

## EXHIBIT A

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

*Petitioner,*

v.

SENATOR KIM WARD, in her official  
capacity as Interim President Pro Tempore  
of the Senate; REPRESENTATIVE  
TIMOTHY R. BONNER, in his official  
capacity as an impeachment manager;  
REPRESENTATIVE CRAIG WILLIAMS,  
in his official capacity as an impeachment  
manager; REPRESENTATIVE JARED  
SOLOMON, in his official capacity as an  
impeachment manager; and JOHN DOES,  
in their official capacities as members of  
the SENATE IMPEACHMENT  
COMMITTEE;

*Respondents.*

Docket No. 563 MD 2022

### **BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA AND POWER INTERFAITH IN SUPPORT OF PETITIONER**

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## INTEREST OF AMICI<sup>1</sup>

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Pennsylvania is one of the ACLU's state affiliates, whose principal mission is to protect the civil liberties of those who live and work in this Commonwealth. The ACLU of Pennsylvania regularly appears as direct counsel or as *amicus curiae* in federal and state courts at all levels, in matters concerning civil liberties, including the right to vote and the rights of defendants in criminal proceedings. While the ACLU and ACLU-PA are nonpartisan and do not endorse candidates for office, the ACLU-PA supports many of the policy goals that the Pennsylvania House of Representatives cited as bases for House Resolution 240 including the elimination of cash bail, alternatives to incarceration and pre-trial detention, legalization of marijuana, decriminalization of sex work in Philadelphia, and bringing balance back to sentencing. Whether the General Assembly has authority to impeach an elected county official for his efforts to end mass incarceration and racial inequities in the criminal justice system is thus an issue of vital importance to the ACLU-PA and its members.

POWER Interfaith ("POWER") is a non-partisan faith-based community organizing network committed to building communities of opportunity that work for all. Founded in Philadelphia, POWER represents more than 150 congregations across Southeastern and Central Pennsylvania, working to bring about justice here and now. One of its five priority areas is civic engagement and organizing communities so that the voices of all faiths, races, and income levels are counted and have a say in government. POWER engages directly with voters across Pennsylvania, and its civic engagement efforts include voter education programs, voter

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<sup>1</sup> Pursuant to Pa. R. App. P. 531(b)(2), Amici state that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

registration drives, information about applying for mail ballots, completing them properly and returning them on time, and “Souls to the Polls” efforts to encourage congregants to vote. On behalf of its members, POWER represent the interests of Philadelphia voters in ensuring that their voices are heard through the selection of the voters’ chosen candidates.

### **BACKGROUND AND SUMMARY OF ARGUMENT**

Larry Krasner ran for the office of Philadelphia District Attorney in 2017 on a platform of reform, emphasizing respect for the civil rights of criminal defendants and citizens who often face fraught interactions with law enforcement. His platform included reducing incarceration for nonviolent crimes in favor of diversionary opportunities, reducing pre-trial detention where the defendant poses no threat to public safety, reducing prosecution for marijuana possession, holding police accountable, and focusing office resources on prosecuting serious, violent crimes and shootings. An overwhelming majority of Philadelphia voters elected him with approximately 74% of the vote in 2017. In 2021, Mr. Krasner sought reelection on a similar platform, and Philadelphia voters chose him as their District Attorney again with an overwhelming majority of the vote (this time, over 69%).<sup>2</sup> A majority of the Philadelphia voters who made their voices heard in the 2021 municipal election are people of color, and this Court should not allow politicians outside of Philadelphia who are hostile to Philadelphians’ right to self-government override their choice based on specious policy-driven allegations of “misbehavior in office.”

