

59. The legislative history of Act 40 confirms that the law targets DA Krasner and Philadelphia. It shows that the intent if not the effect of the law was to limit DA Krasner’s and the DAO’s authority to prosecute crimes occurring on and around SEPTA property in Philadelphia.

60. In an April 2023 Memorandum, Senator Langerholc, Act 40’s sponsoring legislator, states that he intended to introduce legislation “to appoint a special prosecutor to oversee crimes occurring on SEPTA within the City of Philadelphia. This prosecutor will address the inaction of the current DA and ensure that those that break the law will answer for their crime.” *See* Sen. Wayne Langerholc, Jr., Memorandum (Apr. 14, 2023), <https://www.legis.state.pa.us//>

[40490](#). A copy of this Memorandum is attached as Exhibit 2.

61. As alleged, *supra*, the premise that there is “inaction of the current DA” is false, as DA Krasner and the DAO vigorously charge and pursue more than 90% of all SEPTA matters referred for prosecution, consistent with city-wide and historical averages in his and prior administrations in Philadelphia.

62. During debate on SB 140, which became Act 40, opponents of the measure stated that “prosecution is not the problem” on SEPTA, rather, there is a lack of police presence; the bill “usurps local government and will not improve safety on SEPTA;” and the bill “does not address the safety concerns of [voters] who use SEPTA outside of Philadelphia.” 2023 Pa. Leg. J. - Senate 357 at 360-61 (May 2, 2023) (statements of Sen. Kearney). A copy of the Legislative Journal is attached as Exhibit 3.

63. Opponents also correctly noted that the bill “removes the power of the citizens of Philadelphia to choose who their prosecutor is by eliminating that prosecutor’s responsibilities” and observed that, if the bill were enacted, “the citizens of Philadelphia cannot elect the district attorney that they want to elect [and that] if the Majority [of legislators] . . . do[es] not like that district attorney . . . [it] will remove his or her power.” *Id.* at 361-62 (statements of Sen. Hughes). This tells Philadelphians that they are “second-class citizens.” *Id.* at 362.

64. Saliently, opponents of the bill emphasized that “[t]he true intent of this bill . . . is to remove the powers of the District Attorney of Philadelphia [outside the democratic process] . . . this [bill] is going, straight at the person who the citizens of Philadelphia elected to represent them as their district attorney twice.” *Id.* at 362. As Senator Street explained, Act 40 is “clearly targeted at a disagreement, a political disagreement, with the way, the selection that the people of Philadelphia have made as to how such prosecutorial discretion should be exercised.” *Id.* at 363 (statements of Sen. Street).

65. Indeed, as Senator Costa explained, “this has an impact on the voters of Philadelphia . . . this impacts what has taken place twice with overwhelming margins of victory that the authority that was vested in this district attorney by law and by the voters of that county.” *Id.* He further highlighted, “[t]he language in this bill is specifically tied to this district attorney in this office now.” *Id.*³

66. There can be no mistake. Senator Langerholc made clear during the floor debate that the bill targets Philadelphia and DA Krasner.

67. Senator Langerholc stated: “The problem is [that DA Krasner] is not

³ A proposed amendment to Act 40 that would have expanded Act 40 to encompass all counties, not just Philadelphia, was voted down. *See* Amendments to Senate Bill No. 140, Printer’s No. 684 (May 2, 2023), <https://www.legis.state.pa.us/CFDOCS/Legis/HA/Public/HaCheck.cfm?txtType=PDF&sYear=2023&sInd=0&body=S&type=B&bn=0140&pn=0684&aYear=2023&an=00426>.

prosecuting; he is not doing his job. It is not a question of the way or the manner in which he is doing it, he is just flat-out not doing it.” *Id.* at 364. As noted above, this assertion is baseless.

68. Act 40’s attempts to restrict DA Krasner’s authority are not new. The General Assembly has for years tried to remove DA Krasner from office or limit his powers. For example, legislators unsuccessfully introduced legislation to impose term limits on him, a bill that passed the House in 2022. *See* Cassie Miller, *House Passes Bill Limiting Philly DA to Two Terms*, Pennsylvania Capital-Star (Apr. 26, 2022), <https://www.penncapital-star.com/blog/house-passes-bill-limiting-philly-da-to-two-terms>.

69. Most notably, the House impeached DA Krasner in 2022. The Commonwealth Court concluded that the Articles of Impeachment failed to satisfy the constitutional standard of “any misbehavior in office,” and thus the Articles were null and void. For example, the lead opinion noted that Krasner’s alleged misbehavior resulted from policy disagreements and therefore was not a basis for impeachment. The matter is presently on appeal before the Pennsylvania Supreme Court. *See Krasner v. Ward*, Nos. 2 EAP 2023 (Pa.).

70. SB 140 passed both houses and was signed into law on December 14, 2023. It took effect immediately.

D. The Potential Scope of the Special Prosecutor’s Authority Under Act 40

71. The authority of the Special Prosecutor could be read to encompass all territory within 500 yards of a SEPTA property. See *supra* Part C.1(c). Based on that, the DAO has estimated from publicly-available information the scope of the Special Prosecutor’s territorial jurisdiction under Act 40.

72. The City of Philadelphia comprises approximately just over 140 square miles.

73. Within the City, SEPTA operates approximately 8,175 bus, train, and trolley stops. Assuming the 500 yard buffer, the DAO calculated that more than 126 square miles would be encompassed in the Special Prosecutor’s territory, approximately 89% of the total geographic area of Philadelphia. A map depicting the Special Prosecutor’s territory and the remaining portion of the City is attached as Exhibit 4.

74. A second way of measuring the Special Prosecutor’s far-reaching scope is to determine the number and percentage of all criminal incidents that occurred in 2023 within the 500-yard buffer. By that measure, there were 160,510, or approximately 95% of all criminal incidents, that would have fallen into the Special Prosecutor’s territory.

75. These statistics are conservative because they do not include, among other things, 500 yard buffers from SEPTA’s headquarters or other facilities.

76. Accordingly, the Special Prosecutor’s potential territory and preemptive authority under Act 40 is near total.

E. The Attorney General Takes Steps to Implement Act 40, Including By Soliciting Applications for the Special Prosecutor’s Office

77. On or around December 29, 2023, the Office of Attorney General posted a public notice soliciting applications for what appears to be the role of the Act 40 Special Prosecutor. *See* Job Bulletin, Pennsylvania Office of Attorney General, Special Prosecutor, <https://www.governmentjobs.com/careers/paoag/jobs/newprint/4323346>.

78. The job notice initially listed a “closing date” of January 3, 2024, at 5:00 PM. The notice was subsequently revised to include a closing date of January 5, 2024, at 5:00 PM. A version of the job posting without a “closing date” remains posted on the website.

79. On January 8, 2024, counsel for District Attorney Krasner submitted a letter to the Attorney General setting forth reasons why Act 40 was unconstitutional. A copy of that letter is attached as Exhibit 5. The letter also requested the opportunity to discuss the letter and law with the Attorney General and her Office at their earliest convenience.

80. District Attorney Krasner further requested, because of the time constraints imposed by the Act, that the Attorney General provide assurances by

noon on Wednesday, January 10, 2024, that she would not proceed to implement Act 40 in any way, including by the appointment of a Special Prosecutor. *See id.* at 19.

81. The letter advised that if the Office proceeded with implementing Act 40, DA Krasner and the DAO would fully enforce their rights in court and seek declaratory and preliminary and permanent injunctive relief, as well as other appropriate relief.

82. The Attorney General's Office has responded that given the statutory mandate, it is continuing to review potential candidates and does not know when the appointment will occur or when any appointee might actually begin serving.

83. Accordingly, the Attorney General's Office did not provide the requested assurances, necessitating this Petition for Review.

F. Act 40 Causes Imminent Irreparable Injury and Petitioners are Entitled to Preliminary and Permanent Injunctive Relief

84. The Attorney General, as well as the Commonwealth's other officials, are bound to follow the law.

85. Act 40 violates the Pennsylvania Constitution and violates other statutes. *See infra* Claims I-VII.

86. Accordingly, for the following reasons, Petitioners are entitled to preliminary and permanent injunctive relief to maintain the status quo. *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 502 (Pa. 2014).

1. Injunctive Relief Is Necessary to Avoid Immediate Irreparable Harm

87. The harm caused by the implementation of Act 40 is irreparable and would not be adequately compensable by damages.

88. First, any implementation of Act 40 would *per se* cause irreparable harm because the Attorney General's implementation of the law would violate the Commonwealth's Constitution and statutes. *See Wolk v. Sch. Dist. of Lower Merion*, 228 A.3d 595, 610-11 (Pa. Commw. Ct. 2020) (citing *Pennsylvania Pub. Util. Comm'n v. Israel*, 52 A.2d 317, 321 (Pa. 1947) ("When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.")); *see also SEIU Healthcare*, 104 A.3d at 508 (statutory violations constitute irreparable harm *per se*); *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1180 (Pa. Commw. Ct. 2016) ("[T]he Ordinance is preempted . . . and, therefore, the Township's enactment of the [ordinance] violates the [state statute]. Thus, issuance of a preliminary injunction is necessary to prevent immediate and irreparable harm, *i.e.*, the continued statutory violation."); *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Commw. Ct. 2014) ("Because Section 6120(a) prohibits the City from regulating the lawful possession of firearms, an irreparable injury is present in this case."). Even potential violations constitute irreparable harm *per se*. *See ModivCare Sols., LLC*

v. Dep't of Hum. Servs., No. 789 C.D. 2023, 2023 WL 8367792, at *3 (Pa. Commw. Ct. Nov. 17, 2023).

89. Second, implementation of Act 40 would interfere with the rights and responsibilities of Petitioners. Interference with such rights and responsibilities is an additional form of irreparable harm. *See, e.g., Grine v. Cnty. of Centre*, 138 A.3d 88, 100-101 (Pa. Commw. Ct. 2016) (en banc) (affirming preliminary injunction issued to prevent a county from taking actions that came within “the inherent right and power” of the courts under the Pennsylvania Constitution); *Patriot-News Co. v. Empowerment Team of Harrisburg Sch. Dist. Members*, 763 A.2d 539, 547 (Pa. Commw. Ct. 2000) (en banc) (finding irreparable harm where action by statutorily established bodies would undermine public’s trust in government).

90. Third, implementation of Act 40 would otherwise impose injuries not compensable by money damages.

2. Greater Injury Would Result from Refusing the Injunction than from Granting It

91. If the status quo is not maintained and Respondent implements Act 40, immediate and irreparable harm would result to Petitioners and the public.

92. Such harms include without limitation: (1) Act 40 is unconstitutional; (2) Act 40 interferes with Petitioners’ rights and the performance of their duties; (3) the supposed justification for Act 40 – increased prosecution of crimes within

SEPTA – is not based on fact; (4) Act 40 is counterproductive and complicates prosecutions because it allows for the possibility that a crime will occur; the accused is prosecuted by the Special Prosecutor; and the conviction is set aside because the Special Prosecutor’s authority is unconstitutional; and (5) Act 40 denies the voters of Philadelphia of their chosen chief law enforcement officer, undermining democracy.

93. By contrast, there is no harm to Respondent or anyone else if the injunction is entered to preserve the status quo and Respondent therefore must refrain from implementing the unconstitutional Act 40.

3. Injunctive Relief Will Properly Restore the Parties to Their Status as it Existed Immediately Prior to the Alleged Wrongful Conduct

94. The requested injunction restores the parties to the status quo ante because it enjoins Respondent from implementing Act 40.

4. Petitioners Have a Clear Right to Relief and Are Likely to Prevail on the Merits

95. Petitioners are likely to succeed on the merits of each and every one of their claims for the reasons alleged *infra* Claims I-VII. Act 40 is invalid and unenforceable because it is unconstitutional and violates Pennsylvania statutes.

5. The Requested Injunction Is Reasonably Suited to Abate the Offending Activity

96. The requested injunction is narrowly tailored to abate the offending

activity, namely, the implementation of the unconstitutional Act 40. The requested injunction would preserve the status quo and enjoin Respondent from taking any further steps to implement the law.

6. The Requested Injunction Will Not Adversely Affect the Public Interest; to the Contrary, an Injunction Would Favor the Public's Interest

97. The public interest is not adversely affected by the entry of the requested injunction.

98. To the contrary, the injunction would advance the public interest by prohibiting the implementation of an unconstitutional statute: (a) the injunction would allow a duly elected officer to carry out his official duties; (b) it would provide for enhanced enforcement of the Commonwealth's criminal laws; and (c) it would prevent the effective disenfranchisement of the Philadelphia voters who elected DA Krasner.

CLAIM I

**Declaratory Judgment and Equitable Relief
(Act 40 Unconstitutionally Divests the Philadelphia District Attorney's Office
of Its Territorial Jurisdiction)**

99. Petitioners incorporate herein the preceding allegations.

100. Article IX, Section 4 of the Pennsylvania Constitution, originally enacted as part of the Constitution of 1874, expressly designates district attorneys and other county officers with territorial jurisdiction coextensive with their

respective counties. In 1874, the Office of the Philadelphia District Attorney had already exercised prosecutorial jurisdiction over territory coextensive with Philadelphia County, having been established by statute in 1850.

101. The Philadelphia District Attorney's existing, county-wide jurisdiction thus was memorialized in what is now Article 9, Section 4.

102. In effect, Article 9, Section 4 provides a constitutional land grant to the enumerated county officers, including District Attorneys.

103. Act 40 violates this constitutional allocation of territorial jurisdiction. DA Krasner is the authorized district attorney to prosecute crimes that occur within Philadelphia. That a crime occurs on SEPTA property in Philadelphia – as opposed to other property – does not mean that it occurs outside Philadelphia.

104. As noted above, a 500-yard buffer would have the remarkable impact of effectively stripping the jurisdiction of DA Krasner and the DAO of approximately 89% of the geographic area of Philadelphia and 95% of incidents.

105. Act 40 strips DA Krasner and the DAO of the authority to prosecute crimes in Philadelphia because the law authorizes the Special Prosecutor, in his or her “sole discretion,” to exercise “preemptive” jurisdiction.

106. For example, the Special Prosecutor is empowered to compel DA Krasner and the DAO to suspend any investigation or prosecution at the Special Prosecutor's request. Ex. 1, § 1786(a)(4)(iv).

107. Act 40 is also an effort to disenfranchise the voters of the City of Philadelphia. It takes away the voters' choice of elected District Attorney, thereby preventing him from implementing the policies on which he was elected. *See Smith v. Gallagher*, 185 A.2d 135, 151 (Pa. 1962), *overruled on other grounds by In re Application of Biester*, 409 A.2d 848 (Pa. 1979) (“The order of July 18th [appointing a special prosecutor] not only constitutes an invasion of constitutional liberties as pointed out, but it would perpetrate another unconstitutional mischief. It would disfranchise the people of Philadelphia in the realm of their freedom to select a District Attorney of their own choice.”).

108. Act 40 substantially annuls Philadelphia citizens' votes by impermissibly limiting the scope and authority of the District Attorney they elected and re-elected. That legislators from outside Philadelphia chose to do this to predominantly minority voters in Philadelphia makes their constitutional violation all the worse. By divesting the Philadelphia District Attorney's territorial jurisdiction, Act 40 plainly violates the Pennsylvania Constitution.

109. Accordingly, Petitioners respectfully request that the Court enter an Order, among other things, (a) declaring that Act 40 unconstitutionally divests the Philadelphia District Attorney's Office of its territorial jurisdiction, in violation of Article IX, Section 4 of the Pennsylvania Constitution; (b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any

person to perform or implement Act 40; and (c) awarding such other relief as the Court deems just.

CLAIM II

Declaratory Judgment and Equitable Relief (Act 40 Unconstitutionally Nullifies the Core Prosecutorial Functions of the Philadelphia District Attorney's Office)

110. Petitioners incorporate herein the preceding allegations.

111. Because the DAO and other District Attorneys' offices are constitutionally based, Pa. Const., Art. IX, s.4, the Supreme Court has repeatedly, narrowly circumscribed the General Assembly's authority to supersede a district attorney's prosecutorial discretion within the district attorney's jurisdiction.

112. Generally, the Court has limited the General Assembly to do this only where there has "been some evidence of misconduct or conflicting interest or loyalty which casts doubt on the diligent performance of duty." *Commonwealth v. Walter*, 367 A.2d 1113, 1116-17 (Pa. Super. Ct. 1976) (en banc) (citing *Smith*, 185 A.2d 135; *In re Investigation by Dauphin Cnty. Grand Jury, Sept. 1938*, 2 A.2d 802 (Pa. 1938); *Commonwealth v. McHale*, 97 Pa. 397, 397 (1881)).⁴

⁴ Consistent with this authority, the Commonwealth Attorney's Act prescribes the circumstances in which the Attorney General or her designee (under sworn oath of office) may supersede the District Attorney. None of those circumstances are present here, and they include, for example, public corruption cases, corrupt organizations, and, at the request of the DA, matters in which the DA is conflicted or lacks resources to prosecute. 71 P.S. § 732-205.

113. The only instances in which a special prosecutor has been allowed to supersede the authority of a district attorney is *after* a court has reviewed the basis for the appointment of the special prosecutor.

114. Act 40 fails to meet these stringent requirements. First, it ignores these requirements. The Special Prosecutor is empowered to prosecute crimes “occurring within a public transportation authority” in Philadelphia without regard to any alleged misconduct or conflicting interest or loyalty which casts doubt on the diligent performance of the District Attorney’s duty. Ex. 1, § 1786(a)(2), (4).

115. Second, Act 40 does not provide that a court or the Attorney General must make a determination of such misconduct or conflicting loyalty before the Special Prosecutor is appointed or before the Special Prosecutor intervenes or takes over the prosecution of a crime on SEPTA in Philadelphia.

116. Third, the law does not provide for any judicial or other oversight over the appointment of a Special Prosecutor.

117. Taken together, Act 40 is an unprecedented – indeed radical – unconstitutional effort to supersede DA Krasner’s and the DAO’s authority.

118. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 unconstitutionally nullifies the core prosecutorial functions of the Philadelphia District Attorney’s Office in violation of the Pennsylvania Constitution; (b) preliminarily and permanently enjoining

Respondent from performing, implementing or causing any person to perform or implement Act 40; and (c) awarding such other relief as the Court deems just.

CLAIM III

Declaratory Judgment and Equitable Relief (Act 40 Is an Unconstitutional Local or Special Law)

119. Petitioners incorporate herein the preceding allegations.

120. Act 40 is an unconstitutional local or special law because it specifically targets DA Larry Krasner and the DAO.

121. Article III, section 32 of the Pennsylvania Constitution states: “The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law . . . [r]egulating the affairs of counties, cities, townships, wards, boroughs or school districts.”

122. According to the Pennsylvania Supreme Court, legislation violates this precept when it targets specific county officers within a class and treats them differently from officers in other classes. *See DeFazio v. Civ. Serv. Comm’n of Allegheny Cnty.*, 756 A.2d 1103, 1106 (Pa. 2000) (statute limiting political activity and hiring authority of Allegheny County sheriff violated equal protection and Article III, section 32). The Court further observed, “[o]ne particular county officer may not be treated differently from the other similar officers throughout the commonwealth merely because that officer is within a certain class of county.” *Id.*

123. Act 40 is precisely such a prohibited local or special law. It expressly applies to Philadelphia as the Commonwealth’s only county of the first class and is specifically targeted at DA Krasner and the DAO. Act 40 further regulates “the affairs” of Philadelphia because it applies to “*the* county of the first class” and creates a Special Prosecutor to “investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority . . .” Ex. 1, § 1786(a), *i.e.*, SEPTA, in Philadelphia.⁵

124. A law regulating law enforcement within Philadelphia unquestionably regulates Philadelphia “affairs” within the meaning of Article III, Section 32.

125. Act 40 further regulates the affairs of Philadelphia because it requires it to bear the Special Prosecutor’s fees and costs and denies reimbursement to Philadelphia for DA Krasner’s salary from the Commonwealth. *Id.* § 1786(a)(10)-(12).

126. Act 40 also targets DA Krasner – not just the DAO.

127. Act 40 contains a “sunset” provision by which the Special Prosecutor is not permitted to initiate new matters after December 31, 2026, the year DA Krasner’s current term ends. See *id.* § 1786(a)(8).

⁵ That Act 40 mentions only one class of counties does not save it. The Supreme Court has struck down legislation that nominally applies to a class but is targeted to a specific municipality, official, or thing. See *Perkins v. City of Philadelphia*, 27 A. 356, 359-60 (Pa. 1893).

128. Act 40 precludes any person who served in the Philadelphia District Attorney's Office since 2017 – *i.e.*, since the onset of DA Krasner's tenure – from becoming the Special Prosecutor. *Id.* § 1786(a)(1)(iii).

129. Act 40 also unconstitutionally treats the Philadelphia District Attorney differently from District Attorneys in other counties.

