

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JAMES SPADOLA, both individually	)	
and in his capacity as City Council	)	
Member,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2026-0563-KSJM
	)	
ERNEST “TRIPPI” CONGO II, in his	)	
capacity as City Council President; and	)	
CITY COUNCIL OF WILMINGTON,	)	
DELAWARE,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: July 7, 2026
Date Decided: September 17, 2026

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McCORMICK, C.

The City of Wilmington is Delaware's largest municipality. The municipal charter defining the City's powers, governance structure, and procedural rules vests legislative authority in the City Council. The Council comprises thirteen members: one Council President, eight members representing their respective districts, and four members elected at large. The charter provides that no party may nominate more than three candidates to run for the four at-large seats, which ensures that a minority-party nominee will secure at least one at-large seat.

Plaintiff James Spadola is an at-large member of the Council. He was nominated by the Republican Party in 2024. After Spadola took office in January 2025, he became disenchanted with the Republican Party. In September 2025, Spadola changed his voter registration from Republican to Democrat.

Defendant Ernest "Trippi" Congo II is Council President. In April 2026, Congo proposed a Council resolution removing Spadola from the Council on the ground that Spadola's switch in political parties disqualified him from holding an at-large seat.

Spadola brought this suit against Congo and the Council challenging the Congo resolution as an unauthorized use of Council power. Spadola also claims that the resolution violates his constitutionally protected right to freely associate. The parties cross-moved for summary judgment, and this decision enters judgment for Spadola. Spadola has demonstrated as a matter of law that the Congo resolution exceeds the Council's authority under the charter. Because the resolution is a clear misuse of Council authority, it is invalid, and this decision grants Spadola's motion on that basis alone. The decision does not reach Spadola's constitutional challenges.

I. FACTUAL BACKGROUND

The court draws these facts from the submissions made in support of the parties' cross-motions for summary judgment¹ and matters not subject to reasonable dispute.²

The City's municipal charter (the "Charter") was first granted by King George II in 1739 and superseded by the Delaware General Assembly in 1832.³ In October 1961, Wilmington Mayor John Babiarz created the Wilmington Charter Revision Committee (the "1961 Committee").⁴ That committee proposed the changes to the Charter's language at issue in this litigation.⁵ The Charter as amended was approved by the City's voters on November 3, 1964, and submitted to the Secretary of State in January 1965.⁶

In its current form, the Charter divides the City's government into two major branches—legislative and executive—vesting legislative authority in the Council.⁷ The Council comprises thirteen elected members: President of the Council, eight

¹ C.A. No. 2026-0563-KSJM, Docket ("Dkt.") 19 ("Pl.'s Opening Br."), Exs. A–E; Dkt. 24 ("Defs.' Opening Br."), Exs. A–E; Dkt. 26 ("Pl.'s Reply Br."), Ex. A. Plaintiff submitted Defendants' Verified Answer. Pl.'s Opening Br., Ex. A. Citations to Defendants' Verified Answer will take the form "Ans. ¶ —."

² *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006) ("The trial court may also take judicial notice of matters that are not subject to reasonable dispute.") (citing D.R.E. 201(b)).

³ Wilm. C. (Original Charter of the Borough of Wilmington) n.1.

⁴ Defs.' Opening Br., Ex. A.

⁵ *See, e.g.*, Defs.' Opening Br., Ex D; Pl.'s Reply Br., Ex A.

⁶ Defs.' Opening Br., Ex. E.

⁷ Wilm. C. (Charter) §§ 1-101–1-103.

members representing their respective districts, and four at-large members.⁸ Each council member stands for election every four years. The terms are not staggered; all seats are up during each four-year election. Each Wilmington voter may cast votes for Council President, the representative of her district, and three at-large members.⁹

The Charter contains a nomination cap: no party may nominate more than three candidates for the four at-large seats.¹⁰ The 1961 Committee recommended the nomination cap to promote minority-party representation.¹¹ It took this election rule and others from the Philadelphia Home Rule Charter (the “Philadelphia Charter”),¹² which also mixes district and at-large seats and caps the number of candidates each party may nominate to run for the at-large seats.¹³ The 1961 Committee noted the “extensive studies” that informed the structure of the Philadelphia Charter.¹⁴ One such study explained that mixing individual districts and at-large members promotes

⁸ *Id.* § 2-100.

