

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

**Nos. 519 MAL 2021, 520 MAL 2021, 521 MAL 2021, 522 MAL 2021
(Consolidated)**

**CHESTER WATER AUTHORITY,
Petitioner**

v.

**AQUA PENNSYLVANIA, INC., CITY OF CHESTER, WELLS FARGO BANK,
NA, DELAWARE COUNTY, CHESTER COUNTY, SUSQUEHANNA RIVER
BASIN COMMISSION, DELAWARE RIVER BASIN COMMISSION,
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
TRUSTEES OF CHESTER WATER AUTHORITY, NICOLE WHITAKER,
WANDA MANN, MICHELLE CONTE, TYLER THERRIAULT, KATHRYN A.
TOWNSEND, VICTOR S. MANTEGNA, AND WOLF EQUITY L.P.,**

Respondents

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN
SUPPORT OF PETITION FOR PERMISSION TO APPEAL**

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Pursuant to Rule 531(b)(1) of the Pennsylvania Rules of Appellate Procedure, Proposed Amici, Speaker of the Pennsylvania House of Representatives Bryan Cutler and Pennsylvania State Representative John Lawrence, hereby request leave to file the accompanying amicus curiae brief for the Court's consideration in addressing the Petition for Permission to Appeal filed by the Chester Water Authority ("CWA") in the above-captioned appeal. In support thereof, Proposed Amici aver as follows:

1. On September 16, 2021, the Commonwealth Court issued an *en banc* opinion addressing Sections 5610 and 5622 of the Municipality Authorities Act ("MAA").

2. On September 17, 2021, the CWA filed a Petition for Permission to Appeal the Commonwealth Court's decision to this Court.

3. The Commonwealth Court's decision, as well as the arguments now advanced by the parties, hinge on the statutory interpretation of the MAA and the 2012 amendment to Section 5610, the goal of which is to ascertain and give effect to the intent of the General Assembly.

4. Both Speaker Cutler and Representative Lawrence are members of the General Assembly and cast affirmative votes in favor of the passage of Section 1 of Act 73 of 2012, which amended Section 5610 of the MAA, by unanimous vote.

5. In addition, Proposed Amici also serve constituent interests materially impacted by the authority matter giving rise to the pending Petition, as Representative Lawrence represents constituent ratepayers who are customers of the CWA and a major source of the CWA's water, the Octoraro Reservoir, is sited in both Representative Lawrence's and Speaker Cutler's Legislative Districts.

6. Thus, the interest of Proposed Amici is both obligatory and unique, seeking to protect constituent ratepayer interests who have been deprived of a representative voice as a result of the ruling of the Commonwealth Court, and to contribute to an accurate judicial assessment of the General Assembly's legislative intent with respect to the 2012 amendment of Section 1 of Act 73.

7. As set forth in more detail in the proposed Amicus Curiae brief, attached hereto as Exhibit "1", in amending Section 5610, the General Assembly required the replacement of the boards of water authorities that provide services to residents in more than two counties, intending to ensure that ratepayers residing outside of the incorporating municipality had a representative voice on the governing body of the authority from whom they receive such services.

8. This includes conveyances of the authority governed by Section 5622 of the MAA.

9. The Commonwealth Court's decision in this matter contravenes this legislative intent and should be reviewed by this Court.

10. Proposed Amici submit that the attached amicus brief will aid this Honorable Court in its consideration of the CWA's Petition for Permission to Appeal.

11. No person or entity other than Proposed Amici or the undersigned counsel have aided in whole or in part in the preparation or authorship of the proposed amicus curiae brief.

WHEREFORE, Speaker of the Pennsylvania House of Representatives Bryan Cutler and Pennsylvania State Representative John Lawrence respectfully request that the Court grant them leave to file the proposed amicus curiae brief attached hereto as Exhibit 1.

Respectfully submitted.

ELLIOTT GREENLEAF, P.C.

