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Court Likely to Stay Out of DA Krasner's Impeachment Fight, Experts Say

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State and Local Government

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Litigation Reporter

What You Need to Know

- On Nov. 2, Philadelphia District Attorney Larry Krasner sued in the Commonwealth Court to stop the impeachment proceedings against him.
- The petition raises three arguments about the timing of the impeachment, who can impeach a DA, and whether Krasner has committed an impeachable offense.
- Constitutional law experts say the court may be hesitant to get involved.

Constitutional law experts said Philadelphia District Attorney Larry Krasner's [recently filed](#) suit to halt impeachment efforts against him raised several tricky legal questions—but that doesn't mean a court will provide answers.

And experts said Krasner will face an uphill battle in convincing the Commonwealth Court to weigh in on the legality of the Republican-led attempt to remove him from office.

"The courts will be on the sidelines, will stay on the sidelines, will not leave the sidelines," said Craig Green, a professor at Temple University Beasley School of Law.

Krasner's Dec. 2 [petition](#) for review asked Commonwealth Court to throw out the articles of impeachment based on three arguments: First, that the articles became null at the adjournment of the past legislative session; second, that the General Assembly is not authorized to impeach a city district attorney; and third, that the articles do not allege any conduct that meets the standard of impeachment.

Those arguments waded into unclear areas of law, Green said, but the political nature of impeachments is likely to keep the court from stepping in to provide guidance. "Either this impeachment process will [fizzle out](#) as a political matter or it would be concluded before I would expect any court to get involved," he predicted.

Though there is scant precedent for Pennsylvania courts intervening in an impeachment, state law does not bar judicial involvement in the same way federal law does, according to Bruce Ledewitz, a constitutional law expert at Duquesne University School of Law.

"There is precedent that they can weigh in," he said. "This is a pretty egregious example, so they might. It's so obvious that this is unlawful."

Attorneys with Washington, D.C.,-based Miller & Chevalier Chartered are working with local lawyers with Hangle, Aronchick, Segal, Pudlin & Schiller to represent Krasner in the suit.

In a Monday press conference, Miller & Chevalier's Michael Satin declined to comment on the court's likelihood to intervene, but said, "We believe that the law is on the side."

In his [application](#) for summary relief, Krasner's legal team anticipated the obstacle in footnote.

"Respondents may argue that the issues raised in this action are non-justiciable and that the court cannot stray into the prerogatives of the legislative branch," the application said. "That would be incorrect. This court and the Pennsylvania Supreme Court are fully authorized to interpret the Pennsylvania Constitution and the Pennsylvania Code to rule on the kinds of declaratory judgments that this application seeks."

Which Arguments Hold Up?

Quinn Yeargain, assistant professor at Widener University Commonwealth School of Law, said if the court does opt to step in, its easiest course would be to narrowly address the petition's first point.

That argument contends that the articles of impeachment, which the House [approved](#) Nov. 16, died upon the Nov. 30 adjournment sine die of the General Assembly.

"I think this is the clearest [argument]," said Yeargain, an expert. "It's also the most technical one."

Its procedural nature makes the question more appealing to judges who may be hesitant to consider the validity of the articles of impeachment, Yeargain said. "What courts will do is step in to make sure the constitutional requirements are being met," they said.

By determining whether the articles of impeachment carry over to the next legislative session, Yeargain said, the court could intervene without venturing into the other two issues.

Green, conversely, said he sees the adjournment argument as the least powerful of the three.

"I think the strongest argument is the misbehavior in office," he said.

The seven articles of impeachment allege Krasner engaged in "misbehavior in office," a term whose definition has been central to fights over the validity of the removal efforts.

Legislators leading the impeachment have interpreted the phrase to broadly encompass any "misbehavior" while opponents say it only includes criminal conduct, of which Krasner is not accused.

Green said he is unaware of anything Krasner has done that amounts to misbehavior in office and that allowing state legislators to go after local officials for policy disputes "would be very disruptive and troublesome for the state."

Ledewitz, too, said Krasner's "misbehavior" point was the most compelling. "He's right about the fundamental issue, which is that this is a recall masquerading as an impeachment," he said.

He was more doubtful, however, of the remaining arguments.

"He's wrong about local officials," Ledewitz said, referring to Krasner's argument that the Philadelphia district attorney is not a "civil officer" who may be impeached by the General Assembly under the state Constitution.

Yeargain echoed Ledewitz's skepticism, saying certain case law and the text of the Constitution contravene the argument.

"It seems very likely under the case law that we have that he could very well be liable to impeachment," they said.

The suit names Interim Pennsylvania Senate President Pro Tempore Kim Ward, R-Westmoreland, and impeachment managers Reps. Craig Williams, R-Delaware; Tim Bonner, R-Mercer; and Jared Solomon, D-Philadelphia, as defendants. As of Monday afternoon, all defendants were listed as representing themselves pro se.

A Senate Republican spokesperson said in an email, "We are reviewing the matter and will provide an appropriate response once we

have had time to evaluate the petition.”

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