⁹ *Id.* § 2-101.

¹⁰ *Id.*

¹¹ Defs.’ Opening Br., Ex. D.

¹² Defs.’ Opening Br., Ex. A.

¹³ Phila., Penn., Home Rule Charter § 2-101 (2026), https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-263589.

¹⁴ Defs.’ Opening Br., Ex. A.

“better representation.”¹⁵ Public commentary on the 1961 Committee’s proposal reflected a desire to ensure minority-party representation on the Council.¹⁶

Plaintiff James Spadola is a Member at Large of the Council. Citizens of Wilmington first elected Spadola to the Council in 2020.¹⁷ In 2024, he was one of two Republican Party nominees for the at-large seats.¹⁸ Spadola faced no primary challenge.¹⁹ He won an at-large seat in the general election with Democratic Party candidates winning the remaining three at-large seats, as well as all district seats and Council President.²⁰ Spadola took office on January 7, 2025. His term of office expires in January 2029.²¹

¹⁵ Bureau of Municipal Research of Philadelphia, *The Proposed Charter 3* (1951), <https://babel.hathitrust.org/cgi/pt?id=uc1.b5491582&seq=5>.

¹⁶ On September 19, 1962, Maurice duPont Lee wrote the committee expressing concern that civil service employees would not be selected in a bipartisan manner. Defs.’ Opening Br., Ex B. Lee focused on the administration of city parks and remarked that the city government was then “exclusively Democratic” and that “single party government indefinitely” was not consistent with Lee’s “idea of representative government which should exist in our city.” *Id.* On October 15, 1962, Thomas Herlihy, Jr. and Pearl G. Herlihy commented that over a third of votes for city council were cast for Republicans in 1962, yet there was no Republican representation on the Council. Defs.’ Opening Br., Ex. C.

¹⁷ Ans. ¶ 12.

¹⁸ *Id.* ¶ 13.

¹⁹ Wilm. C. (Charter) § 2-101; Ans. ¶ 13 (admitting that the Republican Party nominated only two candidates); *see also* Defs.’ Opening Br. at 4.

²⁰ *2024 General Election Report*, Del. Dep’t of Elections, <https://elections.delaware.gov/reports/GE2024.html> (last visited September 17, 2026); *see also* Defs.’ Opening Br. at 4.

²¹ Ans. ¶ 13.

After Spadola took office, he became disenchanted with the policies and trajectory of the Republican Party.²² On September 29, 2025, Spadola changed his voter registration from Republican to Democrat.²³

In February 2026, President Congo emailed Spadola demanding that he switch back to the Republican Party.²⁴ Congo stated that the Council would “declare [his] seat vacant” unless Spadola complied.²⁵ Spadola did not switch back. He instead disputed the Council’s position.²⁶

The next month, Council Member Alexander Hackett introduced a resolution (the “Hackett Resolution”) requesting that the Delaware General Assembly amend the Charter to prohibit members from switching party affiliation during their terms.²⁷ The Hackett Resolution proposes new language to Charter § 2-101 that “any councilmember-at large elected to city council who is a member of the minority political party . . . shall not change their voter registration political party affiliation during the term in which they were elected.”²⁸ It also would change Charter § 2-103 to require that a “councilmember-at large in a minority political party . . . must remain with the same voter registration political party affiliation for the entire

²² *See id.* ¶ 18.

²³ *Id.* ¶ 19.

²⁴ *Id.* ¶ 21.

²⁵ *Id.* (alteration in original); *see also* Pl.’s Opening Br., Ex. B.

²⁶ Ans. ¶¶ 21–22.

²⁷ Pl.’s Opening Br., Ex. C.