Dated: October 8, 2021

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 8, 2021

/s/ Jarad W. Handelman
Jarad W. Handelman, Esquire

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused the foregoing to be served via the Court's electronic filing system on all counsel of record

Dated: October 8, 2021

/s/ Jarad W. Handelman
Jarad W. Handelman, Esquire

EXHIBIT 1

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WANDA MANN, MICHELLE CONTE, TYLER THERRIAULT, KATHRYN A.
TOWNSEND, VICTOR S. MANTEGNA, AND WOLF EQUITY L.P.,
Respondents**

**BRIEF OF *AMICUS CURIAE* SPEAKER OF THE PENNSYLVANIA HOUSE OF
REPRESENTATIVES BRYAN CUTLER AND PENNSYLVANIA STATE
REPRESENTATIVE JOHN LAWRENCE**

**ON CONSIDERATION FROM THE COMMONWEALTH COURT OF PENNSYLVANIA,
DATED SEPTEMBER 16, 2021
CASE NOS. 489 CD 2020, 504 CD 2020, 514 CD 2020, 685 CD 2020**

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STATEMENT OF THE INTEREST OF THE AMICI CURIAE

Amici Curiae are Speaker of the Pennsylvania House of Representatives Bryan Cutler and Pennsylvania State Representative John Lawrence, both current members of the General Assembly with strong interests in the proper interpretation and application of Section 1 of Act 73 of 2012, which amended Section 5610 of the Municipality Authorities Act (“MAA”). Amici Curiae both cast affirmative votes in favor of the amendment, and also serve constituent interests materially impacted by the matter giving rise to the pending Petition. A major source of the Chester Water Authority’s (“CWA”) water, the Octoraro Reservoir, is sited in Amici’s Legislative Districts and Representative Lawrence represents constituent ratepayers who are customers of the CWA.

Additionally, the Commonwealth Court’s decision and the arguments advanced by the parties hinge on the statutory interpretation of the MAA and the 2012 amendment to Section 5610, the goal of which is to ascertain and give effect to the intent of the General Assembly. Thus, Amici Curiae’s interest is both obligatory and unique, seeking to contribute to an accurate judicial assessment of the General Assembly’s intent.

In amending Section 5610 of the MAA, the General Assembly voted unanimously to replace the boards of water authorities that provide services to residents in more than two counties, intending to ensure that ratepayers residing

outside of the incorporating municipality had a representative voice on the governing body of the authority from which they receive services, including as to conveyances of the authority under Section 5622 of the MAA. The Commonwealth Court’s decision in this matter contravenes this legislative intent.

No person or entity other than the Amici Curiae or their counsel have aided in whole or in part in the preparation or authorship of this brief.

QUESTION PRESENTED FOR REVIEW

Whether the Commonwealth Court’s interpretation of Section 5622 to permit the conveyance of a water authority by resolution or ordinance of only the incorporating municipality, where the authority is governed by a board appointed by three different municipalities in accordance with Section 5610(a.1), contravenes the legislative intent and statutory construction of the MAA?

SUGGESTED ANSWER: YES

RELEVANT PROCEDURAL HISTORY

In March 2019, the CWA petitioned the Delaware County Court of Common Pleas seeking approval to transfer its assets into a trust. *In re Chester Water Auth. Tr.*, 2021 WL 4200770 at *2 (Pa. Cmwlth. Ct. Sept. 16, 2021). In response, the City of Chester (“City”) and Aqua Pennsylvania, Inc. sought a declaration that Section 5622 of the MAA vested the City with the exclusive authority to transfer and sell the CWA’s assets because the City originally incorporated the CWA in 1939. *Id.*

Coordinately, the Receiver for the City has publicly indicated that he is seeking “to repossess and sell the assets of the CWA” to help alleviate the City’s debt. (*See Davin v. City of Chester*, No. 336 MD 2020 (Pa. Cmlth. Ct.), April 7, 2021, Modified Plan of Recovery, p. 85). Ultimately, the Trial Court denied the City’s and Aqua’s motion for judgment on the pleadings, concluding that Section 5622 did not grant the City the *exclusive* authority to transfer the CWA’s assets because, pursuant to the 2012 amendments to Section 5610, the City was no longer the sole municipality that appointed the CWA board. *Id.* at *2-3.

The Commonwealth Court accepted the issue for interlocutory appeal and issued an *en banc* opinion reversing the Trial Court. The Court framed the issue as whether Section 5622 of the MAA authorizes a municipality “to obtain the assets of a water authority that it created ... in light of section 1 of Act 73 of 2012, which ... transformed the governance structure of such an authority.” *Id.* at *1. The Court reviewed the CWA’s history, noting that the City incorporated the CWA in 1939 when it had 67 customers; it originally provided water services to only the residents of the City; and it has expanded services in Delaware and Chester Counties beyond the City, now serving over 200,000 customers, roughly 80% of which live *outside* the City. *Id.* The Court acknowledged that the 2012 amendments to Section 5610 changed the composition of the CWA’s board to now have three members appointed

by the City, three by Chester County, and three by Delaware County. *Id.* at *2. The Court then reviewed its prior case law interpreting Section 5622. *Id.* at *4-6.

