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December 21, 2022

Via Hand Delivery

Michael C. Gerdes, Interim Secretary and
Parliamentarian of the Senate
462 Main Capitol Building
501 North Third Street
Harrisburg, PA 17120

*Re: In Re Impeachment of Lawrence Samuel Krasner, District Attorney of Philadelphia
In the Senate of the Commonwealth of Pennsylvania,
Sitting as a Court of Impeachment*

Dear Mr. Gerdes:

I enclose the Answer of District Attorney Larry Krasner to the Writ of Impeachment
Summons.

Respectfully,

John S. Summers

JSS/cr
Enclosure

cc: Michael J. Satin, Esquire
Timothy P. O'Toole, Esquire
Andrew T. Wise, Esquire
Dawn Murphy-Johnson, Esquire
Andrew M. Erdlen, Esquire
(with enclosure – *all via electronic mail*)

**IN THE SENATE OF THE
COMMONWEALTH OF PENNSYLVANIA
SITTING AS A COURT OF IMPEACHMENT**

IN RE IMPEACHMENT OF
LAWRENCE SAMUEL KRASNER,
DISTRICT ATTORNEY OF
PHILADELPHIA.

**ANSWER OF DISTRICT ATTORNEY LARRY KRASNER
TO WRIT OF IMPEACHMENT SUMMONS**

Lawrence Samuel Krasner, the District Attorney of Philadelphia, in response to the Writ of Impeachment Summons, answers the accusations made by the Pennsylvania House of Representatives in the seven Articles of Impeachment exhibited to the Senate, as follows:

PREAMBLE

For several reasons, most significantly because they do not allege any actions that constitute misconduct in office, the charges in the Articles of Impeachment do not permit the Senate to convict and remove District Attorney Krasner from office. During his first four-year term, the District Attorney changed the way the office operated in significant ways—just as he promised the citizens of Philadelphia he would on the campaign trail when they elected him by a wide margin in 2017. He focused resources on the most serious, violent cases. He massively expanded office support for

victims of serious crimes. He held police who caused harm responsible for their misdeeds. In the kinds of cases where research shows incarceration has no public safety benefit – or worse, leads to more crime – he found other ways to hold individuals accountable, such as expanding diversionary programs to connect people with necessary treatment and services. And he helped to bolster grass roots, community-based anti-crime, anti-violence prevention initiatives with financial support. His office acted with unparalleled transparency, providing information about outcomes on a publicly accessible dashboard. District Attorney Krasner has not only implemented reforms that work (that is, policies that keep communities safe), he has also raised the bar by recruiting and training highly talented assistant district attorneys. Indeed, while under District Attorney Krasner the District Attorney's Office measures the quality and quantity of justice in more ways than conviction rates, but even under that conventional measure the office has achieved remarkable success, securing convictions and delivering justice for victims and communities in 87% of the over 500 homicide cases held for trial since 2017. In 2021, the voters of Philadelphia overwhelmingly reelected District Attorney Krasner to a second term.

Because of decades of divestment, a deadly pandemic that devastated the economy and normal enforcement initiatives and prevention of crime,

and an unprecedented rise in firearm purchases, Philadelphia experienced a spike in homicides in 2021 and 2022—a trend mirrored across Pennsylvania (where many counties experienced higher rates of increase in homicide than Philadelphia), and across the entire country. Along with key partners in the city, the District Attorney has increased efforts to combat this crisis, including by working to secure most of the \$50 million dollars needed for the Philadelphia Police Department to have a state-of-the-art forensic science lab. He believes the entire community must work tirelessly to address this crisis with modern enforcement and investment in prevention, through better policing, more victim support, reasonable gun regulation, and deep investments in our most impacted communities.

Those who voted for impeachment in the House latched onto a serious subject—gun violence—with an unserious, unconstitutional, and anti-democratic approach: impeachment of a democratically elected official for his ideas and policies. District Attorney Krasner has worked tirelessly to find modern solutions that increase public safety by building up impacted communities in Philadelphia in ways that prevent crime after decades of chronic violence based on the failure of traditional approaches. Certain members of the Pennsylvania legislature may disagree with the ideas and policies of the District Attorney. But the citizens of Philadelphia elected him

because they overwhelmingly agree with those ideas and policies. Those disagreements can be debated in elections and in public discussions, but those disagreements cannot serve as the basis for an unprecedented action in this state: impeachment for ideas and policies.