130. Specifically, Act 40 confers the Special Prosecutor with “preemptive” jurisdiction over crimes in Philadelphia – thus divesting the Philadelphia District Attorney's Office of authority over such crimes – and vests in the Special Prosecutor “sole discretion” to determine the exercise of such preemptive jurisdiction. *Id.* § 1786(a)(4)(i).

131. The law does not empower the Special Prosecutor to do this with respect to district attorneys from other counties. Specifically, according to the law, the Special Prosecutor cannot “assert preemptive prosecutorial jurisdiction “in a case where jurisdiction also exists in a county other than a county of the first class,” without the prior written consent of the district attorney in such other county. *Id.* § 1786(a)(4)(iii).

132. In addition to the text of Act 40, the legislative history of the law confirms that it is targeted specifically at Philadelphia and DA Krasner.

133. The law's chief sponsor, Senator Langerholc, repeatedly admits as much. He writes in his sponsoring Memorandum that the Special Prosecutor will

“oversee crimes occurring on SEPTA within the City of Philadelphia. This prosecutor will address the inaction of the current DA . . . This dereliction of duty has cast a negative light on the City of Philadelphia.” Ex. 2, Sen. Wayne Langerholc, Jr., Memorandum (Apr. 14, 2023) (emphasis added).

134. Leaving nothing to chance, Senator Langerholc singled out DA Krasner for criticism during the Senate floor debate: “The problem is he is not prosecuting; he is not doing his job.” Ex. 3, 2023 Pa. Leg. J. - Senate 357 at 364 (May 2, 2023). While Senator Langerholc’s claims about DA Krasner are all objectively false, as noted above, they compel the conclusion that the law targets Philadelphia and Krasner specifically.

135. This impermissible singling out of DA Krasner was evident to other Senators. For example, the bill’s opponents criticized the bill on the ground that it was intended to regulate DA Krasner personally. *See supra* Statement of Facts, Part C.2.

136. Indeed, as Senator Costa cogently noted, “[t]he language in this bill is specifically tied to this district attorney in this office now.” Ex. 3, 2023 Pa. Leg. J. - Senate 357 at 363 (statement of Sen. Costa).

137. Act 40 violates Article III, section 32.

138. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 is an unconstitutional local or special law in

violation of Article III, Section 32 of the Pennsylvania Constitution;

(b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any person to perform or implement Act 40; and

(c) awarding such other relief as the Court deems just.

CLAIM IV

Declaratory Judgment and Equitable Relief (Act 40 Violates the Equal Protection Guarantees of the Pennsylvania Constitution)

139. Petitioners incorporate herein the preceding allegations.

140. Act 40 violates the equal protection guarantees of the Pennsylvania Constitution, Art. I, §§ 1, 26; Art. III, § 32; Art. IX, § 1.

141. “The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly. . . . a classification must rest upon some ground of difference which justifies the classification and have a fair and substantial relationship to the object of the legislation.” *DeFazio v. Civ. Serv. Comm’n of Allegheny Cnty.*, 756 A.2d 1103, 1106 (Pa. 2000) (quoting *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995)).

142. The Supreme Court has explained: “One particular county officer may not be treated differently from the other similar officers throughout the commonwealth merely because that officer is within a certain class of county.” *Id.*

143. Act 40 plainly violates this basic guarantee. It creates one set of powers for district attorneys outside of Philadelphia and another set for DA Krasner and the DAO.

144. Specifically, when it comes to Philadelphia, the Special Prosecutor has the authority to supersede DA Krasner's authority to prosecute SEPTA crimes and fully divests him of any jurisdiction. Ex. 1, § 1786(a)(4). Yet when it comes to district attorneys in other counties, the Special Prosecutor may step in only if the district attorney approves the Special Prosecutor's actions. Specifically, section 1786(a)(4)(iii) states: "A Special Prosecutor may not assert preemptive prosecutorial jurisdiction . . . where jurisdiction also exists in [other] count[ies]" without prior written approval of the District Attorney of such other county.

145. Thus, for a crime that occurs within SEPTA in Philadelphia, the Special Prosecutor has sole discretion and absolute authority to supplant and replace DA Krasner and the DAO; however, for a crime that occurs within SEPTA outside Philadelphia, the Special Prosecutor has no such power and must obtain the consent of the local District Attorney.

146. That violates the Equal Protection guarantees of the Pennsylvania Constitution. Nothing in Act 40 justifies, purports to justify, or could justify, such disparate treatment.

147. Act 40's disparate treatment does not end with DA Krasner and the

DAO. By divesting the Philadelphia DA's law enforcement authority, it undermines the choice made by the voters of Philadelphia, who elected and reelected DA Krasner by overwhelming margins based on his law enforcement policies. Act 40 substitutes that choice with a Special Prosecutor with no policies and accountable to no voter. Philadelphia is a majority minority city, home to many voters coming from marginalized groups, many of whom have been subjected to abusive law enforcement practices. Act 40 disfavors those voters and, paternalistically, tells them they made the wrong choice. That is not what democracy is about, and the disparate treatment on Philadelphia voters stains every assessment of Act 40.

148. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 violates the Equal Protection guarantees of the Pennsylvania Constitution, Art. I, §§ 1, 26; Art. III, § 32; (b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any person to perform or implement Act 40; and (c) awarding such other relief as the Court deems just.

CLAIM V

Declaratory Judgment and Equitable Relief (Act 40 Is Unconstitutional Because it Calls for the Appointment of an Unaccountable Special Prosecutor)

149. Petitioners incorporate herein the preceding allegations.

150. Act 40 is unconstitutional because it imposes no accountability or

oversight over the Special Prosecutor. A District Attorney is an elected official who is accountable to the city-wide electorate. He or she is elected on policies and approaches to criminal justice.

151. By contrast, Act 40's Special Prosecutor is unaccountable. Although the Special Prosecutor has certain limited reporting obligations, *see* Ex. 1, § 1786(a)(9), Act 40 compels the appointment of the Special Prosecutor and establishes no oversight over the Special Prosecutor once appointed. The Special Prosecutor is otherwise insulated from accountability to the electorate, which would constrain unlawful or unpopular conduct by public officials.

152. Although the Special Prosecutor usurps the role constitutionally and statutorily entrusted to the elected District Attorney, the Special Prosecutor is subject to different qualifications and the statute provides no method of accountability. Act 40 does not even require the Special Prosecutor to take an oath to uphold the Constitution. Compare the requirements for eligibility to be a Special Prosecutor under Act 40, Ex. 1 § 1786(a)(1), with those applicable to District Attorneys generally, 16 P.S. §§ 1401, 7701, 7702.

153. As the Supreme Court has explained in an analogous context, “[i]t would be incongruous to place the district attorney in the position of being responsible to the electorate for the performance of his duties while actual control over his performance was, in effect, in the [then-unelected office of] Attorney

General. To countenance such a separation of accountability and control undermines self-government and promotes centralization, . . . of law enforcement precisely the approach rejected in Pennsylvania by statute in 1850 and constitutionally in 1874.” *Commonwealth v. Schab*, 383 A.2d 819, 822 (Pa. 1978) (examining authority of the Attorney General to supersede and finding, inter alia, he had no common law authority to supersede DA and that statute authorizing Special Prosecutor was not complied with) (internal citation omitted).⁶

154. Consistent with this, the Supreme Court has rejected legislative attempts to dilute the authority of District Attorneys by the appointment of special prosecutors, especially those with broad authority who are largely unaccountable. The appointment of such prosecutors is unconstitutional, as is the *de facto* removal of a district attorney other than through constitutional removal methods. *See Smith v. Gallagher*, 185 A.2d 135, 149-52 (Pa. 1962), *overruled on other grounds by In re Application of Biester*, 409 A.2d 848, 850 (Pa. 1979); *McGinley v. Scott*, 164

⁶ Act 40 creates a Special Prosecutor with such unusual control over local law enforcement that it may also be analogous to the unconstitutional special commissions proscribed by Article III, Section 31 of the Pennsylvania Constitution. The Supreme Court has held that Section 31 bars the legislative creation of a law enforcement body with local prosecutorial power outside established law enforcement structures, *Moll v. Morrow*, 98 A. 650 (Pa. 1916), and, separately, even where the legislature creates an office that is not a “commission” in name but nevertheless exercises municipal functions and is appointed by an executive officer, *Perkins v. City of Philadelphia*, 27 A. 356, 358 (Pa. 1893).

A.2d 424, 431 (Pa. 1960).

155. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 unconstitutionally calls for the appointment of an unaccountable special prosecutor; (b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any person to perform or implement Act 40; and (c) awarding such other relief as the Court deems just.

CLAIM VI

Declaratory Judgment and Equitable Relief (Act 40 Violates the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. § 9101, *et seq.*)

156. Petitioners incorporate herein the preceding allegations.

157. Act 40 is unenforceable because it violates the Pennsylvania Criminal History Record Information Act (CHRIA), 18 Pa. C.S. § 9101 *et seq.*

158. CHRIA provides, in relevant part, that “[i]nvestigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.” 18 Pa. C.S. § 9106(c)(4).⁷

⁷ CHRIA defines “investigative information” as: “Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi

159. For proper disclosure of information, CHRIA thus requires that any request must be “based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.” *See id.* § 9106(c)(1)(iii).

160. Act 40 violates this express statutory limitation on disclosure of criminal investigative materials: when a Special Prosecutor asserts such preemptive authority, the DAO “shall suspend all investigations and proceedings regarding the matter and shall turn over to the Special Prosecutor all materials, files and other data relating to the matter.” Ex. 1, § 1786(a)(4)(iv).

161. Act 40 thus eliminates the specific requirements for disclosure in violation of CHRIA.

162. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 violates CHRIA; (b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any person to perform or implement Act 40; and (c) awarding such other relief as the Court deems just.

CLAIM VII

Declaratory Judgment and Equitable Relief (Act 40 Impairs the Effective Prosecution of Criminal Defendants in Philadelphia by Violating their Right to Raise Arguments in Their Defense)

163. Petitioners incorporate herein the preceding allegations.

information.” 18 Pa. C.S. § 9102.

164. Act 40 prohibits criminal defendants from challenging the law. Specifically, § 1786(a)(5) provides, “[n]o person charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.”

165. Act 40 is thus unconstitutional in violating criminal defendants’ right to raise arguments in their defense. *See, e.g., Holt v. Commonwealth of Virginia*, 381 U.S. 131, 136 (1965) (“The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues.”).

166. As a consequence, prosecutions by an Act 40 Special Prosecutor would vastly complicate prosecutions of crimes within SEPTA in Philadelphia and likely lead to the dismissal of charges or convictions for crimes committed within SEPTA in Philadelphia.

167. Act 40, therefore, will have the opposite effect of its supposed purpose – the Act will make it harder to prosecute SEPTA crimes in Philadelphia, potentially leading to an increase in crime.

168. Accordingly, Petitioners respectfully request that the Court enter an Order (a) declaring that Act 40 impairs the effective prosecution of criminal

defendants in Philadelphia by violating their rights to challenge the Act;

(b) preliminarily and permanently enjoining Respondent from performing, implementing or causing any person to perform or implement Act 40; and

(c) awarding such other relief as the Court deems just.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that as to each Claim, the Court order the following relief:

(A) Declare that Act 40 is null and void and cannot be implemented by the Attorney General or any other officer because, *inter alia*, Act 40:

- (1) Unconstitutionally divests the Philadelphia District Attorney's Office of its territorial jurisdiction;
- (2) Unconstitutionally nullifies the core prosecutorial functions of the Philadelphia District Attorney's Office;
- (3) Is an unconstitutional local or special law;
- (4) Violates the Equal Protection guarantees of the Pennsylvania Constitution;
- (5) Unconstitutionally calls for the appointment of an unaccountable Special Prosecutor;
- (6) Violates the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. § 9101 *et. seq.*; and
- (7) Impairs the effective prosecution of criminal defendants in Philadelphia by violating their constitutional rights to challenge Act 40.

(B) Enter permanent and preliminary injunctive relief prohibiting the Attorney General from performing, implementing or causing any person to perform or implement Act 40.

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

Respectfully submitted,

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER



Dated: January 11, 2024

By: _____

John S. Summers (#41854)

Matthew A. Hamermesh (#82313)

Andrew M. Erdlen (#320260)

Michael J. Masciandaro (#329321)

One Logan Square, 27th Floor

Philadelphia, PA 19103

Telephone: (215) 568-6200

jsummers@hangle.com

mhamermesh@hangle.com

aerdlen@hangle.com

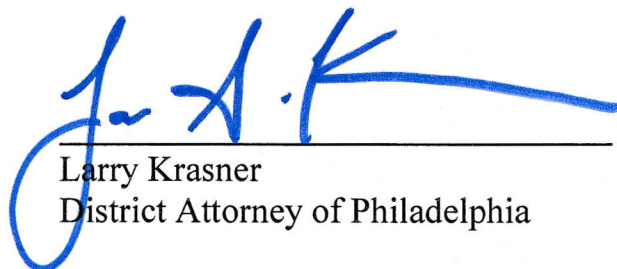
mmasciandaro@hangle.com

Counsel for Petitioners

VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review in the Nature of a Complaint for Declaratory Judgment and Equitable Relief are true and correct based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: January 10, 2024



Larry Krasner
District Attorney of Philadelphia

Exhibit 1

TRANSPORTATION (74 PA.C.S.) - SPECIAL PROSECUTOR FOR MASS TRANSIT**Act of Dec. 14, 2023, P.L. , No. 40****Cl. 74**Session of 2023
No. 2023-40

SB 140

AN ACT

Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in metropolitan transportation authorities, providing for special prosecutor for mass transit.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 74 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1786. Special prosecutor for mass transit.

(a) **Special prosecutor.**--Within 30 days of the effective date of this section, the Attorney General shall appoint a special prosecutor to investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class in accordance with this section. The following shall apply to the special prosecutor:

(1) The special prosecutor must:

(i) Be a member in good standing of the bar of this Commonwealth for a minimum of 10 years.

(ii) Have a minimum of five years of experience in criminal prosecutions in this Commonwealth.

(iii) Not have been employed by the district attorney's office in a county of the first class or the Office of Attorney General within six years of the effective date of this section.

(iv) Possess the character and fitness compatible with the standards expected to be observed by members of the bar of this Commonwealth.

(v) Be a resident of the county in which the special prosecutor shall serve.

(2) Notwithstanding any other provision of law or regulation, a special prosecutor shall have the authority to investigate and prosecute, and has jurisdiction over, any criminal matter involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The special prosecutor's prosecutorial jurisdiction shall include the power and independent authority to exercise all investigative and prosecutorial functions and powers of an office of the district attorney of a county of the first class and any other officer or employee of the office of the district attorney in the county of the first class. The special prosecutor's authority shall include, but not be limited to, the following:

(i) Investigative and prosecutorial functions and powers shall include the following:

(A) Conducting proceedings before grand juries and other investigations.

(B) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special prosecutor considers necessary.

(C) Initiating and conducting prosecutions in any court of competent jurisdiction, appealing any decision of a court in a proceeding in which the special prosecutor participates and handling all aspects of any case in the name of the Commonwealth.

(D) Reviewing all documentary evidence available from any source.

(E) Making applications to a State court for a grant of immunity to a witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders.

(ii) (Reserved).

(3) For the purposes of carrying out the duties of the Office of Special Prosecutor, a special prosecutor may use facilities, resources and personnel of the Attorney General, including investigators, attorneys and necessary experts, to assist with a criminal investigation or prosecution. A special prosecutor may request assistance from the Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction in carrying out the functions of the special prosecutor. The Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction may provide assistance, which may include the use of resources and personnel necessary to perform the duties of the special prosecutor.

(4) A special prosecutor may assert preemptive prosecutorial jurisdiction over any criminal actions or proceedings involving alleged violations of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The following shall apply:

(i) An assertion of preemptive prosecutorial jurisdiction under this section shall be within the sole discretion of the special prosecutor.

(ii) In cases in which a special prosecutor asserts preemptive prosecutorial jurisdiction under this section, no other prosecuting entity for the Commonwealth shall have authority to act, except as authorized by the special prosecutor.

(iii) A special prosecutor may not assert preemptive prosecutorial jurisdiction under this section in a case where jurisdiction also exists in a county other than a county of the first class unless the special prosecutor requests in writing to the district attorney in the county other than the county of the first class to assert preemptive prosecutorial jurisdiction and the district attorney in the county other than the county of the first class accepts the request in writing.

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

(v) Notwithstanding any other law or court rule, prior approval of the district attorney of a county of the first class or an employee of the district attorney of a county

of the first class shall not be required prior to the filing of any criminal complaint or arrest warrant affidavit, or both, involving any violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(5) No person charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.

(6) If a vacancy in office arises by reason of the resignation, death or removal for any other reason of a special prosecutor, the Attorney General shall appoint a replacement within 30 days.

(7) Each law enforcement agency with jurisdiction in a county of the first class shall notify a special prosecutor of any arrest or other criminal action or proceeding involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class within 48 hours of the arrest or of instituting the action or proceeding.

(8) No new action or proceeding may be initiated by a special prosecutor under this section after December 31, 2026. Notice of final disposition of the last remaining action or proceeding initiated under this section prior to December 31, 2026, shall be transmitted to the Legislative Reference Bureau for publication in the next available issue of the Pennsylvania Bulletin.

(9) The special prosecutor shall compile reports related to the criminal activity and administrative proceedings within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class, to which the following shall apply:

(i) An initial report shall be submitted no later than 90 days following appointment of the special prosecutor. Following the initial report, annual reports shall be submitted to the General Assembly.

(ii) Reports shall be submitted to the following:

(A) The President pro tempore of the Senate.

(B) The Speaker of the House of Representatives.

(C) The chairperson and minority chairperson of the Judiciary Committee of the Senate.

(D) The chairperson and minority chairperson of the Judiciary Committee of the House of Representatives.

(E) The chairperson and minority chairperson of the Transportation Committee of the Senate.

(F) The chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(iii) Each report shall contain the following information for the period of time between each report:

(A) The total number of arrests for alleged criminal activity within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(B) The total number of bills of information filed for alleged violations within a public transportation authority that serves as the primary provider of public

passenger transportation in the county of the first class.

(C) The total number of convictions resulting from prosecutions by the special prosecutor.

(D) Each sentence imposed for each conviction for a crime committed within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(10) A county of the first class in which a special prosecutor is appointed under this section shall reimburse the special prosecutor and the Office of Attorney General for any expenses incurred while investigating or prosecuting an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. For reimbursement, the special prosecutor shall submit an itemized statement of expenses of the special prosecutor and Office of Attorney General to the treasurer of the county of the first class, who shall pay the expenses from the general funds of the county of the first class within 30 days of receipt of the itemized statement. Reimbursement under this section may not exceed actual expenses incurred in prosecuting any action, including the amount necessary to compensate the special prosecutor.

(11) A special prosecutor appointed under this section shall receive compensation to be paid by the Office of Attorney General at the per diem rate equal to the annual rate of compensation payable to the district attorney of a county of the first class. A special prosecutor shall be entitled to the payment of travel expenses within this Commonwealth.

(12) Notwithstanding section 1401(p) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, during the period in which a special prosecutor serves in a county of the first class, the Commonwealth may not reimburse that county for the salary of the district attorney of that county. An amount equal to the reimbursement that would have been made if no special prosecutor had been appointed shall be used to reimburse the Office of Attorney General for the compensation of the special prosecutor and any expenses incurred for the purpose of carrying out the duties of the special prosecutor.

(13) This section shall expire upon publication of the notice under paragraph (8).

(14) The Attorney General, the county of the first class, the district attorney of the first class and the public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class must comply with this section until this section expires under paragraph (13).

(15) Notwithstanding any other provision of law, a governing body of a political subdivision or public official may not enact or enforce an ordinance, executive order or directive or take any other official action that would be inconsistent with the provisions of this section or direct a law enforcement agency with appropriate jurisdiction to not assist the special prosecutor if able. An ordinance, executive order or directive or any other official action in violation of this section shall be null and void.

(b) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Law enforcement agency." Any of the following:

(1) A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws.

(2) A campus police or university police department, as used in section 2416 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, certified by the Office of Attorney General as a criminal justice agency under the definition of "criminal justice agency" in 18 Pa.C.S. § 9102 (relating to definitions).

(3) A railroad or street railway police department formed with officers commissioned under 22 Pa.C.S. Ch. 33 (relating to railroad and street railway police) or any prior statute providing for the commissioning.

(4) An airport authority police department.

(5) A county park police force under section 2511(b) of The County Code.

Section 2. This act shall take effect immediately.

APPROVED--The 14th day of December, A.D. 2023.

JOSH SHAPIRO

Exhibit 2

[Home](#) / Senate Co-Sponsorship Memoranda

Senate Co-Sponsorship Memoranda

Senate of Pennsylvania Session of 2023 - 2024 Regular Session

MEMORANDUM

Posted: April 14, 2023 09:47 AM
From: [Senator Wayne Langerholc, Jr.](#)
To: All Senate members
Subject: Mass Transit Special Prosecutor Program

In the near future, I plan on introducing legislation which establishes the Mass Transit Special Prosecutor Program.