The Court explained that in *Clearfield Borough v. Clearfield Borough Park Auth.*, 285 A.2d 532 (Pa. Cmwlth. Ct. 1971), it held that the phrase “proper authorities” in Section 5622 meant “the municipality or municipalities” referred to earlier in the subsection, not the municipal authority itself. *Id.* at *4-5. The Court noted that subsequent decisions in *Forward Township Sanitary Sewage Auth. v. Township of Forward*, 654 A.2d 170 (Pa. Cmwlth. Ct. 1995), *Township of Forks v. Fork Township Municipal Sewer Auth.*, 759 A.2d 47 (Pa. Cmwlth. Ct. 2000), and *Salem Township Municipal Auth. v. Township of Salem*, 820 A.2d 888 (Pa. Cmwlth. Ct. 2003), re-affirmed *Clearfield’s* holding that Section 5622 did not require the approval of the *municipal authority*. *Id.* at *5-6.

The Court then turned to the text of Section 5610(a.1), which was not the law at the time of any of the decisions reviewed by the Court. The Court noted that the Trial Court relied upon Section 5610(a.1) in concluding that conveyance of CWA’s assets had to be authorized by Delaware and Chester Counties, in addition to the City. *Id.* The Court interpreted this ruling as holding that Section 5610(a.1) “somehow displaced the interpretive construction provided to section 5622(a)” in its prior case law. *Id.*

The Court disagreed with the Trial Court, noting that the General Assembly

had not changed the Section 5622’s language despite the noted case law. *Id.* at *7-8. Thus, the Court purported to “re-affirm” its prior decisions, holding that “section 5622(a) confers upon a municipality, via a duly enacted ordinance, the power to dissolve an authority and obtain and later transfer and/or convey the authority’s assets as it deems fit, without any input on the part of the authority.”¹ *Id.* at *8.

The Court also concluded that while Section 5610(a.1) “creates the authority’s governing body” and delineates “the appointment process” for the CWA board, *id.* at *8-9, Section 5610(a.1) did not “displace or otherwise interfere with our settled case law and the construction we have afforded to ... section 5622(a) of the MAA.” *Id.* at *9. Therefore, the Court concluded that Section 5622(a) “vests a municipality with the unilateral power to obtain the assets of an authority it has created and incorporated,” *id.* at *9 n.10, and therefore held that Section 5622 granted the City the *exclusive* right to take possession and sell CWA’s assets, notwithstanding the reconstitution of the CWA’s board under Section 5610(a.1). *Id.* at *10.

Judge Wojcik authored a most persuasive dissenting opinion, joined by Judge Cohn Jubelirer. The dissenting opinion reviewed the plain text of both Sections 5610(a.1) and 5622, noting that “[w]hat we are dealing with here is a water project

¹ The Court also rejected the CWA’s argument that *County of Allegheny v. Moon Township Municipal Auth.*, 671 A.2d 662 (Pa. 1996) and *Burke v. North Huntingdon Township Municipal Auth.*, 136 A.2d 310 (Pa. 1957) required the City to receive the CWA’s consent. *Id.* at *10-11.

established under the MAA by the Chester Water Authority.” *Id.* at *14. The dissent then reviewed the CWA’s growth since its incorporation in 1939, noting that “acquisition and construction of property and infrastructure” was financed by “water rates paid by the Authority’s ratepayers, not by City funding.” *Id.*

As to Section 5610(a.1), the dissent characterized the change in the composition of the CWA’s board as “significant.” *Id.* at *14. The dissent explained that “[w]hen Section 5622(a) and Section 5610(a.1) are read together, as they must be, and applied to the situation here, the Authority’s board is no longer ‘a board appointed by a municipality’ for purposes of Section 5622(a) of the MAA.” *Id.* Rather, “it is a board appointed by three municipalities. Consequently, under Section 5622(a), ‘the proper authorities’ to adopt a resolution or ordinance to convey the project are the City, Chester County, and Delaware County.” *Id.* The dissent recognized that “[b]y altering the membership of the Authority’s board, the General Assembly has impaired the City’s ability to unilaterally make decisions for the Authority and acquire the project without the approval of the other two municipalities represented by the Authority.” *Id.*

