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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA *and* LORRAINE HAW,	:	
Petitioners	:	**No. 578 MD 2019**
v.	:	
KATHY BOOCKVAR, The Acting Secretary of the Commonwealth,	:	**Electronically Filed Document**
Respondent	:	

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR SUMMARY RELIEF

Respectfully submitted,

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I. **INTRODUCTION**

Petitioners' case fails under the governing *Grimaud* standard that holds that a proposed Constitutional Amendment satisfies the Constitution so long as it relates to a single subject and does not facially alter any existing Constitutional rights. *See Grimaud v. Com.*, 865 A.2d 835, 842 (Pa. 2005). In light of this reality, Petitioners urge this Honorable Court to create a new standard—a "modern standard"—that works to invalidate the Crime Victims' Rights Amendment ("the Amendment"). While they maintain that it is coextensive with *Grimaud*, Petitioners' "modern standard" runs directly afoul of the binding precedent. It asks the Court to make policy considerations, and to look to a proposed amendment's implicit impact on other rights—considerations expressly rejected in *Grimaud*. Petitioners' attempt to create a new standard should be rejected.

In applying their "modern standard," Petitioners spend the majority of their brief improperly pondering implicit impacts of the proposed Amendment. They speculate, just like the unsuccessful challengers in *Grimaud*, about potential effects of the Amendment, sparing no hyperbole, and drawing every reasonable inference against the Amendment. They claim that the criminal justice system will come to a halt over the Amendment, giving no benefit of the doubt to the courts to properly apply the Amendment. *See*, Testimony of Intervenor Greenblatt, tr. 63 ("Do you doubt the ability of the Court to apply these provisions consistently?"

"Absolutely.").[1] They ignore that the majority of the rights already exist in the Crime Victims' Rights Act or already in the Constitution (*i.e.*, the Right to Privacy).

Petitioners' thinly veiled attempt to invalidate the Amendment on public policy grounds should be rejected under governing law. There is no dispute that the Amendment was properly placed on the ballot, following consideration over two years in both houses. Neither the Amendment, nor the wording of the ballot question, violates the Constitution. Petitioners' Application for relief should, therefore, be denied.

II. COUNTER-STATEMENT OF THE FACTS

The harms that Petitioners contend would befall the Commonwealth if the Amendment is upheld would have already happened, because the majority of the rights in the Amendment already exist to some extent.

The Pennsylvania Crime Victims Act (CVA) was enacted in Pennsylvania in 1998. For over twenty years, the CVA has provided for a Victims' Bill of Rights that sets forth rights that mirror those in the Amendment. Rights contained in the CVA Bill of Rights include the right "[t]o be notified of certain significant actions

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[1] This testimony is based upon bald speculation, which Mr. Greenblatt admitted, underpins his testimony. *See* P.I. Transcript, pgs. 70-71 ("I'm trying to say that is the irreparable harm of this law, so, of course, there is some speculation to it."). Mr. Greenblatt, a criminal defense attorney, is in no special position to speculate regarding how judges will rule in future cases based upon future facts and circumstances.

and proceedings within the criminal and juvenile justice systems pertaining to their case," and the right "[t]o *not be excluded* from any criminal proceeding..." 18 P.S. § 11.201 (emphasis added). The CVA allows a victim to take actions that may negatively impact the outcome of an offender's criminal case. For example, it provides victims with the opportunity to submit prior comment before pre-trial disposition in cases involving bodily injury or burglary; and, the chance to submit a victim-impact statement that "shall" be considered by the court in fashioning a sentence. *Id.* § 11.201(5).

The CVA provides ongoing rights to victims following an offender's conviction. Victims have the right to provide comment on an offender's potential "pardon, parole or community treatment center placement," including whether an offender should be allowed to attend motivational bootcamp. *Id.* § 11.201(7)(i)-(iii). Victims have notification rights related to an inmate's escape and apprehension. *Id.* Further, the CVA gives victims the right, "[t]o be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property…" *Id.*§ 11.201(6).

Other protections enshrined in the Amendment are rooted in established rights and principles. For instance, the Right to Privacy already exists in the Pennsylvania Constitution. Indeed, our Supreme Court has held that "Article 1, Section 1 of the Pennsylvania Constitution provides even 'more rigorous and

explicit protection for a person's right to privacy' than does the United States Constitution." *Pennsylvania State Educ. Ass'n v. Commonwealth , Dep't of Cmty. & Econ. Dev.*, 148 A.3d 142, 151 (Pa. 2016).