Nearly all of the politicians seeking to push through impeachment are from outside of Philadelphia; some of them have now been voted out of office. They initiated an extraordinary process for the terribly ordinary reason that they do not like another official’s policies or

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<sup>2</sup> Mr. Krasner received 67% of the vote in the 2021 Democratic Primary.

approach—not because they have credibly accused him of any crime or actionable malfeasance. Their impeachment effort specifically identified several of Mr. Krasner’s signature policies that the electorate effectively endorsed by reelecting him—including ending mass incarceration and bringing balance back to sentencing, not charging sex workers or those in possession of marijuana with crimes, reducing pre-trial incarceration, and ending cash bail—as grounds for removal from office. But removal of an elected official, by impeachment or otherwise, requires more than mere disagreement with policy decisions. The extraordinary process set forth in the Pennsylvania Constitution involves overturning the results of democratic election to removing from office a duly elected office holder, overturning the will of and effectively disenfranchising the voters who supported the office holder. As such, removal or impeachment runs counter to the principle that “the people are entitled to the services of the officer during the entire term for which they elected him . . . .” *Commonwealth ex rel. Veneski v. Reid*, 108 A. 829, 831 (Pa. 1919).

Accordingly, the process to remove an elected office holder must be beyond reproach to respect the will of the people who elected him. “[E]lected civil officers may be removed from office only for Cause . . . after due process has been accorded the officer upon conviction of ‘misbehavior in office or of any infamous crime’ or ‘on the actions of two-thirds of the Senate.’” *Citizens Comm. to Recall Rizzo v. Bd. of Elections of City & Cty. Of Phila.*, 367 A.2d 232, 244 (Pa. 1976). Here, the impeachment proceedings fail to abide by the constitutionally proscribed process and are otherwise antidemocratic for several reasons, revealing the political, policy-driven nature of this move to overturn the will of the electorate in Philadelphia and statewide.

## **ARGUMENT**

The process to remove a public official is carefully circumscribed under the Pennsylvania Constitution Articles VI §§ 4-7 (for “civil officers”) and IX § 4 (for “county officers”) and by

statute in 53 Pa. Stat. § 12199 (for municipal officers). The Pennsylvania Supreme Court has emphasized that to remove an elected official requires a showing that the removal is “for cause and [with] due process.” *Citizens Comm. to Recall Rizzo*, 367 A.2d at 244-45 (“elected civil officers may be removed from office only for Cause . . . after due process has been accorded the officer upon conviction of ‘misbehavior in office or of any infamous crime’ or ‘on the actions of two-thirds of the Senate’” (quoting *Houseman v. Commonwealth*, 100 Pa. 222 (1882))).

A fundamental precept of due process is that the Government must “turn square corners” in how it operates. *See, e.g., Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021); *Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909 (2020). The Pennsylvania Constitution places numerous, explicit restrictions on the legislative process precisely to “encourage an open, deliberative and accountable government.” *City of Phila. v. Commonwealth*, 838 A.2d 566, 585 (2003). “The General Assembly must comply with . . . such procedural requirements [because they] are integral to the preservation of the people’s freedom. . . .” *Washington v. Dep’t of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147 (2018).

Here, the General Assembly’s consideration of House Resolution 240 runs afoul of several constitutional requirements and attempts to undo the will of the people based on some of the very reasons that the voters selected him, rather than proceeding on the sort of official misconduct required to trigger this extraordinary process.

**A. House Resolution 240 Violates the Requirement that Removal from Public Office Is Limited to Gross Misbehavior or Criminal Conduct, Not Policy Differences.**

Under the Pennsylvania Constitution, an elected official may only be impeached for “misbehavior in office.” Pa. Const. art. VI, § 6. Reviewing the relevant cases, the Pennsylvania Supreme Court noted in the *Braig* decision that provision had been “uniformly understood” to require “the criminal offense . . . ‘misbehavior in office’ . . . as defined at common law.” *In re*

*Braig*, 527 Pa. 248, 252 (1991) (collecting cases). *See also Rizzo*, 367 A.2d at 243-47 (finding recall provisions unconstitutional under Pennsylvania Constitution because *inter alia* they allowed removal of elected official without “cause”).