The dissent also noted the palpable inequity of the majority’s interpretation, meaning that “a super-minority of the Authority’s board” would have the unilateral ability to repossess and sell the CWA’s assets to pay its own debt, thereby “leaving the 79% majority of the Authority’s ratepayers living in the Counties and elsewhere,

where the majority of the assets are actually located, holding the bag.” *Id.* at *16. The dissent correctly concluded that this was “an intolerable and absurd result” that could not have been the intention of the General Assembly. *Id.*

STATEMENT OF REASONS SUPPORTING ALLOWANCE OF APPEAL

Pennsylvania Rule of Appellate Procedure 1114 provides that a petition for allowance of appeal may be granted where, *inter alia*, “the question presented is one of first impression” or where “the question presented is one of such substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court.” Pa. R. App. P. 1114(b)(3), (4). Both reasons are present here.

First, there are no published or unpublished cases from this Court or the Commonwealth Court addressing whether Section 5622 of the MAA requires each of the municipalities that appoint the governing body of a municipal authority, as reconstituted under Section 5610(a.1), to adopt a resolution and/or ordinance in order to effectuate a transfer of a “project” undertaken by that municipal authority.

Second, this issue is of substantial public importance as it perpetually impacts the 200,000 CWA ratepayers who have funded the purchase and maintenance of the water system that the City seeks “to repossess and sell” for its exclusive benefit. (*See Davin*, No. 336 MD 2020 (Pa. Cmlth. Ct.), Modified Plan of Recovery, p. 85). The CWA currently charges rates well below that of for-profit utilities in and around CWA’s services area, including that of Aqua, who is seeking to purchase the water

system from the City, leading inevitably to higher prices for the CWA's current customers. (CWA Pet., at 6-7). The Commonwealth Court erred in holding that the City alone can adopt an ordinance and/or resolution and thereby "repossess and sell" the CWA's assets, without the approval of the other municipalities that appointed the reconstituted CWA board. Accordingly, this Court should grant the Petition for Allowance of Appeal so that this issue of first impression receives "prompt and definitive resolution by the Pennsylvania Supreme Court."

ARGUMENT

I. THE COMMONWEALTH COURT'S DECISION CONTRAVENES THE GENERAL ASSEMBLY'S LEGISLATIVE INTENT AND PLAIN TEXT OF SECTIONS 5610(a.1) AND 5622 OF THE MAA.

Read and interpreted together, as they must be, *see* 1 Pa. C.S. § 1932, the provisions of the MAA make clear that it was the General Assembly's intent to ensure that conveyances governed by Section 5622, made by authorities with boards reconstituted pursuant to Section 5610(a.1), be accomplished by adoption of appropriate resolution or ordinance by the municipalities that appoint the governing body of the authority, not singularly by the incorporating municipality.

In 2012, the General Assembly passed Act 73 of 2012, P.L. 653, No. 73, § 1, by *unanimous* vote, amending Section 5610 of the MAA to require that the "governing body [of authorities like CWA] **shall be replaced** by a governing body comprised of...[t]hree members appointed by the governing body from each county

in which the services to residents are provided...[and] [t]hree members appointed by the governing body of the incorporating municipality.” 53 Pa. C.S. § 5610(a.1) (emphasis added). In doing so, the General Assembly intended to ensure that ratepayers residing outside of the incorporating municipality had a representative voice on the governing body of the authority from whom they receive such services, including as to conveyances of the authority governed by Section 5622 of the MAA. *See* Pa. House Journal, 2012 Reg. Sess. No. 43 (confirming that the additional board members “would represent authority customers on rates, service problems, and other issues.”).

Section 5622 of the MAA governs conveyances of “established projects” by municipal authorities subject to the MAA, including those reconstituted by Section 5610(a.1). Section 5622 provides in pertinent part:

If a project^[2] established under this chapter by a board^[3] appointed by a municipality [or municipalities]^[4] is of a character which the municipality has power to establish, maintain or operate and the municipality desires to acquire the project, it [or they] may by appropriate resolution or

² A “project” is defined as “any structure, facility or undertaking which an authority is authorized to acquire, construct, finance, improve, maintain or operate.” 53 Pa. C.S. § 5602.

³ A “board” is defined as the “governing body of an authority.” 53 Pa. C.S. § 5602.