Indeed, as explained below, impeachment on the basis alleged is unconstitutional. First, the charges do not allege conduct by District Attorney Krasner constituting “misbehavior in office” within the meaning of Article VI, Section 6 of the Pennsylvania Constitution, and debates about law enforcement policies, priorities, and philosophy are only properly addressed through the ballot box, where the voters elected, and then re-elected by wide margins District Attorney Krasner in 2017 and 2021 respectively. Additionally, because he is a locally elected official, the District Attorney of the City of Philadelphia, he is not subject to impeachment as a “civil officer” under Article VI, Section 6 of the Pennsylvania Constitution. Third, upon the adjournment of the 206th General Assembly legislative session on November 30, 2022, all of the Articles became null and void, like all matters that are not completed by the end of a General Assembly. Finally, the Senate cannot convict and remove District Attorney Krasner from office because it has failed to put in place a series of rules governing any trial guaranteeing District Attorney Krasner’s rights to due process.

For each of these reasons, the Articles of Impeachment should be dismissed.

DISTRICT ATTORNEY KRASNER HAS NOT BEEN DERELICT IN THE DISCHARGE OF HIS DUTIES OR FAILED TO UPHOLD HIS OATH OF OFFICE.

The WHEREAS clauses of the articles of impeachment combine statements regarding the Constitution of Pennsylvania, an opinion of the Commonwealth Court, and the Rules of Professional Conduct with allegations about events occurring during District Attorney Krasner's tenure. Those paragraphs do not make material allegations that District Attorney Krasner has been derelict in the discharge of his duties or failed to uphold his oath of office, and he specifically denies any such allegation. To the contrary, District Attorney Krasner has fully and faithfully fulfilled his duties, enforced the law, and at all times sought to vindicate the interests of the citizens of Philadelphia.

More specifically, District Attorney Krasner's oath defines his duty. That oath is to seek justice and uphold the constitutions and laws. He has done so faithfully, and exercised his discretion precisely for that purpose.

ANSWER TO ARTICLE I

District Attorney Krasner denies each and every material allegation of Article I, and specifically denies that he engaged in a dereliction of duty or refusal to enforce the law.

Article I's allegations combine various incomplete anecdotes and statistics to criticize District Attorney Krasner's operation of the District Attorney's Office and exercise of prosecutorial discretion, including with respect to investigations, prosecution, and sentencing. Specifically, and without any evidence, the Article indicates that the District Attorney's policies have caused violence in Philadelphia.

Not only are these allegations unsupported by any evidence whatsoever, they ignore a plethora of research showing that policies like the District Attorney's do not lead to increases in violent crime, and at least one recent, sweeping study that shows such policies correlate with reduced violent crime. These claims also ignore the District Attorney's many policies that promote decreases in crime and enhanced accountability for serious crimes, including the financial support the District Attorney has provided for grass roots anti-violence and anti-crime community work, the dramatic increase in victims services the District Attorney has overseen, the office's work to increase forensic and other investigative capacity in serious cases,

and the office's efforts to repair the decades-long broken trust of the office and other law enforcement that have undercut the willingness of members of impacted communities to participate in investigations as witnesses and victims. It ignores the office's focus on serious, violent crimes and the office's efforts to connect people charged with less serious, non-violent criminal offenses to solutions that address root causes and therefore have long-term public safety benefits.

Likewise, the Article omits relevant context about the increases in serious crimes, including the impact of the COVID-19 pandemic in the city, and the undeniable evidence of a nationwide increase in the incidence of violent crime beginning in 2020. Substantial upticks in gun crime, especially homicides, occurred in jurisdictions led by members of both parties and with District Attorneys who have massively different policy objectives and approaches. Sadly, the tragic and devastating uptick in Philadelphia is no outlier. Its arc is similar to other jurisdictions of all types---urban, suburban, exurban, rural---in Pennsylvania and across the country. It also ignores the impact that other actors have on criminal investigations and case outcomes, and disregards the importance of police, who must first solve a case and make an arrest and gather evidence without

violating constitutional and legal requirements before the District Attorney can get involved, and the courts.