This legislation will require a panel of three judges to appoint a special prosecutor to oversee crimes occurring on SEPTA within the City of Philadelphia. This prosecutor will address the inaction of the current DA and ensure that those that break the law will answer for their crime. As I've seen and heard firsthand, law enforcement is stymied by a failure to follow through after arrests are made. This dereliction of duty has cast a negative light on the City of Philadelphia and the Commonwealth and has negatively impacted safety and ridership. Multiple murders, rapes, and assaults are contributing to a culture of lawlessness. It is time we take action to help those affected by this tragedy.

Last session, the Senate took action by passing [House Bill 140](#) to address the crimes occurring on SEPTA. While debate ensued on House Bill 140 as amended, many lawmakers in both chambers who ended up voting against the legislation stated that the conversation around the safety on SEPTA and the special prosecutor provision needed to take place separate from the underlying provisions of House Bill 140. This legislation will establish a Mass Transit Special Prosecutor Program for crimes occurring on SEPTA within Philadelphia. Governor Wolf vetoed House Bill 140 as amended on November 17, 2022.

Please join me in co-sponsoring this important piece of legislation, as the working families and visitors of Philadelphia are in dire need of effective solutions.



Introduced as [SB140](#)

Exhibit 3

Senator STREET. Mr. President, and I would suggest that \$1 million in outgoing housing costs over a multiple-year period; so, if you are talking 4 years, that is \$250,000 a year, that is about 5 or 6 people. And the Philadelphia Housing Authority currently serves 90,000 residents a year. So, 5 or 6 people out of 90,000, I would suggest, is not a statistically significant number of people out of 90,000.

And the question recurring,
Will the Senate adopt the resolution?

The yeas and nays were required by Senator PITTMAN and were as follows, viz:

YEA-29

Argall	Culver	Laughlin	Robinson
Aument	DiSanto	Martin	Rothman
Baker	Dush	Mastriano	Stefano
Bartolotta	Farry	Pennycuick	Vogel
Boscola	Gebhard	Phillips-Hill	Ward, Judy
Brooks	Hutchinson	Pittman	Ward, Kim
Brown	Langerholc	Regan	Yaw
Coleman			

NAY-21

Brewster	Flynn	Kearney	Schwank
Cappelletti	Fontana	Miller	Street
Collett	Haywood	Muth	Tartaglione
Comitta	Hughes	Santarsiero	Williams, Anthony H.
Costa	Kane	Saval	Williams, Lindsey
Dillon			

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. The resolution is adopted.

BILLS REPORTED FROM COMMITTEE

Senator MARTIN, from the Committee on Appropriations, reported the following bills:

SB 140 (Pr. No. 684) (Rereported)

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in metropolitan transportation authorities, providing for special prosecutor for mass transit.

SB 243 (Pr. No. 208) (Rereported)

An Act amending the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, in public assistance, further providing for uniformity in administration of assistance and regulations as to assistance.

SB 244 (Pr. No. 685) (Rereported)

An Act amending the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, in public assistance, further providing for uniformity in administration of assistance and regulations as to assistance.

SB 245 (Pr. No. 210) (Rereported)

An Act amending the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, in public assistance, further providing for reports to General Assembly.

SB 671 (Pr. No. 671) (Rereported)

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for title of act; providing for local taxes in cities of the first class, for prohibition of tax on certain individuals and for reimbursement of taxes; and making repairs.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 2**

**BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE**

SB 140 (Pr. No. 684) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in metropolitan transportation authorities, providing for special prosecutor for mass transit.

On the question,
Will the Senate agree to the bill on third consideration?

HAYWOOD AMENDMENT A0426 DEFEATED

Senator HAYWOOD offered the following amendment No. A0426:

Amend Bill, page 1, line 1, by striking out "Title" and inserting: Titles 44 (Law and Justice) and

Amend Bill, page 1, line 2, by inserting after "Statutes,": providing for investigations; and,

Amend Bill, page 1, lines 7 and 8, by striking out all of said lines and inserting:

Section 1. Title 44 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

**CHAPTER 9
INVESTIGATIONS**

Sec.

901. Scope of chapter.

902. Definitions.

903. Application.

904. Full and independent investigation.

905. Referral and report.

906. Public response.

§ 901. Scope of chapter.

This chapter relates to community and police response.

§ 902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Involved police department." A police department that employs an involved police officer.

"Involved police officer." A police officer that is being investigated for the use of deadly force.

"Police department." Any of the following:

(1) A police department as defined in 53 Pa.C.S. § 2162 (relating to definitions).

(2) The Pennsylvania State Police.

"Police officer." Any of the following:

(1) A police officer as defined in 53 Pa.C.S. § 2162.

(2) A member of the Pennsylvania State Police.

"Use of deadly force." An incident in which a police officer applied a use of force and a death occurred as a result.

"Use of force." As described in 18 Pa.C.S. § 508 (relating to use of force in law enforcement).

§ 903. Application.

This chapter applies to a use of deadly force by a police officer.

§ 904. Full and independent investigation.

(a) Selection of team.--The district attorney of the county in which a use of deadly force occurred shall assemble and lead a team, unrelated to the involved police department, of law enforcement personnel and experts to conduct a full and independent investigation into the use of deadly force by an involved police officer in accordance with this chapter. The district attorney may request that the Attorney General perform an investigation authorized under this chapter pursuant to section 205(a)(3) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(b) Prohibition.--Except as provided under subsection (c), once an involved police department transfers jurisdiction to the district attorney to investigate the involved police department, no member of the involved police department may participate in the independent investigation unless the following conditions apply:

(1) Participation is requested by the district attorney.

(2) Participation is in a limited capacity and only as the district attorney deems necessary for the investigation.

(c) Investigation of departmental directives.--An involved police department shall investigate an involved police officer for violations of departmental directives.

(d) Powers and duties of district attorney.--

(1) As part of the investigation under this section, the district attorney shall, without limitation:

(i) Secure and take jurisdiction of the scene of the use of deadly force upon arrival as soon as possible.

(ii) Gather and analyze evidence.

(iii) Conduct witness interviews.

(iv) Review and commission any necessary investigative or scientific reports.

(v) Review audio and video recordings.

(vi) Review photographs.

(vii) Review physical evidence.

(viii) Review geolocation and electronic evidence.

(2) The district attorney shall maintain public trust in law enforcement by ensuring that the investigation under this section is conducted without actual bias or conflict of interest and without an appearance of bias or conflict of interest.

(3) The district attorney shall exercise all other existing powers and duties of jurisdiction relative to any investigation of the involved police department over the scene of the use of deadly force.

(4) The district attorney shall complete the investigation under this section within either of the following time frames:

(i) Within 90 days of the use of deadly force.

(ii) If referred to an investigating grand jury, within 12 months of the referral or the end of the investigating grand jury's term, whichever is sooner.

(5) Upon completion of the investigation under this section, the district attorney shall publish the findings of the investigation on the publicly accessible Internet website of the office of district attorney, subject to any exemptions from access under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, or 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

(e) Compliance.--The involved police department shall have a duty to comply with the requests of the district attorney related to the investigation under this section.

§ 905. Referral and report.

(a) Conflict of interest and discretion.--The district attorney conducting the investigation under section 904 (relating to full and independent investigation) shall avoid an actual or apparent conflict of interest when determining whether to file charges against an involved police officer and may either:

(1) Prosecute the case through the district attorney's office.

(2) Refer the case to an investigating grand jury under 42 Pa.C.S. Ch. 45 Subch. D (relating to investigating grand juries), provided the case may only be brought before an investigating grand jury once.

(3) Refer the case to the Attorney General, in which case the district attorney shall:

(i) Notify the Attorney General of the referral in writing within seven days of the decision not to prosecute.

(ii) Subject to subsection (b), publish a report on the publicly accessible Internet website of the office of district attorney within seven days of the decision not to prosecute, subject to any exemptions from access under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, or 18 Pa.C.S. Ch. 91 (relating to criminal history record information), which details the incident in which the use of deadly force was applied and provides the reasons that the district attorney declines to prosecute.

(iii) Subject to subsection (c), refer the case and forward all available investigative materials to the Attorney General.

(b) Report.--The report under subsection (a)(3)(ii) shall include, but not be limited to, the following:

(1) Events leading up to the use of deadly force.

(2) Why the use of force was applied.

(3) Utilization of any deescalation techniques.

(4) The behavior and speech of the victim before and during the use of deadly force.

(5) The cause of death on the victim's death certificate and a medical examiner's report.

(6) The behavior and speech by the involved police officer before, during and after the use of deadly force.

(7) Details of the scene and the use of deadly force.

(c) Investigative materials.--Upon referral to the Attorney General, the district attorney shall provide all investigative materials to the Attorney General, including, but not limited to:

(1) Critical facts of the case.

(2) All evidence gathered in the investigation.

(3) Any involvement or connections between the involved police officer and the district attorney.

(4) The report under this section.

§ 906. Public response.

Pursuant to 65 Pa.C.S. Ch. 7 (relating to open meetings), the district attorney conducting the investigation under section 904 (relating to full and independent investigation), or the Attorney General in the event of referral under section 905 (relating to referral and report), shall conduct a public meeting to share information and discuss the use of deadly force with the public no later than seven days after the use of deadly force occurs.

Section 2. Title 74 is amended by adding a section to read:

Amend Bill, page 10, line 4, by striking out "2" and inserting:

3

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Haywood.

Senator HAYWOOD. Mr. President, I would like to say at the outset, Mr. President, you are doing a fantastic job as President, and we appreciate you in this position. Amendment No. A0426 fully replaces Senate Bill No. 140's language with language that requires an independent investigation of any incident involving deadly force by a police officer. Restoring trust between the public and police is vital to strengthening the relationships between law enforcement and communities they serve. Our criminal justice system is meant to be impartial and absent of bias or the appearance of bias or conflict of interest. Even the appearance of conflict of an investigation of a police-involved killing can lead to distrust of law enforcement. Unfortunately, in recent years, that distrust has spilled over into unfortunate civil unrest.

Unfortunately, in 2018, in the district near to you, 17-year-old Antwon Rose died in a police-involved incident in Pittsburgh--outside of Pittsburgh. Protests spread across the city as the public

grew concerned that there would be an adequate investigation of what happened. These similar protests have not just been outside of Pittsburgh, but with the murder of George Floyd, killing of Eric Garner, Michael Brown, the list goes on and on, the public has been concerned that there is a full and fair investigation of these killings. This amendment responds to that call for more trust. What it does is calls for requiring, when there is an officer-involved killing, that the district attorney in the county where the killing occurred conducts the investigation. It bars the local police force that was involved in the killing from doing the investigation. In addition, should the district attorney investigate and determine that they want to decline prosecution, it gives the Attorney General the power to commence an investigation.

Now, this amendment is backed by substantial research and recommendations as best practices. Back in 2015, President Obama's Task Force for [on] 21st Century Policing called upon external and independent investigations of prosecutions involving police officers when someone is shot by an officer. More recently, the Pennsylvania State Law Enforcement Citizen Advisory Committee [Commission], formed under Governor Wolf, recommended independent criminal investigations of all uses of force that resulted in death by police officers. We have had two hearings here in the State Senate on this legislation, and, most recently, Montgomery County District Attorney Kevin Steele indicated a fundamental support of this approach of having independent investigations of police-involved shootings. I quote, he says: having an independent agency allows right and just charges in doing it the right way. Former Police Commissioner Kelly of Abington Township shared with me that he believes independent investigations of shootings helps to clear the name of police officers, so that when they are cleared, the public knows that this was a fair and impartial conclusion to the investigation.

This legislation has never taken the position that the police forces are in any way involved in any wrongdoing. It is only to make sure that we can restore the trust and have independent, impartial review of these incidents, and law enforcement has been in support of this kind of legislation for the same reasons as I have discussed. It is the General Assembly's responsibility to pass laws that ensure the fairness and impartiality over those who we govern. This amendment makes good on that responsibility, ensuring justice, eliminating the appearance of impropriety for all Pennsylvanians. For all of these reasons, Mr. President, I request an affirmative vote on this amendment, A0426, to Senate Bill No. 140.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Pittman.

Senator PITTMAN. Mr. President, I would respectfully request a negative vote on the amendment.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Baker has returned, and her temporary Capitol leave is cancelled.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator HAYWOOD and were as follows, viz:

YEA-21

Boscola	Flynn	Kearney	Schwank
Brewster	Fontana	Miller	Street
Cappelletti	Haywood	Muth	Tartaglione
Collett	Hughes	Santarsiero	Williams, Anthony H.
Comitta	Kane	Saval	Williams, Lindsey
Costa			

NAY-29

Argall	Dillon	Laughlin	Robinson
Aument	DiSanto	Martin	Rothman
Baker	Dush	Mastriano	Stefano
Bartolotta	Farry	Pennycuick	Vogel
Brooks	Gebhard	Phillips-Hill	Ward, Judy
Brown	Hutchinson	Pittman	Ward, Kim
Coleman	Langerholc	Regan	Yaw
Culver			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Regan has returned, and his temporary Capitol leave is cancelled.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Pittman.

Senator PITTMAN. Mr. President, I request a temporary Capitol leave for Senator Robinson.

The PRESIDENT. Senator Pittman requests a temporary Capitol leave for Senator Robinson. Without objection, the leave will be granted.

And the question recurring,
Will the Senate agree to the bill on third consideration?

HUGHES AMENDMENT A0441 OFFERED

Senator HUGHES offered the following amendment No. A0441:

Amend Bill, page 1, line 16, by striking out "the county of the first class" and inserting:

each county of this Commonwealth

Amend Bill, page 2, line 5, by striking out "the" and inserting:

a

Amend Bill, page 2, line 6, by striking out "in a county of the first class"

Amend Bill, page 2, line 20, by striking out "of the first class"

Amend Bill, page 2, lines 24 and 25, by striking out "of the first class"

Amend Bill, page 2, line 26, by striking out "of the first class"

Amend Bill, page 4, line 7, by striking out "of the first class"

Amend Bill, page 4, lines 19 and 20, by striking out "a county other than a county of the first class" and inserting:

another county

Amend Bill, page 4, line 21, by striking out "the" where it occurs the second time and inserting:

each

Amend Bill, page 4, line 22, by striking out "other than the county of the first class"

Amend Bill, page 4, line 24, by striking out "the" where it occurs the first time and inserting:

each
Amend Bill, page 4, lines 24 and 25, by striking out "other than the county of the first class"

Amend Bill, page 4, lines 28 and 29, by striking out "of the first class"

Amend Bill, page 5, lines 4 and 5, by striking out "of the first class"

Amend Bill, page 5, line 6, by striking out "of the first class"

Amend Bill, page 5, line 12, by striking out "of the first class"

Amend Bill, page 5, line 24, by striking out "of the first class"

Amend Bill, page 5, line 29, by striking out "of the first class"

Amend Bill, page 6, line 13, by striking out "of the first class"

Amend Bill, page 7, line 7, by striking out "the" where it occurs the first time and inserting:

each
Amend Bill, page 7, lines 7 and 8, by striking out "of the first class"

Amend Bill, page 7, line 12, by striking out "the" and inserting:

each
Amend Bill, page 7, line 13, by striking out "of the first class"

Amend Bill, page 7, line 19, by striking out "the" where it occurs the first time and inserting:

each
Amend Bill, page 7, lines 19 and 20, by striking out "of the first class"

Amend Bill, page 7, line 21, by striking out "of the first class"

Amend Bill, page 7, line 28, by striking out "of the first class"

Amend Bill, page 8, line 1, by striking out "of the first class"

Amend Bill, page 8, lines 2 and 3, by striking out "of the first class"

Amend Bill, page 8, line 11, by striking out "of the first class"

Amend Bill, page 8, line 17, by striking out "of the first class"

Amend Bill, page 8, lines 27 and 28, by striking out "of the first class"

Amend Bill, page 8, line 28, by striking out "of the first class"

Amend Bill, page 8, line 30; page 9, line 1; by striking out "of" in line 30 on page 8 and "the first class" in line 1 on page 9

Amend Bill, page 8, line 28, by striking out "of the first class"

Amend Bill, page 8, line 30; page 9, line 1; by striking out "of" in line 30 on page 8 and "the first class" in line 1 on page 9

Amend Bill, page 8, line 30; page 9, line 1; by striking out "of" in line 30 on page 8 and "the first class" in line 1 on page 9

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On the question,
Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, simply and briefly, what the amendment does is takes the provisions in the bill and spreads them across the entire Commonwealth of Pennsylvania so that every district attorney in the Commonwealth of Pennsylvania who has responsibilities with respect to a public transit situation would have to comply with the rules and regulations as being set forth for the provisions in Senate Bill No. 140, which currently are just for the citizens in the city of Philadelphia.

HUGHES AMENDMENT A0441 TABLED

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Pittman.

Senator PITTMAN. Mr. President, I move the amendment be laid upon the table.

The PRESIDENT. Senator Pittman moves that the amendment be laid upon the table. That motion is not debatable.

On the question,
Will the Senate agree to the motion?

The yeas and nays were required by Senator PITTMAN and were as follows, viz:

YEA-28

Argall	Culver	Laughlin	Robinson
Aument	DiSanto	Martin	Rothman
Baker	Dush	Mastriano	Stefano
Bartolotta	Farry	Pennycuick	Vogel
Brooks	Gebhard	Phillips-Hill	Ward, Judy
Brown	Hutchinson	Pittman	Ward, Kim
Coleman	Langerholc	Regan	Yaw

NAY-22

Boscola	Dillon	Kearney	Schwank
Brewster	Flynn	Miller	Street
Cappelletti	Fontana	Muth	Tartaglione
Collett	Haywood	Santarsiero	Williams, Anthony H.
Comitta	Hughes	Saval	Williams, Lindsey
Costa	Kane		

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. Amendment A0441 will be laid upon the table.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Mr. President, I request a temporary Capitol leave for Senator Flynn.

The PRESIDENT. Senator Costa requests a temporary Capitol leave for Senator Flynn. Without objection, the leave will be granted.

And the question recurring,
Will the Senate agree to the bill on third consideration?
It was agreed to.

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Kearney.

Senator KEARNEY. Mr. President, while I appreciate the author's concerns about safety on public transit, I rise in opposition to this measure, which I believe usurps local government and will not improve safety on SEPTA. Most trips on SEPTA are without incident. Yet there are rare, yet too many common incidents of violence and sexual assault. These incidents may be shocking, but it is the more regular nuisances and overall atmosphere that make people reluctant to ride SEPTA. Common safety issues we experience every day, and which we hear about from riders of all ages and SEPTA employees, include smoking on platforms and in subway cars, disorderly conduct, intoxication, rambunctious teenagers being teenagers, and riders who threaten fellow behaviors [sic] or employees when they are confronted about their behavior. Additionally, there are conditions which may not pose a physical threat, but which make the system feel less safe. Riders experiencing homelessness, riders nodding off due to drug addiction, littering, the stench of bodily fluids in stations and subway cars. These issues are not unique to Philadelphia, and I can tell you that

Delaware County's District Attorney is very happy to aggressively prosecute individuals for crimes on SEPTA property in Delco.

But prosecution is not the problem here. What we are witnessing is all of society's problems having nowhere to go and ending up in SEPTA. SEPTA is burdened with the effects of public health problems like addiction and mental illness; the effects of poverty, like trauma, hopelessness, apathy, and antisocial behavior; and the effect of not having the infrastructure we need to deal with these problems, such as affordable housing, shelter during the day, public restrooms, mental health resources, drug addiction treatment, and recovery services and social workers. These are problems that the State needs to address, because a transportation authority is not the right entity to address all these societal problems, and neither is a prosecutor. Nevertheless, SEPTA is dealing with these problems, and the State needs to help SEPTA deal with these problems with resources. SEPTA needs State funding to deal with these burdens with extra staff, and all counties need more funding to provide greater mental health services, social services, housing services, and drug treatment. However, this bill does not address the need for more manpower to create a lawful atmosphere on SEPTA vehicles and facilities, and this bill does not address the safety concerns of my constituents who use SEPTA outside of Philadelphia. I urge a "no" vote.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, I want to be very clear; we need to be very clear. What Senate Bill No. 140 does, it says directly to the citizens of Philadelphia that you cannot choose who your district attorney is, who your prosecutor is, and if we do not like who you choose and if we do not like the job that they are doing, we are going to remove their responsibilities, remove their powers and effectively, effectively, Mr. President, say to them and say to the citizens of Philadelphia: your rights to choose who you have in elected office are less than those for every other citizen in the Commonwealth of Pennsylvania. That is the true intent of this legislation; that is the true intent, Mr. President. We need to be clear about that; that is the intent. And what the gentleman, the prime sponsor, is offering either on behalf of SEPTA or not--now, we have not heard that SEPTA, you know, after calling a number of SEPTA board members during the course of the day, they are like, well, you know, we might need this, we may not need this, I do not know, there was no vote on the matter. Well, you know, this starts to get a little bit murky with respect to what the, again, the alleged intent. But I want this body and the people paying attention to be very clear what this bill does: it removes the power of the citizens of Philadelphia to choose who their prosecutor is by eliminating that prosecutor's responsibilities. That is what it does. It gives it to, essentially, the Attorney General to appoint a special prosecutor.