²⁸ *Id.*

term.”²⁹ A two-thirds majority of both chambers of the General Assembly must approve the Hackett Resolution to amend the Charter.³⁰ The General Assembly has not introduced a bill to implement the Hackett Resolution.³¹

On April 30, 2026, the Council proposed a resolution vacating Spadola’s current seat (the “Congo Resolution”).³² The Congo Resolution provides the Council’s purported legal basis for removing Spadola. The preamble states that “City Charter § 2-101 presents a clear legislative intent that no more than three (3) councilmen-at-large shall be members of the same political party in order to preserve representation for political minorities.”³³ It also states that the Council “pursuant to City Charter § 2-103, is the sole judge of the qualifications and elections of its members.”³⁴ It then concludes that “Spadola’s choice to change his political affiliation violates City Charter § 2-101 and disqualifies him from holding office . . . and his office is deemed vacant.”³⁵

Spadola filed this action against Congo and the Council (together, “Defendants”) in response to the Congo Resolution.³⁶ Spadola seeks a declaratory judgment that the Congo Resolution is void and ineffective.

²⁹ *Id.*

³⁰ *See* 22 *Del. C.* § 811; Pl.’s Opening Br., Ex. C.

³¹ Ans. ¶ 34.

³² *Id.* ¶¶ 35–36; *see also* Pl.’s Opening Br., Ex. D.

³³ Pl.’s Opening Br., Ex. D.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Dkt. 1.

At the outset of this action, Spadola moved for a Temporary Restraining Order (the “TRO Motion”), requesting that the court enjoin the Council from voting on or implementing the Congo Resolution until this action could be decided on the merits.³⁷ The court held a hearing to consider the TRO Motion on May 7, 2026 (the “TRO Hearing”).³⁸

At the TRO hearing, Defendants stipulated that the Congo Resolution would not become effective until the court determines its validity but asked the court to allow the Council to hold a vote on the resolution.³⁹ The court denied Plaintiff’s TRO for lack of irreparable harm given the Council’s stipulation.⁴⁰ The Council met to consider the Congo Resolution on May 7, 2026.⁴¹ A majority of the Council voted in favor of removing Spadola from office.⁴² The next day, the court entered Defendants’ proposed TRO, preventing the vote from taking any legal effect.⁴³

The parties agreed to expedited proceedings. They stipulated the material facts and presented their respective legal positions through cross-motions for summary judgment.⁴⁴ The court heard oral argument on July 7, 2026.

³⁷ Dkt. 3.

³⁸ Dkt. 21 (“TRO Tr.”).

³⁹ *Id.* at 29:14–23.

⁴⁰ *Id.* at 42:14–21, 43:17–44:6.

⁴¹ Ans. ¶ 63.

⁴² *See id.* ¶ 64 (indicating the resolution had eight co-sponsors, representing a majority of the Council); Pl.’s Opening Br., Ex. D.

⁴³ Dkt. 15.

⁴⁴ Dkts. 17, 19, 24.

II. LEGAL ANALYSIS

Spadola argues that the Congo Resolution is void because it exceeds the Council's authority under the Charter. The Council disputes this assertion and advances an alternative interpretation of the Charter.⁴⁵ The parties' dispute raises an issue of statutory interpretation well-suited for resolution on summary judgment.⁴⁶

⁴⁵ Spadola also argues that the Congo Resolution is void because it violates his rights under the Delaware and U.S. Constitutions. Because Spadola prevails on his first argument, the court does not reach Spadola's constitutional challenges. The court also need not resolve Defendants' political-question argument. In their opening brief, Defendants presented the political-question argument as a gating issue, contending that language in the Charter vesting the Council with authority as "sole judge of the qualifications and election of its members" deprives this court of jurisdiction over disputes regarding a Council Member's qualifications. Defs.' Opening Br. at 7. The court rejected this argument when denying Plaintiff's TRO Motion, and for good reason. See TRO Tr. at 38:24–42:12 (first discussing *Guy v. City of Wilmington*, 2020 WL 2511122, at *4 (Del. Super. May 15, 2020) (holding that interpreting the Charter's language presents a justiciable question); and then *Powell v. McCormack*, 395 U.S. 486, 547–50 (1969) (holding that the Political Question doctrine does not bar courts from determining the qualifications for office established by the Constitution and that Congress cannot create new qualifications beyond those listed in the Constitution)). In their reply brief, Defendants recast their political-question argument as follows: "If the Court determines . . . that the Charter establishes membership in a minority party is a qualification for that one at-large member . . . , the Court's inquiry ends" under the Political Question doctrine. Dkt. 28 ("Defs.' Reply Br.") at 8–9. As recast, Defendants' political-question argument does not present a gating issue. It instead serves to deprive the court of jurisdiction if Defendants win on the merits. Defendants' newly framed political-question argument thus seems to require the court to resolve the merits of the parties' dispute. The court thus turns to that project.