Additionally, the allegations in Article I that relate to District Attorney Krasner's decisions are criticisms of his exercise of prosecutorial discretion, which is vested in the Executive Branch and does not constitute a legitimate basis for impeachment and removal. The Commonwealth's Constitution and laws leave to the citizens of Philadelphia at elections to decide whether the District Attorney properly exercised his prosecutorial discretion. He was elected handily in 2017 and reelected by an overwhelming margin in 2021, which demonstrates the voters' satisfaction. Only an exercise of discretion motivated by an unlawful or corrupt motive – neither of which is alleged in Article I – could form the basis for impeachment and removal.

FIRST AFFIRMATIVE DEFENSE

Article I Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article I does not meet the rigorous constitutional standards for conviction and removal from office of a duly locally-elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article I Fails Because It Improperly Alleges Multiple Offenses In One Article

Article I is fatally flawed because it charges multiple instances of alleged misconduct in one article. Article VI, Section 5 of the Pennsylvania constitution provides that “[n]o person shall be convicted without the concurrence of two-thirds of the [Senate] members present.” Additionally, Senate Resolution 386, at Section 22, which purports to apply to the trial of District Attorney Krasner, states that “An article of impeachment is not divisible for the purpose of voting on the article during the trial.” *See also id.* Section 22(e) (“If impeachment upon an article is sustained by the votes of two-thirds of the Senators present, the Senate shall proceed to the consideration of other matters determined to be appropriate; and a judgment of conviction on that article shall be entered on the record.”). Because Article I combines multiple alleged acts and omissions, it creates a real possibility that a conviction could occur even though Senators were in disagreement as to the alleged wrong committed. That is, District Attorney Krasner might be convicted on an Article even if he would have been acquitted if separate votes were taken on each allegedly wrongful act or omission.

ANSWER TO ARTICLE II

District Attorney Krasner denies each and every material allegation of Article II, and specifically denies that he engaged in misbehavior in office in the nature of obstruction of a House Select Committee investigation. To the contrary, he has complied with all of his duties and obligations in responding to the House Select Committee investigation, and properly sought judicial review of elements of that investigation that he believed improperly implicated separation of powers and grand jury secrecy interests.

Article II alleges that District Attorney Krasner obstructed the 206th General Assembly House of Representatives' Select Committee on Restoring Law and Order by challenging the authority of the Select Committee and its subpoena directed to the District Attorney's Office. But District Attorney Krasner and his Office complied with their obligations by, among other things, serving on the Select Committee a written response to the Subpoena, seeking judicial review of the Subpoena that sought secret grand jury information regarding an on-going, serious homicide prosecution, and producing documents to the Select Committee. The Pennsylvania Supreme Court has squarely held that a recipient of a legislative subpoena may do precisely what District Attorney Krasner did by

seeking relief in court from a subpoena for grand jury information that is secret under the law.

FIRST AFFIRMATIVE DEFENSE

Article II Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article II does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article II Fails Because District Attorney Krasner Did Not Obstruct The Select Committee

Article II improperly alleges as obstruction District Attorney Krasner's proper resort to legal process.

THIRD AFFIRMATIVE DEFENSE

Article II Fails Because It Improperly Alleges Multiple Offenses In One Article

Article II is fatally flawed because it charges multiple instances of alleged misconduct in one article. *See* Second Affirmative Defense, Article I.

ANSWER TO ARTICLE III

District Attorney Krasner denies each and every material allegation of Article III, and specifically denies that he engaged in misbehavior in office in the nature of violating the Rules of Professional Conduct or Code of Judicial Conduct, including Rules of Professional Conduct 3.3 (Candor Toward the Tribunal) and 8.4 (Professional Misconduct), and Canon 2 of the Code of Judicial Conduct (Impropriety and Appearance of Impropriety) in the matter of *Robert Wharton v. Donald T. Vaughn*. To the contrary, District Attorney Krasner and the District Attorney's Office and its lawyers fulfilled all of their duties and obligations as lawyers in that matter, which is the subject of a pending appeal before the United States Court of Appeals for the Third Circuit.