The Seven Articles of Impeachment fall well short of this standard. Mr. Krasner has not been accused, much less convicted, of any crime. Rather, a faction of the General Assembly has chosen to impeach based on policy preferences, including over decisions that are fundamentally entrusted to Mr. Krasner’s prosecutorial discretion. In particular, the Articles of Impeachment cite as bases for Mr. Krasner’s removal criminal justice policy positions that Mr. Krasner touted during his political campaign and were ratified by a supermajority of Philadelphia voters. For example, the Articles cite as grounds for Mr. Krasner’s impeachment:

- His support for policies to “end mass incarceration and bring balance back to sentencing.” Amendment to House Resolution No. 240 at 3. Reform in this area is seriously overdue: Pennsylvania has about 70,000 people behind bars, the highest incarceration rate in the mid-Atlantic and Northeast.<sup>3</sup> In 2016, the State spent \$2.5 billion on its correctional system, a six-fold increase over 30 decades.<sup>4</sup>
- His directive “not to charge sex workers,” Amendments to House Resolution No. 240 (Rep. Ecker) Printer No. 3607 (Nov. 16, 2022) at 3. The ACLU in particular has long supported decriminalization of sex work, which results in driving sex workers underground where they are subject to coercion and heightened risk of

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<sup>3</sup> U.S. Criminal Justice Data, THE SENTENCING PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data/?state=pennsylvania>

<sup>4</sup> *See Blueprint for Smart Justice: Pennsylvania*, ACLU (2018) at 6, 10, available at [https://www.aclupa.org/sites/default/files/field\\_documents/blueprint\\_for\\_smart\\_justice\\_pa.pdf](https://www.aclupa.org/sites/default/files/field_documents/blueprint_for_smart_justice_pa.pdf)

violence, and the people of Philadelphia are entitled to elect a District Attorney that supports this laudable goal.<sup>5</sup>

- His directive “not to charge . . . possession of marijuana and marijuana-related drug paraphernalia,” Amendments to House Resolution No. 240 at 3. In recent terms, the Pennsylvania General Assembly has considered proposals to decriminalize marijuana possession, and the City of Philadelphia passed a marijuana decriminalization ordinance before Mr. Krasner became District Attorney. While marijuana possession is still a crime under state law, Mr. Krasner’s policy simply brings enforcement policy in line with the municipal ordinance.
- His policies to “seek greater use of house arrest, probation and alternative sentencing when the sentencing guidelines indicates a range of incarceration of less than 24 months.” Amendments to House Resolution No. 240 at 4. As noted above, Pennsylvania has the highest incarceration rate of any state in the mid-Atlantic and Northeast, and seeking alternatives to prison is a well-accepted criminal justice goal.
- His efforts to “reduc[e] pre-trial incarceration rates” and his policy to “ordinarily no longer ask for cash bail.” Amendments to House Resolution No. 240 at 4. In recent years, Pennsylvania has considered legislative proposals to eliminate cash bail. Reform in this area is overdue: cash bail is the leading cause of mass incarceration in the United States; nationwide, 62 percent of people held in jail

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<sup>5</sup> See N. Sanchez, *It’s Time to Decriminalize Sex Work*, ACLU (Aug. 26, 2022) available at <https://www.aclupa.org/en/news/its-time-decriminalize-sex-work>

have not been sentenced, the vast majority of whom are held because they cannot pay cash bail. Numerous jurisdictions (including New Jersey, New York, Illinois, and California) have eliminated or significantly reduced imposition of cash bail. Pretrial detention causes a major disruption for detained individuals and their families, and in Pennsylvania, the imposition of cash bail has been tied to higher rates of recidivism. And Black Pennsylvanians are twice as likely to be required to post cash bail as white Pennsylvanians.<sup>6</sup>

The Articles of Impeachment are rife with similar citations to other policies where the impeachment sponsors disagree with Mr. Krasner and the Philadelphians who voted for him. But policy disagreements are not a legitimate basis to remove an elected official under the Pennsylvania Constitution, especially when the intent of those policies is to protect the rights of criminal defendants under both the federal and Pennsylvania constitutions and to reduce racial disparities in the criminal justice system. The Pennsylvania Constitution requires a showing of actual misconduct to warrant removal from office to ensure that “duly elected officials are not removed from office by whim or caprice.” *Rizzo*, 367 A.2d at 247. Not only does House Resolution 240 fail to meet that exacting standard, but it smacks of retaliation against Mr. Krasner and the voters who supported him by members of an opposing political party who object to his efforts to reform criminal justice in Pennsylvania’s largest and most racially diverse city.