⁴⁶ Ct. Ch. R. 56; *Steward Health Care Sys. LLC v. Tenet Bus. Servs. Corp.*, 2023 WL 5321484, at *9 (Del. Ch. Aug. 18, 2023) (cleaned up) ("Under Court of Chancery Rule 56, summary judgment may be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); see also *State ex rel. Jennings v. City of Seaford*, 278 A.3d 1149, 1159 (Del. Ch. 2022) (stating that summary judgment is an appropriate vehicle for resolving questions of statutory interpretation (first citing *Techmer Accel Hldgs., LLC v. Amer*, 2010 WL 5564043, at

Just as the U.S. Constitution stands supreme in matters of Federal governance, and the Delaware Constitution governs state affairs, the Charter serves as Wilmington’s constitutive document governing the City’s affairs.⁴⁷ Because the “Charter stands as its constitution,” acts by the Council “must conform to, be subordinate to, not conflict with, and not exceed the charter, and can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state.”⁴⁸ Council resolutions, ordinances, and other acts that contradict the Charter, or that exceed the Charter’s grant of authority, are *ultra vires* acts.⁴⁹ *Ultra vires* acts by the Council are void; they “are legal nullities incapable of cure.”⁵⁰

When resolving the parties’ competing interpretations of the Charter, the court must “determine and give effect to legislative intent.”⁵¹ “The most important consideration for a court in interpreting a statute is the language the General

*4 (Del. Ch. Dec. 29, 2010); and then *Korn v. New Castle Cnty.*, 2005 WL 396341, at *4 n.28 (Del. Ch. Feb. 10, 2005)).

⁴⁷ See *Schadt v. Latchford*, 843 A.2d 689, 691 (Del. 2004) (“[T]he City enjoys complete powers of legislation . . . but only within the scope of the powers conferred by the General Assembly through the City’s Charter.”).

⁴⁸ *Id.* at 691–92 (citing 5 McQuillin, *Municipal Corporations* § 15.19, p.98 (3d ed.)).

⁴⁹ See *Robbins Hose Co. No. 1, Inc. v. Baker*, 2007 WL 3317598, at *8 n.49 (Del. Ch. Oct. 31, 2007) (quoting *Solomon v. Armstrong*, 747 A.2d 1098, 1114 (Del. Ch. 1999)).

⁵⁰ *Id.* at *8 &n.49 (citing *Apple Computer, Inc. v. Exponential Tech., Inc.*, 1999 WL 39547, at *15 (Del. Ch. Jan. 21, 1999)).

⁵¹ *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999).

Assembly used in writing the statute.”⁵² If the statutory language is “unambiguous, then the plain meaning of the statutory language controls.”⁵³

The parties’ dispute centers on two Charter provisions: Section 2-103 titled “Qualifications of councilmen,” and Section 2-101 titled “The election of councilmen; vacancies.”