FIRST AFFIRMATIVE DEFENSE

Article III Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article III does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article III Fails Because It Does Not Allege Any Conduct By District Attorney Krasner Personally

The *Robert Wharton v. Donald T. Vaughn* decision that is the subject of Article III concerns the alleged misconduct of other lawyers and non-lawyer employees in the District Attorney's Office, not the conduct of District Attorney Krasner.

THIRD AFFIRMATIVE DEFENSE

Article III Fails Because It Alleges Attorney Conduct Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article III fails because the Pennsylvania Supreme Court has exclusive and inherent authority to govern the conduct of attorneys practicing law within the Commonwealth.

FOURTH AFFIRMATIVE DEFENSE

Article III Fails Because It Alleges Violations Of The Canons Of Judicial Conduct, Which Are Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article III fails because the Pennsylvania Supreme Court and the Court of Judicial Discipline have the exclusive and inherent authority to govern conduct subject to the Canons of Judicial Conduct.

FIFTH AFFIRMATIVE DEFENSE

Article III Fails Because It Alleges Violations Of The Code Of Judicial Conduct Which Are Inapplicable To District Attorney Krasner

Article III improperly alleges a violation of Canon 2 of the Code of Judicial Conduct, and does not apply to district attorneys in counties of the first class like District Attorney Krasner and does not apply to the conduct alleged in Article III.

ANSWER TO ARTICLE IV

District Attorney Krasner denies each and every material allegation of Article IV, and specifically denies that he engaged in misbehavior in office in the nature of violating the Rules of Professional Conduct or Code of Judicial Conduct, including Rules of Professional Conduct 3.3 (Candor Toward the Tribunal) and 8.4 (Professional Misconduct), and Canon 2 of the Code of Judicial Conduct (Impropriety and Appearance of Impropriety) in the matter of *Commonwealth v. Pownall*. To the contrary, District Attorney Krasner and the District Attorney's Office and its lawyers fulfilled all of their duties and obligations as lawyers in that matter.

FIRST AFFIRMATIVE DEFENSE

Article IV Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article IV does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article IV Fails Because It Does Not Allege Any Conduct By District Attorney Krasner Personally

The *Commonwealth v. Pownall* matter that is the subject of Article IV concerns the alleged misconduct of other lawyers in the District Attorney's Office, not the conduct of District Attorney Krasner.

THIRD AFFIRMATIVE DEFENSE

Article IV Fails Because It Alleges Attorney Conduct Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article IV fails because the Pennsylvania Supreme Court has exclusive and inherent authority to govern the conduct of attorneys practicing law within the Commonwealth.

FOURTH AFFIRMATIVE DEFENSE

Article IV Fails Because It Alleges Violations Of The Canons Of Judicial Conduct, Which Is Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article IV fails because the Pennsylvania Supreme Court and the Court of Judicial Discipline have the exclusive and inherent authority to govern conduct subject to the Canons of Judicial Conduct.

FIFTH AFFIRMATIVE DEFENSE

Article IV Fails Because It Alleges Violations Of The Code Of Judicial Conduct Which Are Inapplicable To District Attorney Krasner

Article IV improperly alleges a violation of Canon 2 of the Code of Judicial Conduct, which does not apply to the conduct alleged in Article IV and does not apply to district attorneys in counties of the first class like District Attorney Krasner.

ANSWER TO ARTICLE V

District Attorney Krasner denies each and every material allegation of Article V, and specifically denies that he engaged in misbehavior in office in the nature of violating the Rules of Professional Conduct or Code of Judicial Conduct, including Rules of Professional Conduct 3.3 (Candor to Tribunal) and 8.4 (Professional Misconduct), and Canon 2 of the Code of Judicial Conduct (Impropriety and Appearance of Impropriety) in the matter *In re*:

Conflicts of Interest of Philadelphia District Attorney's Office. To the contrary, District Attorney Krasner accurately testified before a Special Master and discharged his legal and ethical duties as a lawyer in that matter. The Supreme Court rejected the claim that District Attorney Krasner had the alleged conflict. The courts also dismissed a subsequent, similar filing.