It is thus imperative for this Court to declare that impeachment of an elected official is unlawful if it is based on nothing more than philosophical differences. Allowing the House of Representatives to mischaracterize an elected official’s lawful policy choices as “dereliction of

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<sup>6</sup> See *Cash Bail*, ACLU, available at <https://www.aclupa.org/en/issues/criminal-justice-reform/cash-bail>



duty” justifying impeachment will chill other public officials from implementing important criminal justice reforms and stifle public debate about how to eliminate racial inequity in Pennsylvania’s criminal justice system. Pennsylvanians deserve a fair debate over policies that have resulted in some of the highest levels of mass incarceration in the country at the cost of billions of taxpayer dollars every year. By declaring advocacy or implementation of reform policies as a basis to remove elected officials, the impeachment sponsors are acting in both an unprecedented and unconstitutional manner.

**B. The Carryover of House Resolution 240 is Antidemocratic and Contravenes the Will of the Pennsylvania and Philadelphia Electorate.**

Mr. Krasner has cited serious constitutional problems with the purported effort to continue House Resolution 240 from the 206th General Assembly to the 207th. *See Memorandum of Law in Support of Petitioner’s Application for Summary Relief* at 8-16. In brief, the Pennsylvania Constitution requires that legislation under consideration, such as House Resolution 240, expires at the end of the General Assembly’s term and must be “reintrod[uced] and repass[ed]” by a subsequent General Assembly to have legal effect. *Frame v. Sutherland*, 327 A.2d 623, 627 (Pa. 1974). That procedure has not been followed here.

The Pennsylvania General Assembly is not a continuing legislative body, and all legislative matters under consideration expire at the end of session. Pa. Const. Art. II §§ 2, 4; 101 Pa. Stat. § 7.21(a). As the Pennsylvania Supreme Court has written “unenacted bills pending at the end of [the] session expired.” *Frame*, 327 A.2d at 627.

The expiration of bills and resolutions pending at the end of session is not merely a technical rule: it represents one of many important constraints the Pennsylvania Constitution places on the General Assembly to ensure that it is responsive and accountable to the electorate. As the Supreme Court has repeatedly noted, the Pennsylvania Constitution contains specific

restrictions on the General Assembly’s legislative process – restrictions that have no analogue in the federal constitution – “to furnish essential constitutional safeguards to ensure our Commonwealth’s government is open, deliberative, and accountable to the people it serves.” *Washington v Dep’t of Pub. Welfare of Commonwealth*, 188 A.3d 1135, 1147 (2018) (citing *City of Phila. v. Commonwealth*, 838 A.2d 566, 585 (2003)). The Supreme Court considers these restrictions “as the embodiment of the will of the voters” because these restrictions were specifically added to the Pennsylvania Constitution when the people of Pennsylvania “lost confidence in the legislature’s ability to fulfill its most paramount constitutional duty of representing their interests,” and in response to “abuses and inadequacies in the lawmaking process,” and members “of the legislature fail[ing] to respect the rules of procedure. . .” *Id.*, 188 A.3d at 1144-45. Accordingly, rules on the legislative process constitute “mandatory constitutional directives from the people, not mere advisory guidelines” and “the General Assembly must comply with them in the course of the legislative process.” *Id.*, at 1147.

The term of the Two Hundred Sixth General Assembly expired when its members’ terms expired -- on November 30, 2022. Pa. Const. Art. II §§ 2, 4; 101 Pa. Stat. § 7.21(a). Following the end of the 206th General Assembly, the General Assembly was required to reintroduce House Resolution 240 and pass it again before “consideration by the other house.” *Frame*, 327 A.2d at 627. Allowing the General Assembly to treat House Resolution 240 as continuing over from the last General Assembly to the current one would be a gross abuse of legislative process. Such a proceeding would run afoul of the requirement that elected officials may only be removed “after due process.” *Rizzo*, 367 A.2d at 245.