Section 2-103 establishes the qualifications for running for and holding office. With bracketed numbers added to aid comprehension, Section 2-103 provides in relevant part:

[1] A councilman shall be a citizen of the United States, shall be a qualified elector of the city and shall have been such for at least one year prior to his election. [2] No councilman shall hold any other city office or employment during the term for which he was elected to the city council. [3] A councilman shall not be less than twenty-five (25) years of age when elected to office. [4] He shall remain a resident of the councilmanic district from which he was elected during his term of office. [5] If a councilman shall cease to possess any of these qualifications, including in the case of a councilman elected from a councilmanic district, residence in the district from which he was elected, or if he shall violate any expressed prohibition of this Charter, or if he be convicted of a crime involving moral turpitude, his

⁵² *Judicial Watch, Inc. v. Univ. of Delaware*, 267 A.3d 996, 1004 (Del. 2021) (quoting *Salzberg v. Sciabacucchi*, 227 A.3d 102, 113 (Del. 2020)) (alterations and internal quotation marks omitted).

⁵³ *Id.* (quoting *Ins. Comm’r of Del. v. Sun Life Assurance Co. of Can.*, 21 A.3d 15, 20 (Del. 2011)); see also *Friends of the H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011) (holding that where a statute uses plain language, “the sole function of the courts is to enforce it according to its terms . . . where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.” (alteration omitted)); *In re Adoption of Swanson*, 623 A.2d 1095, 1096–97 (Del. 1993) (“If the statute as a whole is unambiguous and there is no reasonable doubt as to the meaning of the words used, the court’s role is limited to an application of the literal meaning of those words.”).

office shall immediately be forfeited and become vacant. [6] . . . [7] A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand. [8] The council shall be the sole judge of the qualifications and election of its members and for this purpose shall have power to subpoena witnesses and require the production of records.⁵⁴

Breaking it down, the first four sentences of Section 2-103 impose gating qualifications for Council membership, four of which apply to at-large members. At the time of election, an at-large member must: (i) be a U.S. citizen; (ii) be at least 25 years of age; (iii) have been a qualified Wilmington elector for at least a year prior to his election; and (iv) not hold other city employment or office.⁵⁵

Some of the gating qualifications as stated in the first four sentences are expressly continuing. For example, the ban on members holding another office or employment with the City or “double dipping” applies “during the term for which he was elected to the city council.”⁵⁶ And the fifth sentence of Section 2-103 converts all gating qualifications into continuing qualifications. It states that: “[i]f a councilman shall cease to possess any of these [gating] qualifications . . . his office shall immediately be forfeited and become vacant.”⁵⁷

⁵⁴ Wilm. C. (Charter) § 2-103.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

The fifth sentence also imposes two additional qualifications to holding office—the councilman may not “violate any expressed prohibition of this Charter, or . . . be convicted of a crime involving moral turpitude.”⁵⁸

Section 2-103 further states the consequence of failing to meet its continuing qualifications. The last clause of the fifth sentence states that a failure to maintain the continuing qualifications shall be deemed forfeiture and vacancy of the seat. The seventh sentence provides that if a vacancy arises under Section 2-103, the “member charged with conduct constituting grounds for forfeiture of his office” may “demand” a “public hearing.”⁵⁹ And the eighth sentence states that during that hearing, “[t]he council shall be the sole judge of the qualifications and election of its members and . . . shall have power to subpoena witnesses and require the production of records.”⁶⁰

Section 2-101 governs how to fill council seats both in the ordinary course of elections and if a seat becomes vacant. On elections, it provides that:

At the general election . . . , one councilman shall be elected from each councilmanic district and four (4) from the city at large, together with the president of the council who shall be elected at large. Each elector shall have the right to vote for one district councilman, the president of the council, and (3) councilmen-at-large. To this end not more than three (3) candidates for councilmen-at-large *shall be nominated* pursuant to law by any party or other political body.⁶¹

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* § 2-101 (emphasis added).