Now, the Attorney General's folks have said to us today, we do not want this. We do not want this--it comes from an email from their government affairs person--we do not want this. Now, of course, being a good Attorney General, if it becomes law, they will have to obey the law, comply with the law, as a good attorney general would do, and I would expect that. But they have said they do not want it. They have said that they do not want it. Now, the most recent conversation, in any kind of public fashion that has occurred on this matter, was in a public hearing by the

Committee on Transportation on May 9, 2022. And let me read as I did in the Committee on Appropriations when this matter came in front of us, Mr. President, let me read excerpts of what was testified, Brian Pollitt, the president of Transportation [Transport] Workers Union Local 234, in his testimony, did not lay blame on the Philadelphia District Attorney, rather he laid blame on SEPTA's management, quote, due to either the lack of effective strategies, resources, or training, the SEPTA Transit Police have been unable to address rising transit crime. No mention of the prosecutor. No mention of the district attorney. All of the transit police are shorthanded by approximately 50 officers. The existing force can but is not doing enough to address criminal activity in the system, activity that transit police management is fully aware.

Again, another quote, the ongoing nature of the problems demonstrate a lack of will on the part of top SEPTA management to deploy the resources SEPTA has to drive crime out of the system. Omari Bervine, president and CEO, and Troy Parham, vice president, Fraternal Order of Transit Police, advocate for taking the steps that are needed to recruit and retain qualified transit police officers so that we can restore public confidence in the system. The saddest thing about the recent turn of events is that it was so preventable. We are facing the problems we have today because SEPTA has refused to invest in its transit police department and its transit police officers. No mention of the district attorney; no mention of the district attorney at all. And I would just submit to you, Mr. President, as I said in the Committee on Appropriations, that the issue of not having enough officers and law enforcement is a statewide and national situation.

The Philadelphia Police Department is down, probably, about 1,000 police officers. We just heard SEPTA transit, the law enforcement, the police officers at the University of Penn, Temple, Drexel, the State Police. I even heard one of my colleagues indicate that in western Pennsylvania they do not have enough police officers; they cannot even find a police chief. They cannot even find a police chief. So, the issue about crime in our communities, let alone our transit systems, is not related to who is prosecuting, but is related to the lack of law enforcement and a constructive plan and a constructive program and thoughtful investments to make sure that we take these very important systems and rise them to the level, not to the issue of whether prosecutions are happening in the SEPTA system by the Philadelphia District Attorney. But let me just add that just to add a little bit to that conversation. We pulled some information from the District Attorney's website. In 2019, they made 332 arrests on SEPTA vehicles, brought 240 cases, that is 72 percent. In 2020, they made 172 arrests, 151 cases were brought, that is 87.8 percent. In 2021, Mr. President, 154 arrests were made, 138 cases were brought, that is 89.6 percent. In 2022, Mr. President, 184 arrests were made, 156 cases were brought, 84.8 percent. And in our year, 2023, up to the point that we are at right now, 41 arrests were made, 36 cases were brought, that is a percentage of 87.8 percent.

So, the prosecutor is doing the prosecutor's work. The prosecutor is doing the prosecutor's work. They are making an attempt to try to get ahold of the issues of crime in our transit system. But again, again, let us be clear, Mr. President, this is nothing about dealing with the issue of crime in the SEPTA system. This is not about that. What this does, Mr. President, what this does, it says that the citizens of Philadelphia cannot elect the district attorney

that they want to elect no matter who that person may be, and if the Majority sees fit that they do not like that district attorney, then you know what they will do? They will remove his or her power; they will remove his or her responsibility. And by doing so, what they say to the 1.6 million people who live in the city of Philadelphia is that you are second-class citizens, and damn it, I am not a second-class citizen and no one from the city of Philadelphia are second-class citizens. We are just as equal, just as relevant as every other citizen in the Commonwealth of Pennsylvania. To take, this is another form of voter suppression. That is all this is, Mr. President.

POINT OF ORDER

Senator LANGERHOLC. Point of order, Mr. President.

Senator HUGHES. There is no point of order to be had here.

Senator LANGERHOLC. Far outside of the scope.

Senator HUGHES. No point of order to be had here.

The PRESIDENT. The gentlemen will suspend. What is your point?

Senator LANGERHOLC. Far outside of the scope of the bill. Talking about voter suppression ID.

The PRESIDENT. I would just ask the speaker to narrowly tailor his comments to the subject at hand, but the speaker can continue.

Senator HUGHES. Mr. President, my comments will be tailored to the point of the true intent of the legislation. The true intent of this bill, Senate Bill No. 140, is to remove the powers of the District Attorney of Philadelphia, who the citizens of Philadelphia elected twice, twice. Now, if the opposition cannot find enough--cannot find a good opponent to un-elect that individual then that is on them. But this is the person who we elected and no matter, no matter, and you know, Mr. President, let me backtrack just a second. It is interesting that the timing of the sunset of this legislation coincides with the timing of the end of the current district attorney's term in office. It is very interesting to note that this piece, the timing, the sunset of this legislation is consistent with the current district attorney's term in office. So, that seems to me by any particular interpretation that that is where this is going, straight at the person who the citizens of Philadelphia elected to represent them as their district attorney twice, twice. So let us not be mistaken, let us not be fooled. As President Obama would say, do not be fooled by the okey-dokey because that is what is happening with this piece of legislation. It is not about making the system safer. It is not about making the system safer. The Attorney General said that she does not want this responsibility. She will do it if it is provided her because that is what a good attorney general will do, but she has said she does not want it.

The prosecutor in Philadelphia is doing his job. I have given you the rates: 2019, 2020, 2021, 2022, 2023; all over, the lowest was in 2019 at 72 percent, the highest was in 2021 at 89 percent. Currently in 2023, we are at 87.8 percent of cases brought on arrests that were made. That is extremely high, extremely high. So, all of this, all of this is clearly about, clearly about saying to the citizens of Philadelphia that the person who you elect as district attorney will not have full powers to run the office because it removes the responsibility in this case. It is not veiled. It is obvious, it is clear, crystal clear. We are not second-class citizens in the city of Philadelphia. Our rights to vote for who we want to vote

for, to elect the people who we want to elect, to do the job that has been prescribed to them are just as equal, just as relevant as any other in this Commonwealth of Pennsylvania. I rise, Mr. President, in full opposition to Senate Bill No. 140, one of the ugliest forms of voter suppression that has come across this Chamber in years.

POINT OF ORDER

Senator LANGERHOLC. Point of order. Mr. President, again, far outside the scope of this bill, there is nothing in this bill talking about voter suppression--

The PRESIDENT. I believe--

Senator HUGHES. I have concluded my comments, Mr. President.

Senator LANGERHOLC. --and ask that they be stricken from the record.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator STREET.

Senator STREET. Mr. President, I rise as well to ask for a negative vote on this legislation. It has been asserted that the purpose of this legislation is that the prosecutor is not doing his job. However, as has been outlined most passionately by my colleague from Philadelphia, the median average of cases over the past 4 years is around 85 percent. It should be noted that a prosecutor does not ordinarily exercise--that the prosecutor has the right to exercise discretion--that the prosecutor does not ordinarily prosecute every time there is an arrest made, but 85 percent is a fairly high number. I would also point out, it is not merely whether a prosecutor charges that is at issue, but it is how the prosecutor charges. And the people of Philadelphia have spoken as to how they want their district attorney to do its work.

DA Krasner, in the last election, received over 77 percent of the vote in the Democratic primary, and over 80 percent of the vote in the General Election against his Republican opponent. He had opponents in both primary and general and resoundingly defeated them. The people of Philadelphia have elected this district attorney not once, but twice. We go down a dangerous road if we are to start suggesting that when the Majority rule in the General Assembly--the Majority party of the General Assembly--disagrees with the way local prosecutors or local government officials--period--are exercising their discretion, that we will remove that authority because we disagree with it.

Clearly, we are all elected from different districts, and our constituents have varying sets of preferences, but to substitute the judgment of the General Assembly for the people of Philadelphia and how prosecutorial discretion is exercised is wrong, and it does undermine the decisions that were made by the people of Philadelphia. So, I would submit that that is, in fact, a result intended or unintended of this piece of legislation. It directly attacks the will and the decision made as to how the prosecutorial decisions are going to be made in Philadelphia by removing that authority and substituting it with the authority made by statewide officials.

Moreover, it does not even completely address crime within SEPTA, as has been outlined by my colleague from Delaware County. SEPTA is a regional transit authority, and this only applies to activity that occurs in the city of Philadelphia. And, so, it does not even seek to address issues beyond that, but is, therefore,

clearly targeted at a disagreement, a political disagreement, with the way, the selection that the people of Philadelphia have made as to how such prosecutorial discretion should be exercised. It undermines the very fundamental fabric of our society by compromising the confidence that people will know that their decisions, as to who they elect, will be executed by the officials who they select through the electoral process. It does not address the overarching issues. Moreover, as it may have been mentioned, it was certainly mentioned in the Committee on Appropriations, the folks who are most directly impacted do not support this. One, that would be the people of the city of Philadelphia. People of the city of Philadelphia have had a chance to have a poll on this. The poll was an election, and, additionally, it is the people who work in SEPTA. And when the president of the Transit [Transport] Workers Union testified, he mentioned that there were issues surrounding the inability for SEPTA to appropriately staff its police department, issues that this bill does not seek to address.

Additionally, we have leadership in this on addressing crime issues which are not limited to the city of Philadelphia, and are not limited to SEPTA, in that the Governor has suggested and proposed, through his budget, a plan to address the police shortage not only in SEPTA but across the Commonwealth. Additionally, I will point out that the rise in crime that has been seen in the city of Philadelphia is commensurate with the rise in crime in many other municipalities across this Commonwealth and, indeed, across the nation. Yet, this bill seeks only to eliminate the ability of people in the city of Philadelphia to exercise their right to select how their prosecutorial discretions are going to move forward to select their district attorney. If there was a correlation between people--the way prosecutorial discretion was exercised and the rising crime, it should only be occurring in the city of Philadelphia. But in fact, those rises in crime have occurred across the Commonwealth, but this bill does not seek to address those issues. An amendment was offered by one of my colleagues to expand it. If the scope was really to address it across the Commonwealth, that amendment was voted against by the maker of the bill and the Majority.

This bill does nothing other than eliminate and undermine the fundamental decisions that the people of Philadelphia have made as to how justice should be served in the city of Philadelphia, and I would submit that it is wrong, and it is a dangerous precedent. It is a dangerous precedent that we set when we start to interfere with the prerogatives of local government. It is a dangerous precedent when we suggest that we are going to substitute the will of the General Assembly for how municipalities are going to move forward. It is a dangerous path we are seeking to go down today. The people have selected a district attorney of Philadelphia. We should respect that decision, and we should allow the will of the people of Philadelphia to move forward. And if there are issues related to crime that relate to the entire Commonwealth of Pennsylvania, we should pass legislation that addresses that, and we should address it. And the specific issue around the lack of police officers--we already have a remedy in front of us, in part, suggested by the leadership of the Governor. We should move forward with that remedy and vote "no" on this measure.

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Haywood.

Senator HAYWOOD. Mr. President, I will not go over what my colleagues have already shared and repeat any of it. Instead,

I wanted to address the point of order if that is appropriate. There was a point of order raised about the language of voter suppression.

The PRESIDENT. Will the gentleman please suspend briefly. Senator HAYWOOD. Most definitely.

The PRESIDENT. The Senate will be at ease.

[The Senate was at ease.]

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Haywood, to continue.

Senator HAYWOOD. Mr. President, you are still doing a fantastic job.

[Laughter.]

I rise to highlight the impact of this legislation on voters in Philadelphia. This legislation--

POINT OF ORDER

Senator PITTMAN. Mr. President, point of order.

The PRESIDENT. The gentleman will suspend. The Chair recognizes the gentleman from Indiana, Senator Pittman. What is your point?

Senator PITTMAN. There is nothing in this legislation that addresses anything relative to elections. The gentleman's comments need to be confined to the bill at hand.

The PRESIDENT. I would just ask the gentleman that he confine his comments to the bill at hand, but the gentleman can--

Senator COSTA. Mr. President, if I can respond, if I am able to respond.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. I think, clearly, that this has an impact on the voters of Philadelphia, and they are clearly relevant to this conversation. I think, as my colleague pointed out eloquently and passionately, that this impacts what has taken place twice with overwhelming margins of victory that the authority that was vested in this district attorney by law and by the voters of that county--

Senator PITTMAN. Mr. President, there was a point of order stated. The gentleman is not addressing a point of order at this point. We have a bill before us that has specific language. The debate before us must be confined to the language at hand.

The PRESIDENT. I ask Senator Costa to continue on the point of order.

Senator COSTA. And I would specifically refer to the language that Senator Hughes pointed out. The language in this bill is specifically tied to this district attorney in this office now. That is a very clear intent to make it about this particular individual who, as was mentioned--

POINT OF ORDER

Senator PITTMAN. Mr. President, point of order. A point of order cannot be debatable.

The PRESIDENT. I would ask that the gentleman please continue his remarks but confine them to the subject on the bill. The gentleman, Senator Haywood, may continue.

Senator HAYWOOD. Mr. President, what this bill does is say that the district attorney for the city of Philadelphia would not be prosecuting SEPTA cases. Therefore, cases that are SEPTA cases would no longer be under the jurisdiction of the district attorney

for Philadelphia. That is the core to the legislation. Now, SEPTA is a significant part of the city of Philadelphia and suburban. Mr. President, I ride SEPTA, although I live in Montgomery County, but when I get on SEPTA, there are a number of people who get on at Fern Rock. There are also those who get on at Wayne Junction, there are those who get on at North Broad, and those who get on at Temple. Most of the people get off in Center City. All of these individuals who are on SEPTA and for some reason, unfortunately, might be subject to some type of criminal activity, under this legislation, would not be subject to the decisions of the Philadelphia District Attorney. Instead, they would be subject to the special prosecutor.

Now, the district attorney had authority over the entire city, SEPTA, non-SEPTA, prior to this legislation passing, and so the district attorney had it all--I think we can all agree on that--and then we can all agree that if this legislation passes, he will not have it all. He will only have everything except for SEPTA. SEPTA goes to the special prosecutor. And so, when this district attorney had the whole city, it is only this legislation that is going to restrict him and not have the whole city. Now, the district attorney, believe it or not, is an elected official, and as Senator Hughes has mentioned, he has been elected a couple of times. And so, when there was a decision to have him over the whole city with prosecuting authority, now it is going to be restricted, and he is not going to have the whole city. And so, all those who thought he was going to have the whole city, he is not going to have it. I do not think that is in dispute either, as far as I can tell, although that could change.

Now, what that means is that those who wanted the district attorney to have the authority over the whole city, they are not getting that. If this legislation passes, he will not get what was expected. I think we can agree on that. Now, the people who wanted the district attorney to have the authority over the whole city are the voters. I do not know who else it would be. And these are the people who had the expectation that the district attorney would have the whole city, and now he is not going to have the whole city because of our legislation. These are the individuals who are going to be extremely disappointed that what they sought in an election is not available because of our action in the State Senate. I am following the rules, right? Thank you so much.

So, whether you have any fancy name for it that you want or do not want, these voters who voted for the district attorney to have everything are going to be denied that. He is not going to have the whole city. He is going to be denied what people voted for twice. There is no dispute about that. The only dispute is what you call that denial, and, Mr. President, I leave that to everyone here to figure out what you call the denial of the power of this district attorney to have the whole city and now just have everything except for SEPTA. Thank you so much.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Langerholc.

Senator LANGERHOLC. Mr. President, what is happening to our country? Honestly, why are we here debating this bill? What is the motive or the circumstances that led to this bill being on the Calendar here today? It is not denying the city or the residents of Philadelphia the right to choose their district attorney. And just to counter the previous speaker, it is not eliminating the district attorney from prosecuting. The bill provides for concurrent jurisdiction. Concurrent jurisdiction, so he can still prosecute. The

problem is he is not prosecuting; he is not doing his job. It is not a question of the way or the manner in which he is doing it, he is just flat-out not doing it. You can throw numbers around all day, but arrests are very different from prosecutions, very different. In 2022 numbers, over 66 percent of violent offenses were dismissed or withdrawn; over 68 percent of all offenses were dismissed or withdrawn in 2022. Those are real numbers. I am sure the 85 percent that was quoted here, that might be the arrest, that is not the issue. The police are doing their job, they are arresting; the problem is in the follow-through. We have to remind the district attorney why they took an oath? What their job is? I mean, come on. I never would have thought getting into politics or being elected to the Senate that you are going to have to stand up and say, well, you are a district attorney, so your job is to enforce the law, you should prosecute people.

What is happening in our country? What is happening in our State? It is not an issue of police. No, it is not an issue of police; they are doing their job. I was there firsthand, I saw it, made mention of this many times before, talked with the officers who are overtasked, overburdened, arresting these individuals, taking them in. What happens? Heard it firsthand. One foot apart, on SEPTA, it was on a SEPTA car, they told me: well, it is a revolving door. We take them in, they are out on bail, they are out back on the streets, and then if they do go to court, or before a judge, or before a magistrate, what happens? The numbers that I cited before, they are withdrawn or dismissed. A lot of talk about a lack of police. No mention that after the hearing that we had last year, Local 234, which was cited here, they increased their wages, hired more officers. They are in the process of hiring more. Again, that is not the issue, the issue is in the follow-through. So, yes, I would think that everyone would agree on that. Hey, let us keep people safe. Is that not a core function of government? Someone is not doing their job, not prosecuting people, then, yes, we should provide the tools. And ironically that I just said tools, because in the conversation about the Attorney General's Office being against this, not for this, we do not want a part of this, not awfully ironic, tools.

I had this conversation with the Attorney General, my Senate office brought this very issue to her attention, said it is a very big concern, a very big issue for me. She agreed. I asked her if she would be willing to help. I likened it to my time in the Cambria County District Attorney's Office where we partnered with State Police, the Attorney General's Office, the FBI, the Safe Streets Task Force to address certain individuals, mainly with the drug trafficking. She was all for it. Then again, at her confirmation hearing, tools, I brought that up again. To paraphrase, she shared my concerns with the violence in Philadelphia as well as throughout the State. I will admit this is not just a Philadelphia issue, by no means, when I talk about crime and the rise in violence. But keep in mind that this bill was born out of the Committee on Transportation dealing with Title 75. As I said in the Committee on Appropriations, I would add this to this bill, I would hire 2,000 more law enforcement tomorrow. I agree with the Governor. That is a call that he made in his budget address. I am all in. Let us do it. The Governor is neutral on this bill. SEPTA supports this bill, and with respect to the Attorney General, talking about you share my concerns. What would you do? Will you help? Her last two sentences in that committee, to me, I will read it, quote, so, if you are asking me, if you gave me more resources and more tools

would I use them? The answer is, yes. This is a tool. So, I am quite perplexed as to why they have weighed in against this.

And, again, it is concurrent jurisdiction. It is not neglecting that option. And there is a simple remedy for this no one has talked about. Nobody said anything about, what is the simple remedy? Prosecute these individuals. Nobody wants this? I do not know who you are talking to. Talk to the people who ride SEPTA, or, actually, do not talk to people who ride SEPTA, talk to the people who do not ride SEPTA anymore and ask them why, why do you not ride SEPTA anymore? I really do not think you are going to hear an answer from them about their district attorney who they elected, you are going to hear an issue about safety. And, again, getting back to the law enforcement aspect of this. I heard different speakers at different points, not just on this floor but in different committee meetings, saying how this is not the issue of the prosecutor, this is not the issue of the district attorney, this is the issue--we need more police, we need more police, we cannot find police, we need more police. Hey, as I said before, I am all in. Let us do it. I will do it tomorrow. I think we have a real commitment here to get that done, and that is encouraging. But, again, is it any wonder why we do not have more people trying to go into law enforcement? Is it any wonder why the numbers are down at the local, State level? Is that contingent chose to vilify law enforcement or even previous administrations walking arm in arm with people who thought that was the cool thing to do, let us defund the police. Oh, what a great idea. And I am shocked now that there is a rise in crime. Ridiculous, absolutely ridiculous, and we should not have to be here to do that, to say, hey, do your job.

But, again, there is a remedy for this: prosecute. Is nobody hearing the voice of these victims who are being assaulted, raped, murdered, mugged in SEPTA? Anybody? Anybody want to stand up for them? You have a chance to do that today. You vote "yes," you are saying I hear your concerns; I want to help you, I want to make it safe. I am all for that, a safe transit system which will yield tremendous results, economic activity, it will get people--have our cities thriving again instead of living in fear, and that is what is happening. We can use semantics, we can talk all over about how it is not, that is what is happening. Again, it is not to single out just Philadelphia. This is the tool that we had through Title 75, which came out of the Committee on Transportation. An issue that is across not just our State but, unfortunately, very sadly, our nation.