⁴ In construing statutes, “[t]he singular shall include the plural, and the plural, the singular.” 1 Pa. C.S. § 1902.

ordinance adopted by the proper authorities^[5] signify its [or their] desire to do so, and the authorities^[6] shall convey by appropriate instrument the project to the municipality [or municipalities] upon the assumption by the municipality [or municipalities] of all the obligations incurred by the authorities with respect to that project.

53 Pa. C.S. § 5622.

Incorporating Section 5602's definitions into the text of Section 5622, and recognizing that reconstituted boards are comprised of appointments by municipalities (plural), provides illustrative confirmation of the General Assembly's legislative intent:

If a **“structure, facility or undertaking”** established under this chapter by **“the governing body of a municipal authority”** appointed by *municipalities* is of a character which the *municipalities* ha[ve] power to establish, maintain or operate and the municipalities desire[] to acquire the **“structure, facility or undertaking,”** **“the municipalities referred to above”** may by appropriate resolution or ordinance adopted by **“the municipalities referred to above”** signify its/their desire to do so, and the **“municipal authority”** shall convey by appropriate instrument the **“structure, facility or undertaking”** to the *municipalities* upon the assumption by the *municipalities* of all the obligations incurred by the **“municipal authority”** with respect to that project.

⁵ The phrase “proper authorities” and the pronoun “it” mean the “municipality or municipalities” referred to earlier in this subsection. *Clearfield*, 285 A.2d at 534-35.

⁶ An “authority” is defined as a “body politic and corporate created under [the MAA].” 53 Pa. C.S. § 5602.

Thus, according to its plain and defined terms, and when read consistently with the General Assembly's amendment of Section 1, again as it must be, *see* 1 Pa. C.S. § 1932, in the case of an authority with a reconstituted board pursuant to Section 5610(a.1), the plain language of Section 5622 requires that the *municipality or municipalities that appoint the governing body of the municipal authority* adopt resolutions to effectuate a conveyance under Section 5622.⁷

Here, following the General Assembly's amendment to Section 5610, the CWA's existing governing body was appointed in accordance with Section 5610(a.1). Thus, at all relevant times, the CWA board was comprised of appointees from *three municipalities* – the City, Delaware County, and Chester County. This reconstitution of the board, consistent with the General Assembly's intent, was to ensure the representative voice of all ratepayers who receive services from the CWA. *See* Pa. House Journal, 2012 Reg. Sess. No. 43.

However, the Commonwealth Court's decision permits precisely what the General Assembly sought to prevent – conveyance of a water authority by the unilateral action of an incorporating municipality, where that water authority largely

⁷ The General Assembly's intent to ensure the representative voice of ratepayers residing outside of incorporating municipalities prior to conveyances by a water authority is not limited to Chapter 56 of the MAA. For example, the Municipal Corporations Water Services Act also requires "approval from 75% of the municipalities... whose residents previously received water or sewer services, or both, from the authority prior to ... conveyance of a project of the authority under 53 Pa.C.S. § 5622." 53 P.S. § 3102.302(b)(1)(ii).

serves ratepayers outside of the incorporating municipality and whose board has been reconstituted to include appointees representing the interests of ratepayers in other effected municipalities. Applied to the underlying facts, the Court's decision allows the City to unilaterally take possession of the CWA's assets, without approval from the municipalities that appoint the governing authority of the CWA as reconstituted pursuant to Section 5610 (a.1), which is precisely what the General Assembly intended to prevent by its 2012 amendment of the law.

II. THE COMMONWEALTH COURT'S DECISION VIOLATES WELL-ESTABLISHED PRINCIPLES OF STATUTORY INTERPRETATION.

The Commonwealth Court's reliance upon case law decided prior to the addition of Section 5610(a.1) improperly skewed its analysis and interpretation of Section 5622 of the MAA. In rigidly relying upon precedents that interpreted Section 5622 *before* the enactment of Section 5610(a.1), the Court at best ignored, and at worst completely nullified, the language and intent of the General Assembly's 2012 amendment to the MAA. The critical question presented by the City's proposed conveyance is not whether the City can convey the CWA's assets to itself without *the CWA's* approval (as the Commonwealth Court limitedly viewed the matter), but rather, whether the City can unilaterally do so *without the approval of Delaware and Chester Counties* following the reconstitution of the CWA board as required by Section 5610(a.1.).