As the emphasized language reflects, the plain text of Section 2-101 establishes restrictions on political affiliations of members-at-large for the purpose of nominations.⁶²

On vacancies, Section 2-101 provides:

When a vacancy occurs in the office of councilman, the city council shall certify that a vacancy exists. A vacancy occurring more than thirty (30) days prior to the date of a primary election in which city officers are nominated shall be filled in the next succeeding general election held in the city. Councilmen elected in this manner to fill a vacancy shall take office on the first Tuesday following their election. *If a vacancy occurs* in the period less than thirty (30) days before the date of a primary election or pending the election of a councilman to fill a vacancy as herein provided, the city council, by a majority vote of all its remaining members, shall appoint a qualified person to fill the vacancy until a person is elected by the voters for the unexpired term. *If the vacancy occurs* in the office of a district councilman, the new member shall come from the same councilmanic district; but *if the vacancy occurs* in the office of a councilman-at-large, the new member may come from any place in the city. Council in filling a vacancy must appoint a member of the same political party as that of the councilman whose office has become vacant.⁶³

As the emphasized language reflects, Section 2-101 provides instructions for “if” and “when” a vacancy occurs.⁶⁴ It does not purport to impose continuing obligations on any councilman or consequences for failing to meet them. In that way, this portion of Section 2-101 is a vacancy-filling, not a vacancy-creating provision.

⁶² *Id.*

⁶³ *Id.* (emphases added).

⁶⁴ *Id.*

When Spadola ran for office, he was a U.S. citizen, over 25 years of age, had been a qualified elector for a year, and did not hold other city employment or office.⁶⁵ He still meets these gating qualifications. And he has not violated an express provision of the Charter nor committed a crime involving moral turpitude. So Spadola qualifies for continued membership under Section 2-103.⁶⁶ Defendants do not dispute that Spadola met and maintained the express qualifications of Section 2-103.

Nor do Defendants dispute that Spadola's nomination complied with Section 2-101. The Republican Party nominated Spadola and one other candidate for councilmen-at-large and thus did not exceed the three-nominee cap.⁶⁷

Defendants argue, however, that Section 2-101 must be read with Section 2-103 to imply additional qualifications for holding office. According to Defendants, Section 2-103 sets out the general qualifications for council membership, and Section 2-101 sets out specific qualifications for at-large members by requiring that one of the at-large seats be held by a member of a minority party. Defendants argue that

⁶⁵ Ans. ¶ 58 (stating that Spadola is a U.S. citizen, over 25 years old, and a Wilmington resident). Neither party has stated that Spadola holds any other city employment or office nor disputed Spadola's qualification as a Wilmington elector for one year prior to his 2024 election. *See generally id.*

⁶⁶ *See id.* ¶¶ 11 (admitting that Spadola is a member at-large), 13 (admitting that Spadola was re-elected in November 2024), 14 (admitting that the Department of Elections for New Castle County certified his election), 55 (admitting Spadola has not been convicted (or even charged with) any crime), 57 (admitting Spadola has not been found liable for (or even accused of) treason, bribery or other crime or misdemeanor).

⁶⁷ *Id.* ¶ 13.

Sections 2-103 and 2-101 together imply a prohibition on post-election party-switching akin to what the Hackett Resolution imposes expressly.

Defendants' interpretation finds no support in the Charter's structure. Section 2-103, titled "[q]ualifications of councilmen," plainly states the gating and continuing qualifications for office.⁶⁸ Section 2-101 titled "[t]he election of councilmen; vacancies" does not expressly reference or impose qualifications.⁶⁹ These two provisions thus regulate two different actors. Section 2-103 regulates Members by establishing qualifications. Section 2-101 regulates the Council by establishing rules for administering elections and filling vacancies.

Defendants' interpretation also finds no footing in the Charter's plain language. Section 2-103 imposes both gating and continuing qualifications. It expressly designates continuing qualifications in three ways. First, as to the ban on double dipping, it applies "*during the term* for which he was elected to the city council."⁷⁰ Second, as to the district-residency requirement, it states that the councilman "*shall remain* a resident of the councilmanic district from which he was elected *during his term* of office."⁷¹ Third, as to the consequences for failing to meet the qualifications, it states that a vacancy occurs "[i]f a councilman *shall cease to possess* any of" the gating qualifications.⁷² In contrast, Section-101 contains no

⁶⁸ Wilm. C. (Charter) § 2-103.

⁶⁹ *Id.* § 2-101.

⁷⁰ *Id.* § 2-103 (emphasis added).

⁷¹ *Id.* (emphases added).