Residents of Philadelphia who use SEPTA deserve better. Again, SEPTA supports this, as I said in my comments in the Committee on Appropriations, I do not know the politics of that board, I can just tell you what we were given, that they support it. They have renegotiated a contract with the FOTF for wage increases to draw more people in and to hire more officers. Again, we can hire 5,000 officers just for SEPTA tomorrow. It would not mean a damn thing if we do not have a prosecutor who is willing to step up to do the job that needs done. I ask for an affirmative vote.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes, for a second time, the gentleman from Philadelphia, Senator Street.

Senator STREET. Mr. President, the maker suggests it is not just about Philadelphia, but this bill factually only speaks to changing prosecutions in Philadelphia. The gentleman suggests it

is about just do your job, but he would suggest that he gets to determine what the job of the prosecutor in Philadelphia is, not the people of Philadelphia. He says that prosecutors are elected to prosecute as many people as possible. The people of Philadelphia did not want that. The people of Philadelphia voted for District Attorney Larry Krasner after he served 4 years, knowing full well--and this is not unique to hear--there are a number of people who believe the abuse of prosecutorial discretion has led to mass incarceration and the overcharging of crimes. Now, that crime can occur on a SEPTA platform, and a person could get charged with 1 offense or 10 offenses depending on how prosecutorial discretion was exercised. And as a person who rode SEPTA most of my life on a regular basis to move around, as a person who represents constituents who ride SEPTA every day, I find it fairly insulting that somebody from across the State would suggest he knows more about what the attitudes of people who ride SEPTA are than the people who live there. I live just a couple of blocks from a SEPTA station. I go there every day, and he asks who speaks for the victims of crime. I oppose this. This will not make us safer. I say this as a victim of crime who had a relative murdered in 2021. I say this as a person who has had staff people who had folks murdered. I say this as a person who stands at the funerals of children on a regular basis. The people of Philadelphia, who are subject to the crimes, do not want this. They elected a district attorney who represents their values. Mass incarceration has not made us safer, and we made a selection.

This bill would, in fact, take away the limitations on the use of prosecutorial discretion that the people of Philadelphia voted for in a number of places. You are standing on a SEPTA platform--it would take away the limitations on prosecutorial discretion. The main issue in the campaign was limiting prosecutorial discretion, not the overuse of prosecutorial discretion. That was, in fact, the platform that the district attorney ran on. If you are standing at the corner of Broad and Lehigh, there is a SEPTA station, and the SEPTA police and the special prosecutor would therefore have jurisdiction, and now you have changed how prosecutorial discretion would be exercised. If you are walking down Lehigh Avenue in my district, where SEPTA buses run, now, potentially, because there are bus stops there, you have changed how prosecutorial discretion gets exercised. A significant portion of Philadelphia serviced by SEPTA and allowing a special prosecutor, not elected by the people of Philadelphia, significantly changes who gets to exercise prosecutorial discretion, which was the fundamental issue in the election, and I speak for victims because I am one of them. I am not coming from across the State talking about things I do not know anything about.

I live it day to day, and I understand how prosecutorial discretion is exercised, and the people of Philadelphia were not ignorant, and they did not vote out of ignorance, not understanding the fact that there will be implications into how prosecutorial discretion was exercised. In fact, it was the seminal issue in the election. And this bill would seek to undo that, the will of the voters, in a significant part of Philadelphia. And that is wrong, and it is intentional, and would rob the people of Philadelphia of what they went out to vote for, which was limitations on how prosecutorial discretion will be exercised over a course of a significant part of Philadelphia. And if you do not think that is going to affect whether people think they should go to the polls, that is absurd. That is ridiculous. I urge a "no" vote.

The PRESIDENT. The Chair recognizes, for a second time, the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, for, at the very least, a brief bit of clarification. It was our office, this Caucus, who, in our most recent budget that was signed into law, June of 2022, included about \$135 million for law enforcement agencies across the Commonwealth of Pennsylvania to deal with supporting police, supporting prosecutors, of which SEPTA received \$5 million to assist them in the safety and security of the system. The appropriation came through the Pennsylvania Commission on Crime and Delinquency, of which I am a board member. We helped draft it, on behalf of this Caucus, we helped draft it, we helped put it together, and to be very clear, we are very concerned about all of the aspects of safety and security in our respective communities. Strong law enforcement being one, and strong prosecutors being a second, which is also why the district attorney of the city of Philadelphia received a multimillion-dollar appropriation in that process as well. To expand the number of individuals who have the power and ability to do their job. So, the record must be clear on who is doing what with respect to addressing the issues of violence and crime and the overwhelming flow of guns in the city of Philadelphia. The record must be clear of who is stepping up to deal with that and to make the citizens of the city of Philadelphia safer and more secure and, in fact, have the appropriate justice that they deserve to have, which is what I believe is the heart of Senator Street's comments. How we have justice within our own community in the city of Philadelphia. So, we supported resources for law enforcement, including \$5 million for SEPTA for law enforcement. We support more prosecutors and the capacity for prosecutors all across the Commonwealth of Pennsylvania to do their job. That is why we supported and advanced the issue of money for prosecutors. We would like to rid the Commonwealth of Pennsylvania from the excessive proliferation of firearms all over the place, but we are being stymied with that. But I will not digress into that issue right now.

It has been said that SEPTA supports this bill. However, there has been no vote taken by the SEPTA board, and I submit to you on an issue that impacts the voting powers of the citizens of Philadelphia, who overwhelmingly are riders of the system, that their duly elected prosecutor be removed of certain powers, that the SEPTA board should have an official vote on the matter because it is of that significant nature. But they have chosen not to. However, we have been in communication with the Philadelphia representatives on the SEPTA board. They oppose this matter. So, consistent with the fact that the Attorney General is not supportive of the matter, however, will do what she is prescribed to do by the General Assembly, the members of the SEPTA board, a poll from Philadelphia opposed the bill, because they understand the significant issues that are directly overtly in this legislation. They see it; they understand it. It is clear, Mr. President, that this bill is--because of its true intent, its true intent to abrogate the powers of the district attorney, therefore abrogating the votes of the people in the city of Philadelphia, that they are not interested in it.

So, Mr. President, we have stated the statistics, we have talked about who supports, who wants, who does not want. We have talked about the fact that there is, at best, confused communication from SEPTA. At best, confused communication from SEPTA and its board and its leadership. We are seeking a "no" vote

because the true intent, the true intent of this legislation, of Senate Bill No. 140, is to diminish the voting capacity of the citizens of Philadelphia by saying to their district attorney, you can do this, but you cannot do that. Limiting the district attorney's powers in the city of Philadelphia. The district attorney that the citizens of Philadelphia elected. And, again, I would remind everyone that it is very interesting that the sunset of this legislation is concurrent with the end of the district attorney's term in office. Is that a coincidence? I find very few things that happen in this Senate Chamber a coincidence. This is a hardly veiled attack on that prosecutor. But, most importantly, this is a direct attack on the citizens of Philadelphia. You may view them, you may view us, you may view me as second class, but you will not rule me as a second-class citizen. I assure you of that.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes, for a second time, the gentleman from Cambria, Senator Langerholc.

Senator LANGERHOLC. Mr. President, let us get something crystal clear in response to some comments. At no time, no time did I say the job of a prosecutor is to prosecute as many cases as they can. So, let us be clear about that. You want to start throwing around accolades or resumes, experiences, or for being too far away to be able to bring a bill like this. Is that what we are going to do? Is that where we are at? I do not think so. You want to talk about prosecutorial discretion; okay. So, the individual that pistol whipped a person on SEPTA, going back to my tour, I was there--took me 250 miles to get there--I was there. I saw it. Talked to the officers. The going rate for a gun offense is 1-year probation. Please show me who wants that, other than the guy that is charged with it, they would probably be all for it. Show me who rides SEPTA--maybe let us take a poll--before we get on SEPTA, we could do something with social media. Do you think that if you get beaten in SEPTA, or someone pulls a gun on you, they should just have probation for a year? Let us see; let us do a poll. If they say yeah, we are all for that, then I will stand corrected.

Thank you, Mr. President, I ask for an affirmative vote.

The PRESIDENT. The Chair recognizes, for a third time, the gentleman from Philadelphia, Senator Street.

Senator PITTMAN. Mr. President, I object.

The PRESIDENT. Under the Rules, the gentleman has spoken more than twice. To speak a third time, he will need leave of the Senate without--the gentleman waves off.

The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Mr. President, just very briefly, I think, at the end of the day what my colleagues were trying to impress upon everyone here, and our viewers today, is that the voters have spoken, as Senator Haywood indicated, Senator Street talked about. That poll was indicating that they wanted this district attorney to be able to serve them and understood what the parameters of what he would be doing going forward. That is the only comment I would like to make.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Pittman.

Senator PITTMAN. Mr. President, I request temporary Capitol leaves for Senator Laughlin and Senator Regan, and a legislative leave for Senator Gebhard.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Costa.

Senator COSTA. Mr. President, I request a temporary Capitol leave for Senator Santarsiero.

The PRESIDENT. Senator Pittman requests temporary Capitol leaves for Senator Laughlin and Senator Regan, and a legislative leave for Senator Gebhard.

Senator Costa requests a temporary Capitol leave for Senator Santarsiero.

Without objection, the leaves will be granted.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-29

Argall	Dillon	Laughlin	Robinson
Aument	DiSanto	Martin	Rothman
Baker	Dush	Mastriano	Stefano
Bartolotta	Farry	Pennycuick	Vogel
Brooks	Gebhard	Phillips-Hill	Ward, Judy
Brown	Hutchinson	Pittman	Ward, Kim
Coleman	Langerholc	Regan	Yaw
Culver			

NAY-21

Boscola	Flynn	Kearney	Schwank
Brewster	Fontana	Miller	Street
Cappelletti	Haywood	Muth	Tartaglione
Collett	Hughes	Santarsiero	Williams, Anthony H.
Comitta	Kane	Saval	Williams, Lindsey
Costa			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

**UNFINISHED BUSINESS
BILLS ON FIRST CONSIDERATION**

Senator J. WARD. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to by voice vote.
The bills were as follows:

SB 97, SB 100, SB 146, SB 205, SB 248, SB 262, SB 290, SB 344, SB 353, SB 411, SB 414, SB 456, SB 460, SB 497, SB 500, SB 549, SB 555 and SB 647.

And said bills having been considered for the first time,

Ordered, To be printed on the Calendar for second consideration.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA
COMMITTEE MEETINGS

WEDNESDAY, MAY 3, 2023

9:30 A.M.	AGING AND YOUTH (to consider the nomination of Jason Kavulich for the position of Secretary of Aging; and to consider Senate Bill No. 607)	Room 8E-B East Wing (LIVE STREAMED)
Off the Floor	RULES AND EXECUTIVE NOMINATIONS (to consider certain Executive Nominations)	Rules Committee Conference Room

PETITIONS AND REMONSTRANCES

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Tartaglione.

Senator TARTAGLIONE. Mr. President, I rise today to ask my colleagues to support Senate Resolution No. 103, which recognizes May as Asian-American and Pacific Islander Heritage Month in Pennsylvania. Asian-American and Pacific Islander, or AAPI, Heritage Month is observed in May to commemorate the arrival of the first Japanese immigrant to the United States on May 7, 1843. Today our Commonwealth is home to over 500,000 Asian American and Pacific Islanders, including the Chinese, Indian, Vietnamese, Korean, Filipino, Nepalese, Hawaiian, and many other AAPI communities. Back home in my district, I am proud to call many Asian Americans and Pacific Islanders my friends and neighbors. These communities have greatly enriched our great State and nation despite the significant adversity they faced throughout history.

Mr. President, we cannot forget that it was once normalized in this country, even in law, to discriminate against and exclude AAPI communities. And although we cannot change the past, we must recognize our country's errors and vow to do better in the future. I applaud my colleagues for recently taking action in acknowledging the value of these communities. This Chamber's unanimous passage of Senate Bill No. 402, making Diwali an official State holiday, was an important step, but we cannot allow this progress to stall here. We must ensure that the wave of hate directed towards AAPI communities in the wake of the pandemic never rears its ugly head again. Openness, tolerance, and respect for the people must remain the norm in this Chamber and across Pennsylvania. After all, the American story as we know it would be impossible without the strengths, contributions, and legacies of Asian American and Pacific Islanders who have helped build and unite this country in each successive generation. Let us take another step in honoring AAPI communities of the past and present by recognizing this May as Asian-American and Pacific Islander Heritage Month in Pennsylvania.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes, for a second time, the gentlewoman from Philadelphia, Senator Tartaglione.

Senator TARTAGLIONE. Mr. President, I rise today because today marks 6,141 days since this Commonwealth's legislature last passed an increase in the minimum wage. This staggering and heartbreaking statistic is only made worse by the fact that we

Exhibit 4

Area Within a 500 yard Radius from a SEPTA Stop

The area shaded in red accounts for 89% of Philadelphia's landmass.
In 2023, 95% of all criminal incidents in Philadelphia occurred in the shaded area.

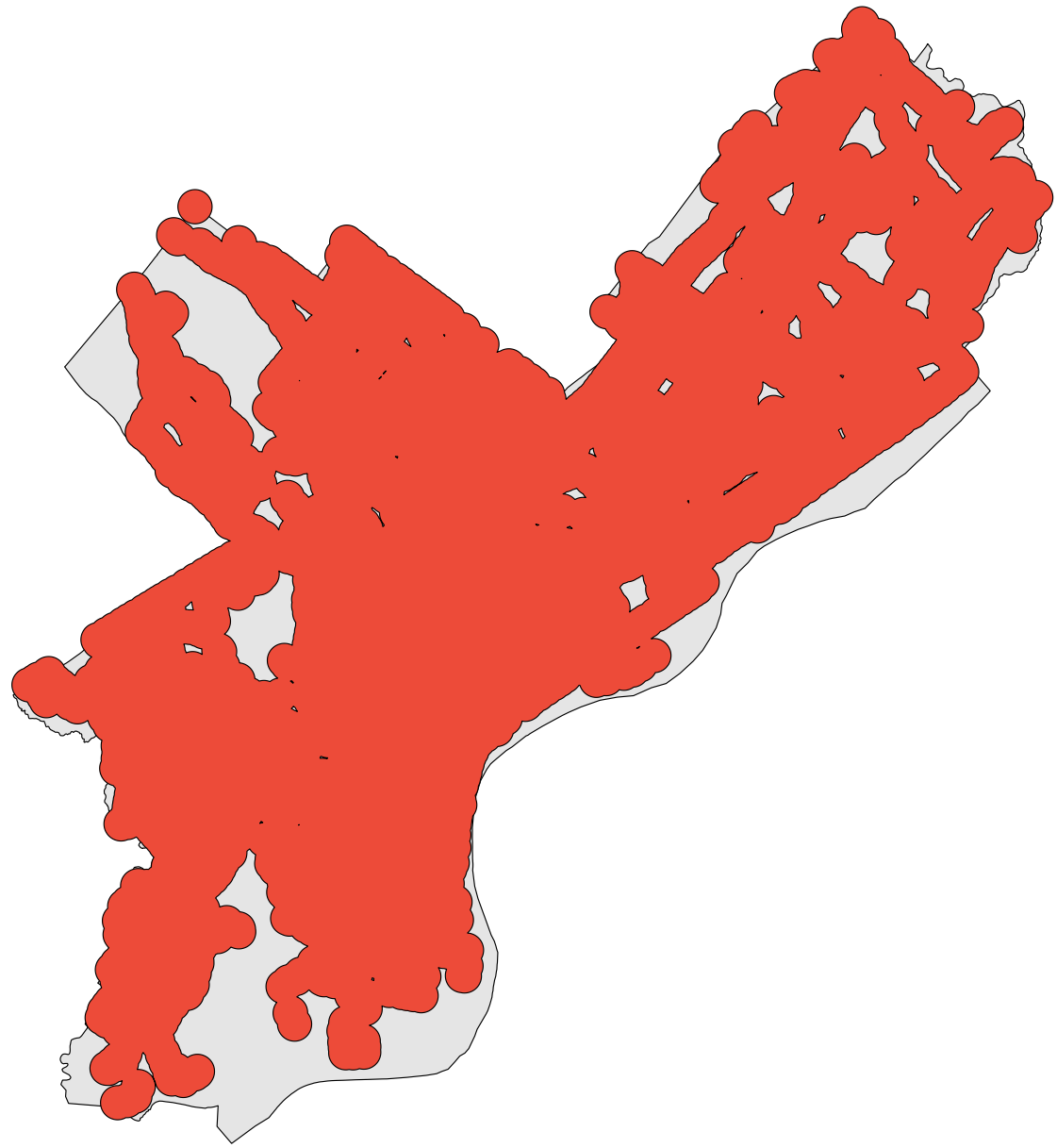


Exhibit 5



One Logan Square
27th Floor
Philadelphia, PA 19103-6933
215.568.0300/facsimile

www.hangley.com

PHILADELPHIA, PA
CHERRY HILL, NJ
HARRISBURG, PA
PLYMOUTH MEETING, PA

John S. Summers
Direct Dial: 215.496.7007
E-mail: jsummers@hangley.com

January 8, 2024

Via Electronic Mail and Federal Express

Michelle A. Henry, Attorney General (mhenry@attorneygeneral.gov)
J. Bart DeLone, Chief Deputy Attorney General (jdellone@attorneygeneral.gov)
Pennsylvania Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, PA 17120

Re: Unconstitutionality of Act of Dec. 14, 2023, P.L. No. 40

Dear Attorney General Henry and Deputy Attorney General DeLone:

This law firm represents Philadelphia District Attorney Larry Krasner with respect to P.L. No. 40 (Dec. 14, 2023) (“Act 40”).

I. INTRODUCTION AND SUMMARY

Act 40 is a brazen effort led by legislators from outside Philadelphia to disenfranchise the over one million voters of the City of Philadelphia. Philadelphia citizens elected DA Krasner in 2017 and re-elected him in 2021, when he carried over 66% of the primary vote and 72% of the general election vote, winning by a margin of 44%. The principal sponsor of Act 40, Republican Sen. Wayne Langerholc, Jr. – of Cambria, Centre (part) and Clearfield Counties – made clear that the law targets DA Krasner and the Philadelphia District Attorney’s Office (“DAO”). As opponents of the law repeatedly explained on the Senate floor, Act 40 in effect – if not in intent – erases the votes of all Philadelphia citizens, including DA Krasner’s tremendous voter support from our Black community. No law enforcement official, including the Attorney General, can implement Act 40 consistent with her oath to uphold the Constitution and laws of the Commonwealth.

In broad, vague language, Act 40 removes from DA Krasner and the DAO their authority to prosecute crimes “within,” and possibly within a wide berth of, the Southeastern Pennsylvania Transportation Authority (“SEPTA”). Specifically, the Act compels the Attorney General to appoint a Special Prosecutor to unilaterally prosecute crimes “within” SEPTA in Philadelphia, for the purpose of precluding and supplanting DA Krasner’s and the DAO’s authority.

To be clear, Act 40 discriminates against Philadelphia; it favors other counties and their voters because the Special Prosecutor has no such unilateral authority over district attorneys in other counties. Indisputably, Act 40 is a radical and unprecedented measure; our research has uncovered no comparable law in the history of the Commonwealth that so unconstitutionally and undemocratically undermines a single district attorney's law enforcement authority.

The law is worse than unconstitutional for the many reasons discussed in detail below because it discourages voters in Philadelphia – Pennsylvania's most urban, diverse, and populated county – from believing their votes will truly be counted. Democracy is in a perilous position in Pennsylvania and the rest of the country. In just a few short months, a landmark election will test the strength of our Republic. Laws like Act 40, at their very core, undermine the will of Philadelphia's million-plus voters, many of whom come from marginalized groups who do not agree with the views of Act 40's sponsors. As you likely know, critics of the law have repeatedly and publicly decried Act 40 as racially motivated. See Solomon Jones, *The Racist Message at the Heart of Pennsylvania's New Act 40*, Phila. Inquirer (Dec. 28, 2023), <https://www.inquirer.com/opinion/pennsylvania-general-assembly-act-40-philadelphia-septa-racism-larry-krasner-josh-shapiro-20231228.html>; Denise Clay-Murray, *A Question of Trust*, Phila. Sun (Dec. 29, 2023), <https://www.philasun.com/local/a-question-of-trust/> (op-ed); Michael Coard, *Republicans Disenfranchise Black Philly Voters by Attacking Krasner*, Phila. Tribune (Dec. 15, 2023), https://www.phillytrib.com/commentary/michaelcoard/republicans-disenfranchise-black-philly-voters-by-attacking-krasner/article_733b5187-b295-531a-ae23-772458cba03a.html, attached as Exhibits A-C.