FIRST AFFIRMATIVE DEFENSE

Article V Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article V does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article V Fails Because It Alleges Attorney Conduct Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article V fails because the Pennsylvania Supreme Court has exclusive and inherent authority to govern the conduct of attorneys practicing law within the Commonwealth.

THIRD AFFIRMATIVE DEFENSE

Article V Fails Because It Alleges Violations Of The Canons Of Judicial Conduct, Which Is Within The Exclusive Jurisdiction Of The Pennsylvania Supreme Court

Article IV fails because the Pennsylvania Supreme Court and the Court of Judicial Discipline have the exclusive and inherent authority to govern conduct subject to the Canons of Judicial Conduct.

FOURTH AFFIRMATIVE DEFENSE

Article V Fails Because It Alleges Violations Of The Code Of Judicial Conduct Which Are Inapplicable To District Attorney Krasner

Article V improperly alleges a violation of Canon 2 of the Code of Judicial Conduct because it does not apply to district attorneys in counties of the first class like District Attorney Krasner.

ANSWER TO ARTICLE VI

District Attorney Krasner denies each and every material allegation of Article VI, and specifically denies that he engaged in misbehavior in office in the nature of violating victims' rights. To the contrary, District Attorney Krasner and the District Attorney's Office complied with their obligations under victims' rights statutes, and have affirmatively sought to enhance the provision of services to, and protect the rights of, victims throughout his tenure as District Attorney.

FIRST AFFIRMATIVE DEFENSE

Article VI Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article VI does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article VI Fails Because It Is Void For Vagueness

Article VI fails as a matter of law because it is unconstitutionally conclusory and vague. It alleges, without identifying supporting facts, that District Attorney Krasner violated federal and state victims' rights statutes by "failing to timely contact victims, deliberately misleading victims and or disregarding victims input and treating victims with contempt and disrespect." Such vague and conclusory assertions are plainly inadequate. In fact, his office's efforts in handling about 35,000 new cases per year and many more that are post-trial have been diligent, reasonable, and extensive.

THIRD AFFIRMATIVE DEFENSE

Article VI Fails Because It Improperly Alleges Multiple Offenses In One Article

Article II is fatally flawed because it charges multiple instances of alleged misconduct in one article. *See* Second Affirmative Defense, Article I.

ANSWER TO ARTICLE VII

District Attorney Krasner denies that he engaged in any misbehavior in office in the nature of violation of the Constitution of Pennsylvania by usurpation of the legislative function. He denies each and every material allegation of Article VII. To the contrary, District Attorney Krasner makes prosecution decisions on a case-by-case basis with an eye toward achieving individual justice, as his oath to seek justice requires, and has also faithfully performed his duties and upheld his oath to support, obey and defend the Constitution of the United States and the Constitution of Pennsylvania.

Article VII alleges criticisms of the District Attorney Krasner's exercise of his prosecutorial discretion in investigating, prosecuting, and sentencing. Yet, as explained above, those allegations are criticisms of his exercise of broad prosecutorial discretion, not a basis for impeachment and removal. *See Answer to Article I.*

FIRST AFFIRMATIVE DEFENSE

Article VII Fails Because It Does Not Meet The Constitutional Standard For Conviction And Removal

For the reasons set forth in the Preamble of this Answer, Article VII does not meet the rigorous constitutional standards for conviction and removal from office of a duly elected District Attorney of the City of Philadelphia and should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Article VII Fails Because It Is Void For Vagueness

Article VII fails as a matter of law because it is unconstitutionally conclusory and vague. It fails to identify any supporting facts, and its vague and conclusory assertions are inadequate.

THIRD AFFIRMATIVE DEFENSE

Article VII Fails Because It Improperly Alleges Multiple Offenses In One Article

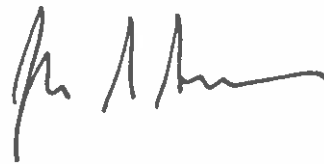
Article II is fatally flawed because it charges multiple instances of alleged misconduct in one article. *See* Second Affirmative Defense, Article I.

WHEREFORE, for the foregoing reasons, all Articles of Impeachment set forth in the Writ of Summons issued to District Attorney Krasner should be dismissed.

District Attorney Krasner reserves the right to amend this Answer to assert additional responses and affirmative defenses.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: December 21, 2022



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