⁷² *Id.* (emphasis added).

similar language (framed affirmatively, “during,” “remain,” or framed negatively, “shall cease”) signaling continuing requirements.⁷³

As the Delaware Supreme Court has held, by “affirmatively or negatively designat[ing]” something—here, the continuing qualifications for office—a statute gives rise to “an inference that all omissions were intended by the legislature.”⁷⁴ Section 2-103 expressly designates the continuing qualifications to hold office. Section 2-101 is silent on this issue. Given the clear designations of Section 2-103, the court must infer that the General Assembly intended the omission of express language establishing continuing qualifications in Section 2-101.⁷⁵

The negative implication is even stronger given that post-election party-switching prohibitions are commonly studied⁷⁶ and easy enough to formulate

⁷³ *Id.* § 2-101.

⁷⁴ *Leatherbury v. Greenspun*, 939 A.2d 1284, 1291 (Del. 2007) (quoting Norman J. Singer, *Sutherland Statutes and Statutory Construction*, § 4915 (3d Ed.)).

⁷⁵ *See Id.*

⁷⁶ *See, e.g.*, Jonathan S. Gould, *The Law of Legislative Representation*, 107 VA. L. REV. 765, 788 (2021) (“A number of national parliaments, for example, operate under ‘anti-defection’ laws. These sorts of rules discipline or even expel legislators who do not vote the party line.”); India Const. Tenth Schedule art. 2 cl. 1(a) (stating that a legislator “belonging to any political party shall be disqualified . . . if he has voluntarily given up his membership of such political party”); Constitution of the Republic of Singapore Dec. 31, 2021, art. 46 § 2(b) (stating that a legislator’s seat “shall become vacant . . . if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election”); S.B. 748, 156th Gen. Assemb., Reg. Sess. (N.C. 2023) (a proposed anti-defection law in North Carolina stating that “if an elected or appointed member of the General Assembly changes party affiliation during the member’s term of office with more than six months remaining on the member’s term, that member’s office shall be deemed vacated”). Party defection, especially post-election, while very rare, was not unheard of in American politics when Sections 2-101 and 2-103 were debated and adopted. *See* Timothy P. Nokken & Keith T. Poole, *Congressional Party Defection in American History*, 29 LEGIS. STUD.

expressly, as the Hacket Resolution reflects. Defendants do not explain why the drafters did not use a clear formulation that was readily available.⁷⁷

Lacking support in the structure or plain language of the Charter, Defendants point to Section 2-101's purpose—to promote minority-party representation on the Council.⁷⁸ But there are many ways to advance that purpose.⁷⁹ Section 2-101 promotes minority-party representation by imposing party-based restrictions on the Council's ability to structure elections and fill vacancies. It stops short of imposing party-based restrictions on a duly elected individual's ability to freely associate. Thus, even reading the Charter as whole and giving every provision effect does not justify converting Section 2-101's express guidance on elections and vacancies into a secret prohibition on post-election party-switching.

Q. 545, 551–55 (2004). The rarity of party defection supports the conclusion that Sections 2-103 and 2-101 do not address the issue.

⁷⁷ See generally *Stockman v. Heartland Indus. P'rs, L.P.*, 2009 WL 2096213, at *7 (Del. Ch. July 14, 2009) (rejecting defendant's contract interpretation where defendant failed to explain why a “clear formulation was not used if [that] was the intent” and where it “would have been easy to write” the provision “to accomplish the end” that defendant urged).

⁷⁸ Defs.' Opening Br. at 11–17 (invoking the whole-text canon, surplusage canon, and absurdity doctrine).

⁷⁹ See generally Gabrielle Schust, *Snake Oil And Second Chances*, 103 N.C. L. REV. 247, 261–77 (2024) (describing the benefits and drawbacks of the many potential methods to protecting voters' expectations and right to representation, including (i) “sore loser” laws that prohibit candidates from running in more than one party primary, (ii) civil and contract remedies against candidates who switch parties, (iii) tacit understandings between legislators to expel members who switch parties, (iv) citizens using recall elections to punish party-switchers, and (v) vacancy filling provisions that would trigger upon a member switching parties).