Without doubt, Act 40 is a constitutional train wreck that cannot be lawfully implemented.

This letter is structured as follows. Part II provides background on the DAO, DA Krasner's prosecution of crimes on SEPTA, and a summary of Act 40. Among other things, we demonstrate that Act 40 does not even address the problems of crime occurring at SEPTA. Specifically, as shown below, it is arrests by SEPTA police that have fallen sharply (*e.g.*, from 275 to 110) in the past five years, not DA Krasner's and the DAO's charging of those arrested. DA Krasner and the DAO have continued to charge those arrested by SEPTA at the same rate as predecessor administrations (approximately 92%) and at the same rate DA Krasner is charging others throughout Philadelphia for similar crimes. Act 40 fails out of the gate because it does not address the real problem, the lack of resources provided to SEPTA and its police force. Instead, the law attacks DA Krasner and the DAO, who play no role in SEPTA arrests.

Part III then details many of the ways in which Act 40 violates the Pennsylvania Constitution, including that the law: (a) unconstitutionally divests the DAO of its territorial jurisdiction; (b) unconstitutionally nullifies the DAO's core prosecutorial functions; (c) is an unconstitutional local or special law that singles out Larry Krasner and the City of Philadelphia by purporting to usurp the authority of the Philadelphia District Attorney's Office to prosecute crimes in Philadelphia that occur on SEPTA; (d) violates the Equal Protection Clause of the Pennsylvania Constitution in treating the DAO differently than the District Attorney's offices in the surrounding counties; (e) unconstitutionally calls for the appointment of an unaccountable

special prosecutor; (f) conflicts with the Criminal History Record Information Act (“CHRIA”); (g) impairs the prosecution of criminal matters in Philadelphia by violating the rights of criminal defendants to raise arguments in their defense; and (h) imposes a set of fiscal requirements that are contrary to the Constitution and other laws. Any one of these deficiencies dooms the law; taken together it is a slam dunk that the law cannot be implemented by the Attorney General.

II. BACKGROUND

A. DA Krasner Is the Philadelphia District Attorney, Accountable to the Voters of the City of Philadelphia Who Elected and Re-elected Him

For over a century, the Philadelphia District Attorney, like all other District Attorneys statewide, has been an elected official vested with substantial discretion over the enforcement of our Commonwealth’s criminal laws. Broadly, the Pennsylvania Constitution and its laws provide that voters elect local, countywide District Attorneys who are responsible for prosecuting crime in the county from which the District Attorney is elected.

The principles underpinning these provisions are actually simple; law enforcement in a county is subject to, and accountable to, the electorate in that county. That is what local control and local accountability is all about. As our Supreme Court has explained, “[t]he District Attorney of Philadelphia County . . . is the sole public official charged with the legal responsibility of conducting in court all criminal and other prosecutions, in the name of the Commonwealth. The District Attorney must be allowed to carry out this important function without hindrance or interference from any source.” *Com. ex rel. Specter v. Bauer*, 261 A.2d 573, 576 (Pa. 1970).

Larry Krasner is the District Attorney of Philadelphia County and its chief law enforcement officer. As a matter of Pennsylvania Constitutional law since 1874 – 150 years – DA Krasner’s territorial jurisdiction is coextensive with Philadelphia County. *See* Pa. Const., Art. IX, s.4.

B. DA Krasner’s Prosecution of Crimes on SEPTA

As part of his duties as Philadelphia’s chief law enforcement officer, DA Krasner has prosecutorial authority over all crimes in Philadelphia. No law provides for different chief law enforcement officers to prosecute crimes committed in some parts of Philadelphia and not others. He – and his office, the DAO – are the only authorities responsible for enforcing the laws throughout the City of Philadelphia, including on SEPTA or anywhere else.

And DA Krasner vigorously charges and prosecutes SEPTA crimes. The following table depicts the number of arrests by SEPTA police for felonies and misdemeanors occurring within SEPTA:¹

Year	Total Arrests	Total Arrests Charged	Charging Rate
2018	275	240	87%
2019	176	156	89%
2020	161	150	93%
2021	144	137	95%
2022	165	155	94%
2023	110	103	94%

These data demonstrate several things. First, arrests by SEPTA police have fallen sharply (*e.g.*, from 275 to 110) in the five years from 2018 to 2023. But Act 40 does not provide SEPTA and its police force with greater resources. That would be a genuine way to enhance law enforcement by increasing the number of arrests. The law is instead misdirected to attack DA Krasner and the DAO, who play no role in SEPTA arrests.

Second, the data show that what DA Krasner and the DAO are actually doing – taking SEPTA’s arrests and charging those defendants – has remained essentially unchanged. During DA Krasner’s tenure, the charging rate has stood at approximately 92 percent, which is consistent with the charging rate of the prior DAO administration in Philadelphia. Specifically, over the four years from 2014 to 2017, the charging rate for such SEPTA crimes, was 97, 94, 88, and 89 percent respectively, with an average of 92 percent.

¹ The figures below exclude summary offenses (which are usually charged by police without the DA’s involvement in charging), excludes the many police stops that SEPTA deems and pursues as civil violations (in which the DAO plays no role), and arrests for outstanding bench warrants pursuant to 18 Pa. C.S. § 5124. Section 5124(a) states that a person who is required to appear in court “commits a misdemeanor of the second degree if, without lawful excuse, he fails to appear at that time and place.” A violation of this statute therefore results in further prosecution of a prior offense where the defendant failed to appear in court for a crime that nearly always did not occur on SEPTA.

Third, DA Krasner and the DAO cannot be criticized for casting a blind eye towards SEPTA crimes, because the 92 percent charging rate is consistent with the average charging rates for citywide felony and misdemeanor arrests by all agencies (93.2 percent for period 2018 to 2023).

Contrary to fact, Sen. Langerholc and colleagues baselessly criticized DA Krasner and the DAO for supposedly failing to prosecute crime on SEPTA. DA Krasner cannot be faulted for any lack of arrests by police or for SEPTA and police decisions to use civil remedies and charge summary offenses rather than pursue misdemeanor charges. Simply put, there is no basis for concluding that there is any problem with prosecutions within SEPTA. Act 40 is a targeted political measure made up by a legislator in a county far from Philadelphia.

Though the facts apparently don't matter to the proponents of Act 40, facts matter in Philadelphia. And on the basis of real facts – DA Krasner's and the DAO's actual record of charging of SEPTA crimes (as well as his other policies and track record) – DA Krasner was reelected in 2021. Overwhelmingly. Undeterred by actual facts and the citizens of Philadelphia's strong support for DA Krasner, Sen. Langerholc and other legislators voted for Act 40 to erase the votes of the citizens of Philadelphia by stripping DA Krasner and the DAO of their exclusive authority to prosecute crimes everywhere in Philadelphia, including on SEPTA.

Thus, the District Attorney's Office has ably and zealously charged and prosecuted crimes occurring on or anywhere near SEPTA in Philadelphia. That crime on SEPTA in Philadelphia remains a problem and always will require constant effort to combat it is no doubt true, just as crime throughout the Commonwealth requires such constant effort. But to pin a false narrative of non-prosecution on DA Krasner and the DAO and to enact Act 40 as an excuse to disenfranchise Philadelphians in the future and erase their votes in the past is disingenuous, baseless, and untethered to fact.

C. The Terms and Legislative History of Act 40

1. Summary of Act 40's Terms

On December 14, 2023, Act 40, titled "An Act Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in Metropolitan Transportation Authorities, Providing for Special Prosecutor for Mass Transit," came into effect. Here are the pertinent provisions.

a. The Unelected Special Prosecutor Has Broad General Authority and Jurisdiction

Section 1 states, "[w]ithin 30 days of the effective date of this section [*i.e.*, by January 13, 2024], the Attorney General shall appoint a special prosecutor to investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class in accordance with this section." *See* Act 40, Section 1, at § 1786(a). Act 40 further provides:

Notwithstanding any other provision of law or regulation, a special prosecutor shall have the authority to investigate and prosecute, and has jurisdiction over, any criminal matter involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The special prosecutor's prosecutorial jurisdiction shall include the power and independent authority to exercise all investigative and prosecutorial functions and powers of an office of the district attorney of a county of the first class and any other officer or employee of the office of the district attorney in the county of the first class.

Id. at § 1786(a)(2).

Such “investigative and prosecutorial functions” are extensive and encompass the traditional roles and functions of a county district attorney. For example, “Conducting proceedings before grand juries and other investigations”; “Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special prosecutor considers necessary”; “Initiating and conducting prosecutions in any court of competent jurisdiction, appealing any decision of a court in a proceeding in which the special prosecutor participates and handling all aspects of any case in the name of the Commonwealth”; “Reviewing all documentary evidence available from any source”; and “Making applications to a State court for a grant of immunity to a witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders.” *Id.*

The Special Prosecutor is empowered to “use facilities, resources and personnel of the Attorney General” and “may request assistance from the Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction.” *Id.* § 1786(a)(3). In turn, “any law enforcement agency with appropriate jurisdiction may provide assistance, which may include the use of resources and personnel necessary to perform the duties of the special prosecutor.” *Id.*

b. The Special Prosecutor Has Broad Pre-Emptive and Targeted Authority over DA Krasner and the DAO – but Not over Suburban District Attorneys

Within the Special Prosecutor's “sole discretion,” the Special Prosecutor may assert exclusive, preemptive prosecutorial jurisdiction over any criminal actions or proceedings involving alleged violations of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.” *Id.* § 1786(a)(4). No prior approval by the Philadelphia District Attorney's Office is required for the special prosecutor to initiate criminal proceedings. *Id.* (a)(4)(v). And the Philadelphia District Attorney's Office must notify a Special Prosecutor of “any arrest or other criminal action or proceeding involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority” within 48 hours. *Id.*

(a)(7). The Special Prosecutor’s powers include not only the power to investigate and bring prosecutions, but to stop ongoing investigations and prosecutions (regardless of their stage), and to take the District Attorney’s files that the special prosecutor deems related to an investigation in his/her jurisdiction. *Id.* (a)(4)(iv).

Act 40’s preemptive jurisdiction is targeted at only the Philadelphia District Attorney, even though SEPTA serves counties other than Philadelphia (and even though SEPTA is not the only Pennsylvania transit service). Notably, the Special Prosecutor “may not assert preemptive prosecutorial jurisdiction . . . in a case where jurisdiction also exists in a county other than a county of the first class unless the special prosecutor requests in writing to the district attorney in the county other than the county of the first class to assert preemptive prosecutorial jurisdiction and the district attorney in the county other than the county of the first class accepts the request in writing.” *Id.*

Act 40 imposes certain requirements for the Special Prosecutor, including that such person shall “[n]ot have been employed by the district attorney’s office in a county of the first class or the Office of Attorney General within six years of the effective date of this section.” This is a coded way of saying that no one can be selected who has ever worked as an ADA while Larry Krasner was DA – DA Krasner’s first term began in 2018.

c. The Special Prosecutor’s Territorial Authority to Prosecute Potentially Broadens to 500 Yards from any SEPTA Property

Act 40 sets aside broad territorial jurisdiction for the appointed Special Prosecutor, who will “investigate and institute criminal proceedings for a violation of the laws of this Commonwealth *occurring within a public transportation authority.*” § 1786(A) & (A)(2) (emphasis added). Although Act 40 repeatedly uses the phrase “occurring within a public transportation authority,” it does not define that phrase. *See, e.g.*, § 1786(a) & (a)(2). The law’s vagueness on this central question – the breadth of the Special Prosecutor’s territorial jurisdiction – is one of many things that dooms the law. For example, does the Special Prosecutor’s authority extend only to SEPTA headquarters, stations, trains and buses? What about at SEPTA’s bus stops, bus routes, train tracks and countless rights of ways throughout Philadelphia and the region? The law can’t begin to be implemented until all of those many issues are sorted out.

It is true that the statute does state that “[e]ach *law enforcement agency* with jurisdiction in a county of the first class shall notify a special prosecutor of any arrest or other criminal action or proceeding involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation . . .” § 1786(A)(7) (emphasis added). This suggests that the Special Prosecutor has jurisdiction coextensive with any “law enforcement agency,” which is defined to include “a public agency . . . having general police powers and charged with making arrests,” campus police or university police department, or a railroad or street railway police department under Title 22, an airport authority police department, or a county park police force. *See* § 1786(b).

If this were so, the jurisdiction of such “law enforcement agencies” would be even broader and include up to 500 yards from the agency’s property. *See, e.g., Commonwealth v. Bloom*, 979 A.2d 368, 371 (Pa. Super. 2009); *Commonwealth v. Firman*, 813 A.2d 643 (2002); 71 P.S. § 646.1(a)(8) (campus police have jurisdiction “within 500 yards of the grounds of the college or university”); 22 Pa. C.S. § 3303.

If the Special Prosecutor’s preemptive authority extends to any crime occurring on or within 500 yards of SEPTA property, the Special Prosecutor’s territory would dwarf the District Attorney’s Office, usurping its constitutional function and running roughshod over the traditional authority of county district attorneys and their extensive prosecutorial discretion. Imagine that – the Special Prosecutor’s authority extends five football fields beyond any SEPTA property. While we have yet to calculate the precise impact of that, it may well include 80% of all criminal incidents in Philadelphia and nearly all of Philadelphia’s territory except the centers of a few parks.

d. Act 40 Has No Procedure for Removal or Mechanism for Oversight of the Special Prosecutor

Act 40 contains no mechanism for oversight of the Special Prosecutor. Act 40 has no procedure for removing the Special Prosecutor. And it prescribes no limits on the Special Prosecutor’s discretion or authority in Philadelphia. Instead, Act 40 authorizes “preemptive jurisdiction” over DA Krasner and the DAO in the Special Prosecutor’s “sole discretion.” *See* § 1786(a)(4).

Further, the Special Prosecutor’s authority expires at the end of 2026, at which time “[n]o new action or proceeding may be initiated” by the special prosecutor. *Id.* § 1786(a)(8). This “sunset” occurs one year after the end of DA Krasner’s current term, likely to allow the Special Prosecutor to complete any prosecutions initiated by the end of DA Krasner’s term.

Moreover, nothing in Act 40 requires the Special Prosecutor to swear an oath of office to uphold the Constitution and laws of the Commonwealth, as all District Attorneys and other public officials must do. *See* § 1786(a)(1) (setting forth requirements for Special Prosecutor).

Finally, Act 40 on its face creates steep administrative problems that could allow the Special Prosecutor, apparently in its sole discretion, to expand the prosecutor’s authority. For example, Act 40 does not authorize challenges to the Special Prosecutor’s jurisdiction, though the law does not define what it means to occur “within” SEPTA, and other authorities suggest that territorial jurisdiction could be within 500 yards of SEPTA property. And Act 40 provides no basis for determining what exactly the Special Prosecutor’s jurisdiction is. To the contrary, Act 40 limits the right of municipalities to take official action with respect to the enforcement of Act 40 and, further, strips criminal defendants of standing to challenge the statute.

e. The Act Prohibits Criminal Defendants from Challenging the Law

Act 40 states that no person “charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.” *Id.* at § 1786(a)(5). Accordingly, Act 40 purports to strip the judiciary of its right to review the authority of the special prosecutor and denies a criminal defendant the constitutional right to raise arguments in his/her defense. This provision further exposes the deeply anti-democracy views of the drafters of the legislation and would normalize the statutory elimination of judicial review by the courts, running roughshod over centuries of case law. The Constitution does not permit the legislature to pass a law that denies the judiciary the authority to review its constitutionality.

f. The Act’s Fiscal Provisions Require Philadelphia to Bear the Special Prosecutor’s Costs and Deny Philadelphia Its Statutory Right to Reimbursement for DA Krasner’s Salary

Act 40 requires Philadelphia County to “reimburse” the Special Prosecutor for any expenses occurred in performing the Special Prosecutor’s duties. The Special Prosecutor shall be compensated by the Office of Attorney General, at a per diem rate equivalent to the District Attorney’s salary. The Commonwealth shall not reimburse Philadelphia County for any portion of DA Krasner’s salary, even though it is otherwise obligated to do so by statute. *See* § 1786(10)-(12).

2. Act 40’s Legislative History

The legislative history of Act 40 confirms that the law targets DA Krasner and Philadelphia. It shows that the intent if not the effect of the law is to limit DA Krasner’s and the DAO’s authority to prosecute crimes occurring on and around SEPTA property in Philadelphia.

In an April 2023 Memorandum, Senator Langerholc, Act 40’s sponsoring legislator, states that he intended to introduce legislation “to appoint a special prosecutor to oversee crimes occurring on SEPTA within the City of Philadelphia. This prosecutor will address the inaction of the current DA and ensure that those that break the law will answer for their crime.” *See* Sen. Wayne Langerholc, Jr., Memorandum (Apr. 14, 2023), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20230&cosponId=40490>. As noted above, the fact-free assertion of “inaction of the current DA” is false, as the DA vigorously charges and pursues more than 90% of all SEPTA matters referred to him for prosecution, consistent with city-wide and historical averages in his and prior administrations in Philadelphia.

During debate on SB 140, which became Act 40, opponents of the measure stated that the “prosecution is not the problem” on SEPTA; the bill “usurps local government and will not improve safety on SEPTA”; and that the bill “does not address the safety concerns of [voters] who use SEPTA outside of Philadelphia.” Pa. Leg. J. Sen. 360-61 (May 2, 2023) (statement of Sen. Kearney). Opponents also correctly noted that the bill “removes the power of the citizens of Philadelphia to choose who their prosecutor is by eliminating the prosecutor’s responsibility” and says that “the citizens of Philadelphia cannot elect the district attorney that they want to elect [and that] if the Majority . . . do[es] not like that district attorney . . . [it] will remove his or her power.” *Id.* at 361-62 (statements of Sen. Hughes). This tells Philadelphians that they are “second-class citizens.” *Id.* at 362.

Saliently, opponents of the bill emphasized that “[t]he true intent of this bill . . . is to remove the powers of the District Attorney of Philadelphia [outside the democratic process] . . . this [bill] is going, straight at the person who the citizens of Philadelphia elected to represent them as their district attorney twice...” *Id.* at 362. As Senator Street explained, Act 40 is “clearly targeted at a disagreement, a political disagreement, with the way, the selection that the people of Philadelphia have made as to how such prosecutorial discretion should be exercised.” *Id.* at 362-63 (statements of Sen. Street); *see also id.* at 363. Indeed, as Senator Costa explained, “this has an impact on the voters of Philadelphia . . . this impacts what has taken place twice with overwhelming margins of victory that the authority that was vested in this district attorney by law and by the voters of that county,” *id.* He further highlighted, “[t]he language in this bill is specifically tied to this district attorney in this office now.” *Id.*²

There can be no mistake. Senator Langerholc made clear during the floor debate that the bill targets Philadelphia and DA Krasner. Senator Langerholc emphasized: “The problem is [that DA Krasner] is not prosecuting; he is not doing his job. It is not a question of the way or the manner in which he is doing it, he is just flat-out not doing it.” *Id.* at 364. As noted above, Senator Langerholc’s fact-free assertion of DA Krasner “flat-out not doing [his job]” is baseless.

SB 140 passed both houses and was signed into law on December 14, 2023. It took effect immediately.

² A proposed amendment to Act 40 that would have expanded Act 40 to encompass all counties, not just Philadelphia, was voted down. *See* Amendments to Senate Bill No. 140, Printer’s No. 684 (May 2, 2023), <https://www.legis.state.pa.us/CFDOCS/Legis/HA/Public/HaCheck.cfm?txtType=PDF&sYear=2023&sInd=0&body=S&type=B&bn=0140&pn=0684&aYear=2023&an=00426>.

III. ACT 40 IS UNCONSTITUTIONAL

A. Act 40 Unconstitutionally Divests the Philadelphia District Attorney's Office of Its Territorial Jurisdiction

Article IX, Section 4 of the Pennsylvania Constitution, originally enacted as part of the Constitution of 1874, expressly designates district attorneys and other county officers with territorial jurisdiction coextensive with their respective counties. In 1874, the Office of the Philadelphia District Attorney had already exercised prosecutorial jurisdiction over territory coextensive with Philadelphia County, having been established by statute in 1850. The Philadelphia District Attorney's existing, countywide jurisdiction thus was memorialized in what is now Article 9, Section 4. In effect, Article 9, Section 4 provides a Constitutional land grant to the enumerated county officers, including District Attorneys.

Act 40 violates this constitutional allocation of territorial jurisdiction. DA Krasner and the DAO are the authorized authority to prosecute crimes that occur within Philadelphia. That a crime occurs on SEPTA property in Philadelphia – as opposed to other property – does not mean that it occurs outside Philadelphia. The Act strips DA Krasner and the DAO of the authority to prosecute crimes in Philadelphia because the law authorizes the Special Prosecutor to exercise “preemptive” jurisdiction. For example, the Special Prosecutor is empowered to compel DA Krasner and the DAO to suspend any investigation or prosecution at the Special Prosecutor's request. § 1786(a)(4)(iv).