Indeed, Amici Curiae do not dispute the Commonwealth Court's analysis in

Clearfield, Forward, Forks, and Salem. In each of those cases, the “project” that the municipality sought to acquire was established by the governing body of an authority that was “appointed” solely by the municipality that sought to acquire the “project.” Thus, the issue in those cases was whether the municipality that appointed the board of the municipal authority could acquire the project without the consent *of the authority itself*. See *Clearfield*, 285 A.2d at 534-35; *Forward*, 654 A.2d at 175; *Forks*, 759 A.2d at 53-54; *Salem*, 820 A.2d at 890.

But this is 2021, and Section 5610(a.1) has been the law for nearly ten years. The “project” that the City seeks to acquire (the CWA’s water system and assets) was established by a “board” (the CWA’s governing body) that is appointed by *three municipalities* (the City, Delaware County, and Chester County). Thus, while the case law that the Commonwealth Court relied upon may inform the question of whether a municipality can convey assets of a water authority to itself without the consent of a board comprised of appointees of only the incorporating municipality, these cases do not control, or even address, the issue of whether the City can convey the CWA’s assets to itself *without the consent of the other two municipalities that appoint the CWA’s governing body*. As such, the Court erred in concluding that *Clearfield, Forward, Forks, and Salem* dictate that the City has the *exclusive* authority to repossess and sell the CWA’s assets, without the consent of Delaware and Chester Counties.

In addition, the Commonwealth Court erred in its interpretation of Section 5622 and violated several well-settled principles of statutory interpretation.

First, according to its plain terms, Section 5622 only applies to a “project” that was established by the “governing body of a municipal authority” (*e.g.*, the CWA board) that is “appointed by a municipality.” Section 5622 then provides that if the municipality or municipalities that appointed the board that established the project have the power to maintain the “project” and desire to do so, it can force the municipal authority to transfer the project to that municipality or municipalities.

The Commonwealth Court, however, re-wrote this provision and considered only the municipality that “created” or “incorporated” the municipal authority, even though those words do not appear anywhere in Section 5622. The first clause of Section 5622 reads, “If a project established under this chapter *by a board appointed by a municipality....*” However, the Commonwealth Court effectively re-wrote it to read, “If a project established under this chapter by ~~a board appointed~~ [an authority created or incorporated] by a municipality....” *See In re Chester Water Auth. Tr.*, 2021 WL 4200770, at *1 (framing question presented as “whether Section 5622(a) ... authorizes ... a municipality to obtain the assets of a water authority *that it created*”); *id.* at *9 n.10 (“section 5622(a) of the MAA ... vest a municipality with the unilateral power to obtain the assets of an *authority it has created and incorporated.*”); *id.* at *11 (stating that “the *creating and/or incorporating*”

municipality, ...can obtain the authority and its assets by passing an ordinance”) (emphasis added).⁸

Under well-established principles of statutory interpretation, it is legal error for the Commonwealth Court to re-write the plain text of a statute and insert the words “created or incorporated” when those words do not appear on the face of Section 5622 itself. *See In re Consol. Appeals of Chester-Upland Sch. Dist.*, 238 A.3d 1213, 1222 (Pa. 2020) (“courts should not read words into a statute which do not appear in the text.”); *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 651 (Pa. 2021) (“courts should not add to a statute a requirement that the legislature chose not to include.”); *Sivick v. State Ethics Comm'n*, 238 A.3d 1250, 1264 (Pa. 2020)(same).

Moreover, a review of the neighboring provisions of the MAA makes it abundantly clear that the General Assembly did not intend Section 5622 to apply exclusively to the municipality that *created* or *incorporated* the municipal authority. While the text of Section 5622 is devoid of any language stating that it applies only to the municipality that “created” or “incorporated” the municipal authority, other provision of the MAA *do use these express terms*. For example:

⁸ *See also id.* at *1, n.4 (stating that the Court is deciding whether a municipality can “obtain the assets of an authority that it created.”); *id.* at *7 (“section 5622(a) of the current MAA provide a municipality with the unilateral authority to obtain the assets of an authority it had created”).

- Section 5619(a) provides that an authority may convey a project “to the municipality *creating the authority*.” 53 Pa. C.S. § 5619(a)(emphasis added).
- Section 5619(c) requires an authority to submit certain types of information “to the municipality *which created it*.” 53 Pa. C.S. § 5619(c)(emphasis added).
- Section 5613 provides that certain actions must be approved by the governing body of “the municipality *which created* ... the authority.” 53 Pa. C.S. § 5613 (emphasis added).