Defendants rely on the Charter’s drafting history as a fallback if the court deems the Charter ambiguous.⁸⁰ Because the Charter is not ambiguous, the court may not look beyond its plain language. Were the court to consider the drafting history, it is neutral at best. Defendants assert correctly that the 1961 Committee and the Charter’s drafters had concerns about single-party governance. For that reason, they structured the elections to result in at least one at-large minority-party member. Nowhere does the legislative history manifest an intent to create a post-election party-switching provision. The drafters chose to address concerns over minority representation through elections, not continuing qualifications.

Teller v. Jennings supports this conclusion.⁸¹ There, the Pennsylvania district attorney sought to expel from office a county commissioner who switched parties post-election. As here, the party seeking disqualification relied on election procedures designed to encourage minority representation.⁸² The trial court held that no statute prohibited the official from switching parties, and thus the commissioner was free to do so.⁸³ The Supreme Court of Pennsylvania affirmed on appeal, holding that the provision at issue encouraged minority representation through the election process, but it did not “insure . . . continuance of minority representation.”⁸⁴ The court further

⁸⁰ Defs.’ Opening Br. at 17–23.

⁸¹ *Com. ex rel. Teller v. Jennings*, 186 A.2d 916 (Pa. 1963).

⁸² *Id.* at 918. The county election rules provided that the three candidates with the highest vote totals would be elected, but each elector could only vote for two candidates. *Id.* at 917.

⁸³ *Com. ex rel. Teller v. Jennings*, 53 LUZ. L.R. 43, 51 (Pa. Ct. C.P. 1962).

⁸⁴ *Teller*, 186 A.2d at 917–18 (footnote omitted).

held that “[o]nce a person assumes public office he becomes the representative of all his constituents and not merely those who voted for him or happen to belong to his political party.”⁸⁵

The court in *Teller* thus drew a distinction between election provisions that encourage minority representation and post-election party-switching prohibitions that ensure it. The court held that the former does not constitute the latter. So too here.

Moreover, the trial court in *Teller* issued its ruling on August 14, 1962, the day before the 1961 Committee transmitted its recommended amendments to the Charter. The Supreme Court of Pennsylvania released its decision in *Teller* on January 8, 1963, over a year before Wilmington voters ratified the Charter. And the 1961 Committee based its recommendations on a Pennsylvania municipal charter. It is thus fair to conclude that the drafters of Section 2-102 were aware of *Teller* and its holdings. If the drafters sought to impose a post-election party-switching prohibition, why would they adopt a provision that *Teller* held ineffective toward that goal? Defendants offer no answer.

In sum, the Charter does not expressly impose a post-election party-switching prohibition, and this decision will not imply one. Thus, Plaintiff has proven that the Council exceeded its authority under the Charter by purporting to remove him for switching parties.

⁸⁵ *Id.* at 918.

Plaintiff seeks permanent injunctive relief preventing the Congo Resolution from taking effect. To secure a permanent, prohibitive injunction, “a party must show (i) actual success on the merits; (ii) that it would suffer irreparable harm if the injunction is not granted; and (iii) that the balance of the equities favors it.”⁸⁶

Plaintiff has met this burden. Plaintiff has prevailed on the merits by demonstrating that the Congo Resolution exceeds the Council’s authority. No other relief can remedy the irreparable harm to Plaintiff that would result from losing his seat on the Council, his ability to represent his constituents, and the opportunity to vote his conscience. These important interests balance the equities in Plaintiff’s favor. Therefore, the court permanently enjoins Defendants from implementing the Congo Resolution.

III. CONCLUSION

The Congo Resolution exceeds the Council’s authority. Plaintiff’s motion for summary judgment is granted. Defendants’ motion for summary judgment is denied.

⁸⁶ *In re COVID-Related Restrictions on Religious Servs.*, 326 A.3d 626, 640 (Del. 2024) (quoting *North River Ins. Co. v. Mine Safety Appliances Co.*, 105 A.3d 369, 379 n.47 (Del. 2014)).