It is also an effort to disenfranchise the voters of the City of Philadelphia. It takes away the voters' choice of elected District Attorney, thereby preventing him from implementing the policies on which he was elected. *See Smith v. Gallagher*, 185 A.2d 135, 151 (Pa. 1962), *overruled on other grounds by Application of Biester*, 409 A.2d 848 (1979) (“The order of July 18th [appointing a special prosecutor] not only constitutes an invasion of constitutional liberties as pointed out, but it would perpetrate another unconstitutional mischief. It would disfranchise the people of Philadelphia in the realm of their freedom to select a District Attorney of their own choice.”). This surely is contrary to the guarantees that our Constitution places on the importance of free and equal elections that shall not be interfered with. *See Pa. Const*, Art. I, s.5. As the Supreme Court has explained, this provision “guarantees our citizens an equal right, on par with every other citizen, to elect their representatives. Stated another way, the actual and plain language of Section 5 mandates that all voters have an equal opportunity to translate their votes into representation.” *League of Women Voters v. Commonwealth*, 178 A.3d 737, 804 (Pa. 2018); *id.* at 814 (noting that section 5 “should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so.”).

Act 40 substantially annuls Philadelphia citizens' votes by impermissibly limiting the scope and authority of the District Attorney they elected and re-elected. That legislators from outside Philadelphia chose to do this to predominantly minority voters in Philadelphia makes their constitutional violation all the worse. By divesting the Philadelphia District Attorney's territorial jurisdiction, Act 40 plainly violates the Pennsylvania Constitution.

B. Act 40 Unconstitutionally Nullifies the Philadelphia District Attorney's Office's Core Prosecutorial Functions

Because the DAO and other District Attorneys' offices are constitutionally based, Pa. Const., Art. IX, s.4, the Supreme Court has repeatedly, narrowly circumscribed the General Assembly's authority to supersede a District Attorney's prosecutorial discretion within the District Attorney's jurisdiction. In general, the Court has limited the General Assembly to do this only where, in a particular case, there has "been some evidence of misconduct or conflicting interest or loyalty which casts doubt on the diligent performance of duty." *Commonwealth v. Walter*, 367 A.2d 1113, 1116-17 (Pa. Super. Ct. 1976) (en banc) (citing *Smith v. Gallagher*, 185 A.2d 135 (Pa. 1962); *Dauphin County Grand Jury Investigation Proceedings (No. 2)*, 2 A.2d 802 (Pa. 1938); *Commonwealth v. McHale*, 97 Pa. 397, 397 (1881)).³ Further, our research has uncovered that the only instances in which a special prosecutor has been allowed to supersede the authority of a district attorney is *after* a court has reviewed the basis for the appointment of the special prosecutor.

Act 40 fails entirely to meet these stringent requirements. First, it ignores these requirements. The Special Prosecutor is empowered to prosecute crimes "occurring within a public transportation authority" in Philadelphia without regard to any alleged misconduct or conflicting interest or loyalty that casts doubt on the diligent performance of his duty.

Second, Act 40 does not provide that a court or the Attorney General must make a determination of such misconduct or conflicting loyalty before the Attorney General appoints the Special Prosecutor or before the Special Prosecutor intervenes or takes over the prosecution of a crime on SEPTA in Philadelphia.

Third, the law does not provide for any judicial or other oversight over the appointment of a Special Prosecutor.

³ Consistent with this authority, the Commonwealth Attorney's Act prescribes the circumstances in which the Attorney General or her designee (under sworn oath of office) may supersede the District Attorney. None of those circumstances is present here; they include, for example, public corruption cases, corrupt organizations, and, at the request of the DA, matters in which the DA is conflicted or lacks resources to prosecute. 71 P.S. § 732-205.

Taken together, Act 40 is an unprecedented – indeed radical – unconstitutional effort to displace DA Krasner’s and the DAO’s authority. No provision like Act 40, which divests a district attorney and his or her office from the authority to investigate and prosecute crimes in such a sweeping territory, has been enacted in the history of the Commonwealth.

C. Act 40 Is an Unconstitutional Local or Special Law

Act 40 is an unconstitutional local or special law because it specifically targets DA Larry Krasner and the DAO. The Constitution prohibits this.

Article III, Section 32 of the Pennsylvania Constitution states, “[t]he General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law . . . [r]egulating the affairs of counties, cities, townships, wards, boroughs or school districts.”

According to the Pennsylvania Supreme Court, legislation violates this precept when it targets specific county officers within a class and treats them differently from officers in other classes. *See DeFazio v. Civ. Serv. Comm’n of Allegheny Cnty.*, 756 A.2d 1103, 1106 (Pa. 2000) (statute limiting political activity and hiring authority of Allegheny County sheriff violated equal protection and Art. III, section 32). The Court further observed, “[o]ne particular county officer may not be treated differently from the other similar officers throughout the commonwealth merely because that officer is within a certain class of county.” *Id.*

Act 40 is precisely such a prohibited local or special law. It expressly applies to Philadelphia as the Commonwealth’s only county of the first class and is specifically targeted at DA Krasner and the DAO. Act 40 further regulates “the affairs” of Philadelphia because it applies to “the county of the first class” and creates a Special Prosecutor to “investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority,” *i.e.*, SEPTA, in Philadelphia.⁴ § 1786(a). A law regulating law enforcement within Philadelphia unquestionably regulates Philadelphia “affairs” within the meaning of Article III, Section 32. Act 40 further regulates the affairs of Philadelphia because it requires the City to bear the Special Prosecutor’s fees and costs and denies reimbursement to Philadelphia for DA Krasner’s salary from the Commonwealth. § 1786(a)(10)-(12).

Act 40 also targets DA Krasner – not just the DAO. Among other things, Act 40 contains a “sunset” provision by which the Special Prosecutor is not permitted to initiate new matters after December 31, 2026, which occurs soon after the end of DA Krasner’s current term. *See*

⁴ That Act 40 mentions only one class of counties does not save it. The Supreme Court has struck down legislation that nominally applies to a class but is targeted to a specific municipality, official, or thing. *See Perkins v. City of Philadelphia*, 27 A. 356, 359–60 (Pa. 1893).

§ 1786(a)(8).⁵ Act 40 additionally precludes any person who served in the Philadelphia District Attorney’s Office since 2017 – *i.e.*, since the onset of DA Krasner’s tenure – from serving in the role. *Id.* § 1786(a)(1)(iii).

Act 40 also unconstitutionally treats the Philadelphia District Attorney differently from District Attorneys in other counties. Specifically, Act 40 confers “preemptive” jurisdiction on the Special Prosecutor over crimes in Philadelphia and divests the Philadelphia District Attorney’s Office of authority over such crimes. *Id.* § 1786(a)(4). The law does not empower the Special Prosecutor to do this with respect to District Attorneys from other counties. Specifically, according to the law, the Special Prosecutor cannot “assert preemptive prosecutorial jurisdiction “in a case where jurisdiction also exists in a county other than a county of the first class,” without the prior written consent of the district attorney in such other county. *Id.* § 1786(a)(4)(iii).

In addition to the text of Act 40, the legislative history of the law demonstrates that the law is targeted specifically at Philadelphia and DA Krasner. The law’s chief sponsor, Senator Langerholc, repeatedly admits as much. He writes in his sponsoring Memorandum that the Special Prosecutor “will oversee crimes occurring on SEPTA within the City of Philadelphia. This prosecutor will address the inaction of the current DA . . . This dereliction of duty has cast a negative light on the City of Philadelphia.” *See* Sen. Wayne Langerholc, Jr., Memorandum (Apr. 14, 2023) (emphasis added). Leaving nothing to chance, Senator Langerholc singled out DA Krasner for criticism during the Senate floor debate: “The problem is he is not prosecuting; he is not doing his job.” Pa. Leg. J. Sen. 364 (May 2, 2023). While Senator Langerholc’s claims about DA Krasner are all objectively false as noted above, they compel the conclusion that the law targets Philadelphia and DA Krasner specifically.⁶

⁵ The General Assembly has for years attempted to remove or limit DA Krasner from office. For example, legislators unsuccessfully introduced legislation to impose term limits on him, a bill which passed the House in 2022. *See* Cassie Miller, *House Passes Bill Limiting Philly DA to Two Terms*, Pennsylvania Capital-Star (Apr. 26, 2022), <https://www.penncapital-star.com/blog/house-passes-bill-limiting-philly-da-to-two-terms/>.

Most notably, the House impeached DA Krasner in 2022. The Commonwealth Court concluded that the Articles of Impeachment failed to satisfy the constitutional standard of “any misbehavior in office”, and thus the Articles were null and void. For example, the lead opinion noted that Krasner’s alleged misbehavior resulted from policy disagreements and therefore was not a basis for impeachment. The matter is presently on appeal before the Pennsylvania Supreme Court. *See Krasner v. Ward*, Nos. 2-4 EAP 2023 (Pa.).

⁶ Article IX, Section 13 of the Pennsylvania Constitution does not authorize Act 40. That Section was enacted as part of the home rule amendments of the early 1950s and provides for consolidation of Philadelphia County and City offices. It requires implementing legislation to
footnote cont’d on next page

This impermissible singling out of DA Krasner was evident to other Senators. For example, the bill’s opponents criticized the bill on the ground that it was intended to regulate DA Krasner personally. *See supra* Section II.C.2. Indeed, as Senator Costa cogently noted, “[t]he language in this bill is specifically tied to this district attorney in this office now.” *Id.* at 363 (statement of Sen. Costa) (emphasis added).⁷

D. Act 40 Violates the Equal Protection Clause of the Pennsylvania Constitution

Act 40 violates the equal protection guarantees of the Pennsylvania Constitution, Art. I, §§ 1, 26; Art. III, § 32. “The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly [A] classification must rest upon some ground of difference which justifies the classification and have a fair and substantial relationship to the object of the legislation.” *DeFazio v. Civ. Serv. Comm’n of Allegheny Cnty.*, 756 A.2d 1103, 1106 (Pa. 2000). The Supreme Court has explained: “One particular county officer may not be treated differently from the other similar officers throughout the commonwealth merely because that officer is within a certain class of county.” *Id.*

Act 40 plainly violates this basic guarantee. It creates one set of powers for District Attorneys outside of Philadelphia and another set for the DA Philadelphians overwhelmingly elected. Specifically, when it comes to Philadelphia, the Special Prosecutor has the authority to supersede DA Krasner’s authority to prosecute SEPTA crimes and fully divests him of any jurisdiction. § 1786(a)(4). Yet when it comes to District Attorneys in other counties, the Special

facilitate consolidation and does not authorize plenary legislation interfering with local offices and affairs for all time. Thus, it is inapplicable because, among other things: (1) Act 40 does not effectuate city-county consolidation, and it was not an existing law regulating Philadelphia County or City officers prior to home rule; and (2) Act 40 regulates the current DAO administration and District Attorney Krasner personally and thus does not prescribe the duties of a Philadelphia office generally.

Additionally, we have uncovered no authority upholding under Section 13 a law that targets a Philadelphia office or officer. Instead, Section 13’s scope appears limited to legislation implementing consolidation. *See Lennox v. Clark*, 93 A.2d 834, 853–54 (Pa. 1953) (Musmanno, J., concurring and dissenting) (“Thus supplemental legislation is obviously necessary to carry out the policy or principle sought to be effectuated by the [consolidation] amendment. The amendment itself did not consolidate, but enabled the legislature to effectuate the consolidation.”); *see also Clark v. Meade*, 104 A.2d 465 (1954) (striking down law implementing city-county consolidation because it violated the Constitution of 1874’s prohibition on local or special laws conferring special privileges).

⁷ The Supreme Court has considered legislative history for purposes of determining whether legislation is an unconstitutional local or special law. *See Pennsylvania Tpk. Comm’n v. Com.*, 899 A.2d 1085, 1095 (Pa. 2006).

Prosecutor may step in only if the District Attorney approves of the Special Prosecutor's actions. Specifically, § 1786(a)(4)(iii) states: "A Special Prosecutor may not assert preemptive prosecutorial jurisdiction . . . where jurisdiction also exists in [other] count[ies]" without prior written approval of the District Attorney of such other county.

Thus, for a crime that occurs on SEPTA in Philadelphia, the Special Prosecutor has sole discretion and absolute authority to supplant and replace DA Krasner and the DAO; however, for a crime that occurs on SEPTA outside Philadelphia, the Special Prosecutor has no such power and must obtain the consent of the local District Attorney. That violates the Equal Protection Clause of the Pennsylvania Constitution. Nothing in Act 40 justifies, purports to justify, or could justify, such disparate treatment.

Act 40's disparate treatment does not end with DA Krasner and the DAO. By divesting the Philadelphia DA's law enforcement authority, it undermines the choice made by the voters of Philadelphia, who elected and reelected DA Krasner by overwhelming margins based on his law enforcement policies. Act 40 substitutes that choice with a Special Prosecutor with no policies and who is accountable to no voter. Philadelphia is a majority minority city, home to many voters coming from marginalized groups, many of whom have been subjected to abusive law enforcement practices. Act 40 disfavors those voters and, paternalistically, tells them they made the wrong choice. That is not what democracy is about, and the disparate treatment on Philadelphia voters stains every assessment of Act 40.

E. Act 40 Is Unconstitutional Because It Calls for the Appointment of an Unaccountable Special Prosecutor

Act 40 is additionally unconstitutional because it imposes no accountability or oversight of the Special Prosecutor. A District Attorney is an elected official who is accountable to the county-wide electorate. He or she is elected on policies and approaches to criminal justice. By contrast, Act 40's Special Prosecutor is unaccountable. Although the Special Prosecutor has certain limited reporting obligations § 1786(a)(9), Act 40 compels the appointment of the Special Prosecutor and establishes no oversight of the Special Prosecutor once appointed. The Special Prosecutor is otherwise insulated from accountability to the electorate that constrains unlawful or unpopular conduct of public officials.

As the Supreme Court has explained in an analogous context, "[i]t would be incongruous to place the district attorney in the position of being responsible to the electorate for the performance of his duties while actual control over his performance was, in effect, in the [then-un-elected office of] Attorney General. To countenance such a separation of accountability and control undermines self-government and promotes centralization, of law enforcement precisely the approach rejected in Pennsylvania by statute in 1850 and constitutionally in 1874." *Commonwealth v. Schab*, 383 A.2d 819, 822 (Pa. 1978) (examining authority of the Attorney

General to supersede District Attorneys and finding, inter alia, he had no common law authority to supersede and that the statute authorizing a special prosecutor was not complied with).⁸

Consistent with this, the Supreme Court has rejected legislative attempts to dilute the authority of District Attorneys by the appointment of special prosecutors, especially those with broad authority who are largely unaccountable. The appointment of such prosecutors is unconstitutional, as is the *de facto* removal of a District Attorney other than through constitutional removal methods. *See generally Smith v. Gallagher*, 185 A.2d 135, 149-52 (Pa. 1962); *McGinley v. Scott*, 164 A.2d 424, 431 (Pa. 1960).⁹ *Accord Carter v. City of Philadelphia*, 181 F.3d 339, 353 (3d Cir. 1999) (“The Pennsylvania AG is permitted only a narrowly circumscribed power to supersede a district attorney in a particular criminal prosecution subject to court authorization under an abuse of discretion standard (or at the district attorney’s own invitation) [citing Commonwealth Attorney’s Act].”).

F. Act 40 Conflicts with the Criminal History Record Information Act

Act 40 is unenforceable because it conflicts with the Pennsylvania Criminal History Record Information Act, 18 Pa. C.S. § 9101 *et. seq.* CHRIA provides, in relevant part, that “[i]nvestigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.” 18 Pa. C.S. § 9106(c)(4).¹⁰ For proper disclosure of information, CHRIA thus

⁸ Act 40 creates a Special Prosecutor with unusual control over local law enforcement that may also be analogous to the unconstitutional special commissions proscribed by Article III, Section 31 of the Pennsylvania Constitution. The Supreme Court has held that Section 31 bars the legislative creation of a law enforcement body with local prosecutorial power outside established law enforcement structures, *Moll v. Morrow*, 98 A. 650 (Pa. 1916), and, separately, even where the legislature creates an office that is not a “commission” in name but nevertheless exercises municipal functions and is appointed by an executive officer, *Perkins v. City of Philadelphia*, 27 A. 356, 358 (Pa. 1893).

⁹ Although the Special Prosecutor usurps the role constitutionally and statutorily entrusted to the elected District Attorney, the special prosecutor is subject to different qualifications and the statute provides no method of accountability. Act 40 does not even require the Special Prosecutor to take an oath to uphold the Constitution. Compare the requirements for eligibility to be a Special Prosecutor under Act 40, § 1786(A)(1), with those applicable to district attorneys generally, 16 P.S. §§ 1401, 7701, 7702.

¹⁰ CHRIA defines “investigative information” as: “Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa. C.S. § 9102.

requires that any request must be “based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.”

Act 40 violates this express statutory limitation on disclosure of criminal investigative materials: when a Special Prosecutor asserts such preemptive authority, the Philadelphia District Attorney’s Office “shall suspend all investigations and proceedings regarding the matter and shall turn over to the Special Prosecutor all materials, files and other data relating to the matter.” Act 40, § 1786(a)(4). Act 40 thus eliminates the specific requirements for disclosure under CHRIA.

G. Act 40 Impairs the Effective Prosecution of Criminal Defendants in Philadelphia By Violating their Rights to Challenge the Act

Act 40 prohibits criminal defendants from challenging the law. Specifically, § 1786(A)(5) provides, “[n]o person charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.”

Act 40 is thus unconstitutional in violating criminal defendants’ rights to raise arguments in their defense. *See, e.g., Holt v. Virginia*, 381 U.S. 131, 136 (1965) (“The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues.”).

As a consequence, prosecutions by an Act 40 Special Prosecutor will vastly complicate prosecution of crimes within SEPTA on Philadelphia and likely lead to the dismissal of charges or convictions for crimes committed within SEPTA in Philadelphia. Act 40, therefore, will have the opposite effect of its supposed purpose – the Act will make it harder to prosecute SEPTA crimes in Philadelphia, potentially leading to an increase in crime.

H. Act 40’s Fiscal Provisions Are Unconstitutional and Unlawfully Burden Philadelphia with the Costs of the Special Prosecutor

Act 40’s fiscal provisions also render the law unconstitutional because they interfere with the City of Philadelphia’s fiscal affairs. In part, the law shifts expenditures from the AG’s Office to the City. *See, e.g.,* § 1786(a)(10) (requiring Philadelphia to reimburse the special prosecutor and the Office of Attorney General for the special prosecutor’s expenses.). Additionally, it interferes with the customary reimbursement of DA Krasner’s salary by the Commonwealth. *See* § 1786(a)(12) (prohibiting the Commonwealth from reimbursing Philadelphia for the salary of DA Krasner “during the period in which a special prosecutor serves”, even though the Commonwealth by statute reimburses district attorney salaries). *See also* 16 P.S. § 1401 (“The Commonwealth shall annually reimburse each county with a full-time district attorney an amount equal to sixty-five per cent of the district attorney's salary.”). Instead, such amount is directed to be paid to the Special Prosecutor. *Id.*

Michelle A. Henry, Attorney General
J. Bart DeLone, Chief Deputy Attorney General
January 8, 2024
Page 19

For the moment, we leave to the City to address the ways in which the fiscal issues are unconstitutional and bar the implementation of Act 40.

Thank you for reviewing this letter and the issues we have presented. Please understand that we are continuing to review Act 40 and it is likely that we will develop further the issues discussed above, as well as additional infirmities.

To return to first principles: Act 40 violates the Pennsylvania Constitution and other laws in multiple and fundamental respects. It is fundamentally an undemocratic and brazen effort by the General Assembly to erase the votes of Philadelphia voters. We think that any reasonable assessment of the Act will lead to the conclusion that we have reached – Act 40 cannot as a matter of law be implemented.

Moving forward, we invite timely discussion with the Attorney General's Office. It is our hope that the Attorney General and her Office will conclude that they cannot constitutionally implement Act 40 or perform any duties or obligations imposed by Act 40 in any way, including by appointing a Special Prosecutor. If the Office disagrees with our analysis and conclusion that the law is unconstitutional, we welcome learning the basis of that disagreement. Please understand, however, that if the Office does proceed, DA Krasner and the DAO will fully enforce their rights in court and seek declaratory and preliminary and permanent injunctive relief, as well as other appropriate relief.

Because of the time constraints imposed by the Act absent agreement, we request that the Office respond promptly to this letter and in any event assure us not later than noon on Wednesday, January 10, 2024, that the Attorney General will not proceed to implement Act 40 in any way, including by the appointment of a Special Prosecutor.