If the General Assembly intended Section 5622 to grant the unilateral authority to convey an authority to the municipality that “created” it (as the Commonwealth Court found), it would have used those words in Section 5622, just like it did in Sections 5613, 5619(a), and 5619(c). But the General Assembly deliberately chose otherwise. The Commonwealth Court erred in failing to give purpose and effect to this intentional distinction. *See In re Consol. Appeals of Chester-Upland Sch. Dist.*, 238 A.3d at 1222 (“where the Legislature includes specific language in one section of a statute, its omission from a similar section often reflects a different legislative intent, and hence, it should not be implied where exclude.”); *Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n*, 985 A.2d 678, 684 (Pa. 2009) (“where a section of a statute contains a given provision, the omission of such

a provision from a similar section is significant to show a different legislative intent.”); *Doe v. Franklin Cty.*, 174 A.3d 593, 608 (Pa. 2017) (same).

Second, in addition to its inconsistency with the plain language of the MAA, the practical consequences of accepting the Commonwealth Court’s interpretation provides further evidence that the General Assembly intended otherwise. *See* 1 Pa. C.S. § 1921 (providing that Court can consider the “consequences of a particular interpretation”); *Schock v. City of Lebanon*, 210 A.3d 945, 960 (Pa. 2019) (same); *MERSCORP, Inc. v. Delaware Cty.*, 207 A.3d 855, 866 (Pa. 2019) (same).

In this case, the practical consequences of the Commonwealth Court’s interpretation of the MAA are untenable. If permitted to stand, it would vest the City with the sole and exclusive authority to repossess and sell the CWA’s water system and assets, despite the fact that 80% of the CWA’s customers live outside the City and the CWA’s customers – not the City – funded the purchase, development, and maintenance of the water system and its related assets. This will inevitably lead to rate increases for CWA’s current customers, as the CWA charges rates far below that of for-profit utilities in and around CWA’s services area, including that of Aqua. (*See* CWA Pet., at 6-7).

The Commonwealth Court’s interpretation permits this result simply because the City is the municipality that “created” or “incorporated” the CWA (terms not used in the Section 5622) almost 100 years ago when it had 67 customers. This is

precisely the result that the General Assembly sought to *avoid* when it amended Section 5610(a.1) to ensure that ratepayers residing outside of the incorporating municipality have a say in conveyances of the authority from which they receive services.

Indeed, it would be truly unjust to grant the City the unilateral right to “repossess and sell” the CWA’s water system and assets, which were purchased and maintained through funds received from customers who overwhelmingly reside outside the City, resulting in an estimated valuation in excess of \$400 Million, against the wishes of two-thirds (2/3) of the municipalities that appoint the CWA’s governing body. As the dissent persuasively stated, such glaring inequities render the Commonwealth Court’s interpretation of Section 5622 unreasonable as a matter of law. *See* 1 Pa. C.S. § 1922(1) (providing that there is a presumption that “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”); *Terra Firma Builders, LLC v. King*, 249 A.3d 976, 985 (Pa. 2021) (“court may presume legislature did not intend result that is absurd, impossible of execution or unreasonable.”); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 380 (Pa. 2020) (same).

In sum, the Commonwealth Court erred in failing to credit the General Assembly’s amendment of Act 73 in 2012 to include Section 5610(a.1), and consequently misinterpreting Section 5622 to permit the City to convey the CWA’s

assets to itself without the approval of the municipalities that actually appoint the CWA's governing body. In so ruling, the Commonwealth Court contravened well-established principles of statutory interpretation and directed precisely the result that the General Assembly sought to avoid when it added Section 5610(a.1) to the MAA. Accordingly, this Court should grant allowance of appeal to review the erroneous statutory interpretation and to correct the Commonwealth Court's erroneous view of this issue of first impression. The voice of more than 200,000 CWA customers throughout Delaware and Chester Counties depends upon it.

CONCLUSION

For all the foregoing reasons, the Court should grant the Petition for Allowance of Appeal filed by the Chester Water Authority and review the Order and decision of the Commonwealth Court issued on September 16, 2021.

Respectfully submitted,

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Dated: October 8, 2021

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 8, 2021

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, I certify that the word count feature of the word-processing system used to prepare this Brief states that the Brief contains 4,484 words.

Dated: October 8, 2021

/s/ Jarad W. Handelman
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused the foregoing to be served via the Court's electronic filing system on all counsel of record

Date: October 8, 2021

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