The limited term for the General Assembly, as well as the requirement that incomplete legislation expires at the end of the term promotes democratic values in ensuring the General

Assembly is responsive to the electorate. The General Assembly’s continued consideration of House Resolution 240 defies the will of the electorate in at least three important respects.

First, the General Assembly is seeking to override the will of Philadelphia voters, who elected and then reelected District Attorney Krasner by a large margin in 2021. Clearly Mr. Krasner is responsive to the demands of his community; indeed, many of his most significant policies supported by his community are precisely the grounds upon which the legislative sponsors seek his impeachment. And the grounds cited for impeachment in House Resolution 240 are like the claims of Mr. Krasner’s political opponents, whose complaints were rejected at the polls. In this way, there is a fundamental disconnect—demographically and politically—between the electorate of Philadelphia (which is 40% white, 42% Black, 12% Latino, and 6% AAPI) and the statewide electorate (which is 81% white, 11% black, 5% Latino, and 3% AAPI). This disconnect between the General Assembly and Philadelphia voters is clear from the House vote, in which the State Representatives who represent Philadelphia voted overwhelmingly (21 to 1) against House Resolution 240. Absent extraordinary circumstances, “the people [of Philadelphia] are entitled to the services of the officer during the entire term for which they elected him . . . .” 108 A. 829, 831 (1919).

Second, in ignoring the end of the 206th General Assembly and acting as a continuing legislature, the General Assembly has ignored the strictures of the Pennsylvania Constitution. As discussed above, the Pennsylvania Constitution’s restrictions on how the General Assembly may enact legislation are the “embodiment of the will of the voters.” *Washington*, 188 A.3d at 1144. As such, these rules, including the prohibition on carrying over legislation, are “mandatory constitutional directives from the people” that must be complied with by the General Assembly “in the course of the legislative process.” *Id.*, at 1147.

Third, the passage of House Resolution 240 itself ignored the will of the voters. H.R. 240 in its current form was not introduced until November 16, 2022, eight days after an election in which many of the supporters of H.R. 240 were defeated or chose not to run. Pennsylvania has always provided for relatively short terms (two years) for the members of the Pennsylvania House of Representatives. Biannual elections are a basic safeguard to keep the General Assembly responsive to the Pennsylvania electorate. *See generally* The Federalist No. 52 (Feb. 8, 1788) (“it is essential to liberty that the government in general should have a common interest with the people, so it is it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people . . . frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured”). And providing that legislative action does not continue from one legislature to the next is one of the key mechanisms to ensure that the General Assembly remains responsive to the electorate.

As noted above, H.R. 240 was not introduced or subject to a vote until a rump “lame duck” session of the 206th General Assembly, following an election in which supporters of H.R. 240 were eviscerated at the polls. Notably, 29 representatives who voted for H.R. 240 will not be members of the Pennsylvania House in the 207th General Assembly, including nine Representatives who lost their elections (Representatives Day, Gillespie, Hennessey, Polinchock, Hershey, Quinn, Saylor, Silvis, and Stephens) and nineteen members who retired rather than stand for reelection.

Under these circumstances, it would be antidemocratic, in addition to being highly irregular, to allow the H.R. 240 to avoid the normal legislative process of being “reintroduce[ed]” and “repass[ed]” before it can be considered by the Senate. *Frame*, 327 A.2d at 627. There is

certainly substantial reason to doubt that H.R. 240 could “repass” the Pennsylvania House of Representatives. But that is not a reason to allow the General Assembly to avoid “mandatory constitutional directives from the people.” *Washington*, 188 A.3d at 1147.

### CONCLUSION

For the foregoing reasons, the Court should enter declaratory relief in favor of the Petitioner.

Respectfully submitted,

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