Very truly yours,



John S. Summers

JSS:cr
Enclosures

cc: Andrew M. Erdlen, Esq.
Michael J. Masciandaro, Esq.
(with enclosures – via electronic mail)

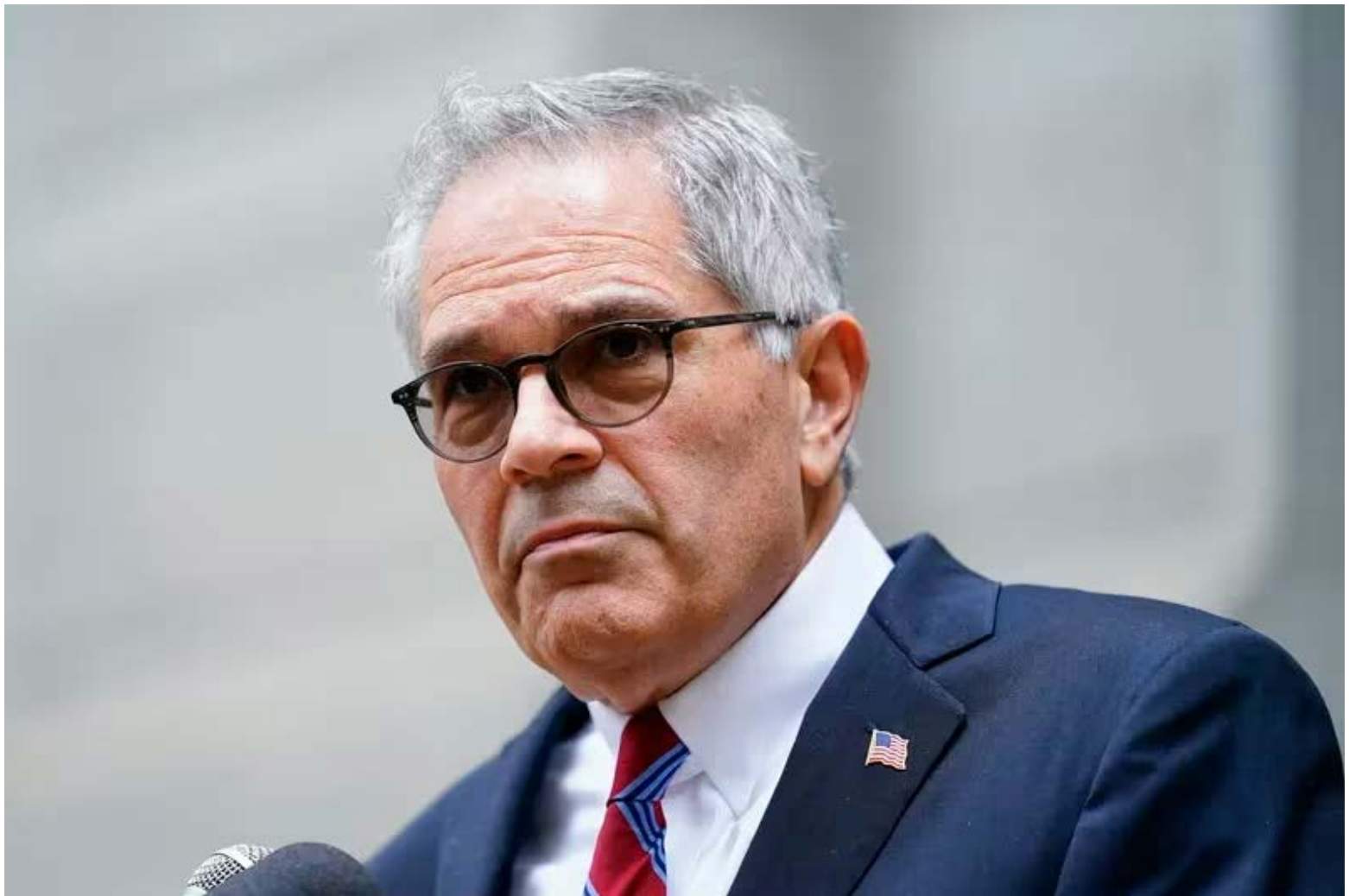
EXHIBIT A

OPINION



The racist message at the heart of Pennsylvania's new Act 40

The law allows the state to appoint a special prosecutor for crimes that occur near SEPTA property. It also disempowers the Black and brown people who make up the bulk of the city's population.



Philadelphia District Attorney Larry Krasner speaks with members of the media during a news conference in Philadelphia on Oct. 13, 2022.

Matt Rourke / AP

by Solomon Jones | Columnist

Published Dec. 28, 2023, 7:00 a.m. ET

With [the enactment of Act 40](#), which strips power from the city's elected district attorney and hands it to an appointed special prosecutor, I believe Philadelphia has become the Northern equivalent of Jackson, Miss.

The law, which as it made its way through the General Assembly was [known as Senate Bill 140](#), allows the state's attorney general to appoint a special prosecutor for crimes that occur at or near SEPTA property in Philadelphia.

Because SEPTA stops are nearly everywhere in the city, this new law effectively empowers the state to take over nearly any case that takes place within city limits, and it diminishes the authority of the elected district attorney, Larry Krasner.

By doing so, this law disenfranchises the 155,000 Philadelphians [who in 2021 re-elected Krasner](#), a progressive prosecutor whose policies are the antithesis of the GOP's tough-on-crime approach.

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However, this is not just about policy. It's about racism. It reflects the paternalistic view by the mostly white, GOP-led state Senate that Black and brown people who make up the bulk of the city's population should not be left to decide how criminal justice is administered in their own communities.



Democratic State Sen. Sharif Street has called Act 40 a law enforcement measure that's masquerading as a transportation law.

Erin Blewett

And this is just the latest attempt by the legislature to target Krasner, who was the subject of [an unsuccessful](#) — and misguided — [impeachment effort in Harrisburg](#) just last year.

We've seen this same kind of thing play out earlier this year in Jackson — a majority Black city where a mostly white and Republican state legislature sought to appoint special judges and prosecutors to usurp the authority of elected officials in the city. It was [signed into law in April by Gov. Tate Reeves](#), a Republican.

The move was met with both local and national outrage, as residents challenged the law in state court. [The U.S. Justice Department also filed suit](#), calling the legislation exactly what it was: a racially discriminatory policy that targeted Black people.

But that's the kind of thing one might expect in Mississippi — a state whose history of slavery, followed by decades of Jim Crow and violent racial oppression, is well-documented.

While [Pennsylvania, a Northern state with a plethora of hate groups](#), has witnessed [the number of race-based hate crimes skyrocket from 62 in 2020 to 199 in 2022](#), I never expected to see Mississippi's policies enacted in a predominantly Black corner of the commonwealth. Clearly, I was not watching closely enough.

A spokesperson for Democratic Gov. Josh Shapiro said that he signed the new law because the approval of the state budget was contingent upon the enactment of a package of bills that included the Act 40 legislation.

Nevertheless, the measure undercuts a duly elected official in the state's largest city, and it undermines voters like me — people who voted for both Krasner and Shapiro.

State Sen. Sharif Street, the state Democratic Party chair whose 3rd Senatorial District includes parts of Philadelphia, voted against the legislation and believes it is unconstitutional.

“It’s unconstitutional because Philadelphia is the only ... majority Black and brown county, and that’s the only place where it applies,” [Street told me in an interview on WURD Radio](#). “Because it doesn’t just say everywhere where there’s SEPTA, because that would include all of our surrounding counties. No, it says only in the county of the first class ... basically the suggestion of the bill is that Philadelphians aren’t responsible enough to choose our own prosecutor.”

» **READ MORE: [What was Larry Krasner’s biggest offense? Correctly calling out a racist criminal justice system. | Solomon Jones](#)**

Street, who called Act 40 a law enforcement measure that’s masquerading as a transportation law, said the legislation prevents state funding from being used to create the office of the special prosecutor. That means the funding for such an office would have to come from the city of Philadelphia — a fact that should be troubling to all of us.

Given that it would be up to the state attorney general to actually appoint the special prosecutor, Street believes the best way to stop the bill from being implemented is to pressure the attorney general not to do so because the bill does not pass constitutional muster.

In the meantime, I fully expect that the law will be challenged in court. [Krasner told me as much in a WURD interview](#). He said he plans to fight for the right to represent the people who elected him.

Whatever happens, I'm convinced Krasner's troubles stem from the fact that he had the temerity to try to change a racist criminal justice system from the inside. He's [exonerated the wrongly convicted, turned away the testimony of crooked cops](#), and charged police officers who've killed unarmed people from Philadelphia's poorest communities.

In other words, Krasner did what the people elected him to do, and we must fight to make sure he stays.

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EXHIBIT B



29 A question of trust

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December 29, 2023 Category: Local Posted by: Philadelphia Sun Staff

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When he signed Act 40 into law as part of a package of budget bills, Gov. Josh Shapiro showed that he doesn't trust Philadelphia to make its own decisions either.

By Denise Clay-Murray

During a press conference held in City Council Chambers last week, Council Majority Leader Curtis Jones unveiled The Blueprint for a Safer Philadelphia and presented it to Mayor-elect Chelle Parker. The plan was put together with information gathered during a summit held by Jones at St. Joseph's University in September. It includes things that are both new — an emphasis on using technology to fight crime, community courts, and finally, at long last, an emphasis on witness protection — and old — more police, school safe corridor programs and economic development.

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Assembled on the podium were community leaders, anti-violence activists, and politicians both state and local. Everyone pledged to help the Mayor-elect implement as much of this blueprint as possible, including Philadelphia's District Attorney Larry Krasner.



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But you'll have to forgive Krasner if he doesn't have a whole lot of trust when it comes to the Commonwealth of Pennsylvania and its intentions when it comes to the City of Philadelphia.

The latest example of why the District Attorney might not trust the commonwealth as far as he can throw it came when the budget — and a law that basically calls for a special prosecutor to oversee the prosecution of crimes in large sections of the city — was signed last week.

Under this law, which was proposed by Republican State Sen. Wayne Langerholc, a guy that probably wouldn't leave his Centre County home to visit Philly on a bet, the state attorney general can appoint a special prosecutor to prosecute any crime within 500 yards of a SEPTA property.

Seeing that there aren't a whole lot of places here in Philadelphia where crimes are committed that don't fit that description, any special prosecutor appointed to this position is going to be running around like a chicken with its head cut off.

The fact that this law doesn't extend to SEPTA properties outside of Philadelphia tells you who it was aimed at.

Which is why Krasner is more than a little miffed.

"We should never be at the point where anybody who was elected considers it okay to erase 155,102 votes," he said. "That's exactly what Act 40 does. There should be no politician from any party who is okay with that notion."



Gov. Josh Shapiro

At a time when Pennsylvania in general, and Philadelphia in particular, has found itself at the center of voter fraud allegations by Republicans that simply can't believe that a city made up of mostly Black and Brown people wouldn't vote to re-elect a racist with fascist tendencies, Act 40 sends a bad message, Krasner said.

And it's one that Philadelphians need to heed, he said.

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"We're in incredibly dangerous times, when we have a country that is largely ruled by the party that represents the smaller number of us, not the larger number of us," Krasner said. "And they know that they will lose power if we have every vote count. So, this is why they work so hard to erase votes. What they are doing is trying to erase 155,102 votes in the city of Philadelphia, which is obviously the biggest city and the most diverse city and the most Democratic Party, voting city in Pennsylvania, it is no surprise. We are the biggest city of a swing state that the party of insurrection very much very much wants to win."

To say that Krasner has had a problem with Republicans in the legislature practically since his election would be an understatement. They've attempted to impeach him because they don't feel he does his job effectively. Seeing as "doing his job effectively" translates into "putting people in upstate prisons", they've been at odds. Especially since Krasner's office has gotten more than a few people out of these upstate prisons that shouldn't have been there in the first place."

But what's causing folks to scratch their heads is that Shapiro, himself a Democrat, signed this into law. While the word on the street is that you can't invited Krasner and Shapiro to the same parties because they don't care for each other, Philadelphia played a big part in Shapiro becoming governor.

Seeing as the city, which is basically the Commonwealth's ATM, gets disrespected by the Commonwealth every chance it gets, you'd think that someone Philly helped to get that job would have thought twice about Act 40. But when I asked State Sen. Sharif Street about it, he said that Shapiro had no choice but to sign it if he wanted his budget enacted.



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I'm sure that Street, the chair of the Commonwealth's Democratic Party, is right about this. But considering Shapiro tried to create a school voucher program in this budget, well, let's just say that benefit of the doubt is going to be hard to come by here.



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The ball is now in the court of State Attorney Gen. Michelle Henry, who will ultimately decide (a) if Act 40 is constitutional, something that Krasner disputes and (b) if she really wants to put someone else in the middle of the ongoing feud between the legislature and Philly's progressive DA.

Meanwhile, you have this Blueprint for a Safer Philadelphia that everyone allegedly wants to help Mayor-elect Parker use to make the city safer. Parker has said in multiple interviews that the reason why she was the best person for the job was because she was able to navigate the Harrisburg landscape.

This may be where she finds out just how much that landscape has changed and how many missiles aimed at Philadelphia she's going to have to dodge.

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EXHIBIT C

Republicans Disenfranchise Black Philly Voters by Attacking Krasner

Michael Coard Dec 15, 2023



The Republicans in Harrisburg and Democratic Governor Josh Shapiro don't like Philadelphia Mayor-elect Chelle Parker so they took away most of her executive branch authority.

The Republicans in Harrisburg and Democratic Governor Josh Shapiro don't like Philadelphia City Council President Kenyatta Johnson so they took away most of his legislative branch authority.

The Republicans in Harrisburg and Democratic Governor Josh Shapiro don't like Philadelphia Sheriff Rochelle Bilal so they took away most of her law enforcement authority.

And the Republicans in Harrisburg and Democratic Gov. Josh Shapiro don't like Philadelphia District Attorney Larry Krasner so they took away most of his prosecutorial authority.

The first three paragraphs are not true (as least not yet) and I wrote them just to make a salient point. But what's most frightening is that they soon could be true. And that's because the fourth paragraph- regarding Krasner- is completely true.

If state legislators and a state governor outside of Philly can unilaterally take away the power of a duly elected Philly D.A., they can therefore take away the power of any and all other duly elected Philly officials.

Here's the background: On December 14, Gov. Shapiro at the behest of the MAGA-supporting Republican legislature signed Senate Bill 140 into law as Act 40. That law claims to be an anti-crime initiative but it's actually a pro-disenfranchisement insult.

Act 40, as Krasner pointed out in his December 14 press conference, "strips the twice-elected District Attorney in the largest and most racially diverse county in Pennsylvania of prosecutorial authority over crimes within 500 yards of SEPTA property- effectively covering the entire county and is a back-door assault on Philadelphia voters following last year's failed Republican effort to impeach and remove one of the highest-profile progressive D.A.s in the nation. An un-elected, appointed 'special prosecutor' would substitute for Philly's elected D.A."

By the way, he's right on point about this being an assault on the "most racially diverse [i.e., Blacks] county in Pennsylvania." And the numbers prove it. As documented by the U.S. Census Bureau in May 2023, Blacks are the city's majority at 39.6% while whites lag behind at just 33.8%. And as a confidential and exceptionally knowledgeable source in City Hall told me, the local Democratic electorate is a whopping 65% Black. That means white fascist legislators from the boondocks are attempting to disenfranchise Philly's Black voters.

But not only is Act 40 racist. It's also illegal.

During the aforementioned press conference, esteemed state Senator Sharif Street- who is an attorney and serves as chair of the Pennsylvania Democratic Party- accurately pointed out that "Act 40 is blatantly unconstitutional. It is wrong to take prosecutorial discretion away from the voters of Philadelphia. The citizens of Philadelphia overwhelmingly voted for D.A. Krasner. This bill is unconstitutional, and beyond that, it is unworkable. It's convoluted. It's poorly drafted. And it disparately impacts the only majority Black and Brown county in Pennsylvania."

He's right on all points. So, what's the next step? Well, now it's up to Michelle Henry to do the right thing. In her role as state Attorney General, she has the authority to determine whether the law is constitutional or unconstitutional. And most political and legal insiders believe she'll see that outrageous law for what it is and refuse to implement it. But if she goes MAGA on us, like Shapiro did, then this matter will be litigated in the state courts and probably up to the federal courts as well. Stay tuned.

By the way, why are the Republicans and co-conspirator Shapiro disenfranchising Black voters by disempowering Krasner? Well, it goes back to his progressive policies as the candidate who I enthusiastically endorsed in 2017 and 2020 as "The Blackest white guy I know."

Here are some examples:

1. When I publicly endorsed Krasner in 2017 and 2020, I did so because I had known him for over a decade as one of the few white (or Black) attorneys who consistently stood with me representing Black activists pro bono.
2. On Juneteenth 2023, Krasner held a major press conference at the site of the old Eastern State Penitentiary to announce his office's "Racial Injustice Report: Disparities in Philadelphia's Criminal Courts from 2015-2022." He chose that date because of its historic significance toward the liberation of Black people in America. And he chose that location because Eastern State Penitentiary- which operated from 1829-1971 and once was the most famous and most expensive prison in the world- still symbolizes the racism and classism of mass incarceration.
3. Krasner has increased the financial and physical support for devastated family members of homicide victims through his 15-employee Crisis Assistance, Response and Engagement for Survivors (CARES) program that provides immediate grief counseling, funeral expense payments and utility bills assistance.
4. The FOP hates Krasner. That is the very same organization that endorsed racist Donald Trump twice, the very same organization that joined the KKK in endorsing Trump twice and the very same organization that hung out with the racist Proud Boys in 2021 at a Mike Pence rally. On the other hand, Krasner was endorsed by the Guardian Civic League, which is the Black police officers' organization.
5. Krasner has stated that "The DA's Office must [and does] target the six percent of criminals who commit 60 percent of the crimes. It must not [and does not] target entire neighborhoods where people of color and poor people live."
6. Krasner has always supported the very same criminal justice issues that the Black community supports. Those issues include the immediate end to unconstitutional stop and frisk, mass incarceration, unfair cash bail system, racist death penalty, life sentences for juveniles and police brutality.

Before ending this column, I must mention that the Republican state legislature and Shapiro didn't seek to bully any power away from any Republican D.A.s, including these three:

1. Republican Somerset County D.A. Jeffrey Lynn Thomas, who was arrested in 2021 and charged with rape.
2. Republican Bradford County D.A. Chad Salsman, who was convicted of sexually assaulting five former clients.
3. Republican Bedford County D.A. Bill Higgins, who pleaded guilty to 31 counts including some involving obstruction of justice for telling criminals the identity of confidential informants and some involving sexual assault.

I wonder why.

In conclusion, Philly voters- especially Black Philly voters- better be careful and better rally around Krasner. Otherwise, the white folks from the boondocks might set their sights on Mayor Parker and Council President Johnson and Sheriff Bilal.

Michael Coard, Esq. can be followed on Twitter, Instagram, and his YouTube channel as well as at AvengingTheAncestors.com. His "Radio Courtroom" show can be heard on WURD 96.1 FM or 900 AM. And his "TV Courtroom" show can be seen on PhillyCAM/Verizon Fios/Comcast. The views expressed in this column are not necessarily those of The Philadelphia Tribune.



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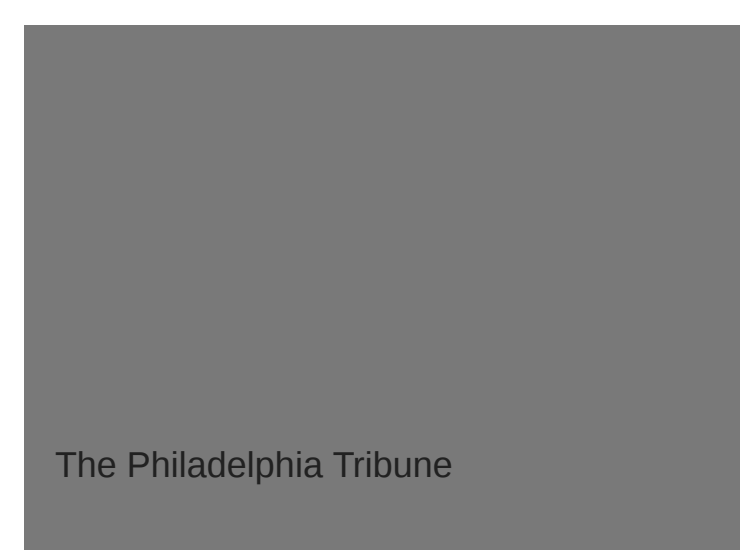
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In compliance with Pennsylvania Rule of Appellate Procedure 127, I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that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

Dated: January 11, 2024

/s/ John S. Summers

John S. Summers

CERTIFICATE OF SERVICE

I, John S. Summers, hereby certify that on this 11th day of January, 2024, I am serving the foregoing Petition for Review in the Nature of a Complaint for Declaratory Judgment and Equitable Relief upon the following persons by certified mail, which service satisfies the requirements of Pa. R. App. P. 121:

Michelle A. Henry, Attorney General
Pennsylvania Office of Attorney
General Strawberry Square, 16th Floor
Harrisburg, PA 17120

Respondent

/s/ John S. Summers _____
John S. Summers