Against this backdrop, the Amendment was considered and crafted by the General Assembly over the course of two years. The Amendment *does not* delete anything from the Constitution. The Amendment *does not* change any existing language in the Constitution. Rather, the Amendment adds a provision to Article 1 of the Constitution, creating a new Section "9.1." titled "Rights of victims of crime." *See* Joint Resolution 2019-1.

The Amendment's purpose is to secure rights for victims in the "criminal and juvenile justice systems." The Amendment requires that victims receive notification of: public proceedings, pre-trial dispositions, parole, and escape. It states that victims have a right to be heard, *if* their rights are implicated, in proceedings such as sentencing, parole hearings and pardon hearings. The Amendment provides for basic protections as part of the process, including consideration of the safety of the victim when bail is set. Victims continue to be able to refuse interviews, depositions and discovery requests in criminal cases under the Amendment.

The Amendment tasks the courts with enforcement responsibility. Victims are *not* able to pursue monetary damages under the Amendment, however. Nor

does the Amendment make the victim a party to a criminal proceeding. Victims are limited to include those against whom a criminal offense is committed or who is directly harmed by a crime. The Amendment states that the rights therein shall exist "as further provided and as defined by the General Assembly…" Joint Resolution 2019-1.

The Amendment was proposed to the public by way of a ballot question crafted by the Secretary. The ballot question was placed on the November 5, 2019 Municipal Election ballot. The votes cast on the ballot question have not been officially tabulated or certified per the Preliminary Injunction Order.

III. ARGUMENT

Petitioners' lawsuit is a wholesale attempt to create new law. Their challenge to the Amendment fails under *Grimaud* so they proffer a new "modern standard." The "modern standard" analyzes implicit impacts and adopts a novel definition of the word "facially," in direct contravention of *Grimaud*. Additionally, Petitioners ask this Court to adopt Kentucky's rule regarding the form of ballot questions, which rule contradicts long-standing law and tradition in Pennsylvania. Petitioners' attempts to quietly overturn the law on the books should be rejected.

A. THE AMENDMENT PERTAINS TO A SINGLE SUBJECT MATTER, SERVING ONE GOAL—SECURING VICTIMS' RIGHTS IN CRIMINAL CASES IN WHICH THEY SUFFERED DIRECT HARM.

The law at-issue, the separate vote requirement of Article 11, Section 1 of the Pennsylvania Constitution, is technical in-nature. It requires that: "[w]hen two or more amendments shall be submitted they shall be voted upon separately." Pa. Const. art. XI, § 1. It does not call for consideration of the wisdom of an amendment nor does it set word limits or restrictions on the number of parts that an amendment may contain.

Yet, that is the standard Petitioners apply. They argue that multiple parts equate to multiple subject matters. They state that the Amendment is unconstitutional because it grants numerous "rights" to victims, which rights are separated by "seven semicolons." Brief, p. 21. They argue that the Amendment contains "plurals, multiple paragraphs, and even bullet points to set off" the "new rights." *Id.* at 22. They adduce the word "including" as further proof that the Amendment sets forth not one, but more than one, right for victims.

Petitioners could have avoided their analysis of the Amendment's punctuation and grammar because it is undisputed that the Amendment sets forth plural rights. The fact that there are multiple rights—or parts—does not render the Amendment void, however. The law is not concerned with the number of parts in an Amendment, but, rather, whether those parts are related.

Indeed, the Supreme Court of Pennsylvania has adopted a single subject test, which inherently acknowledges that an amendment may have multiple parts necessitating an examination of their commonality. The single subject test examines "the interdependence of the proposed constitutional changes in determining the necessity for separate votes." *Grimaud*, 865 A.2d at 841. In doing so, the high court adopted a "common-purpose formulation" to inquire into whether the parts are sufficiently related to "constitute a consistent and workable whole on the general topic embraced." *Id.* It posits whether there is a "rational linchpin" of interdependence, or whether all of the proposed changes "are germane to the accomplishment of a single objective." *Id.* (citing *inter alia* other state supreme court decisions, including *Fugina v. Donovan*, 104 N.W.2d 911, 914 (Minn. 1960) (upholding amendment containing sections that, although they could have been submitted separately, were rationally related to a single, purpose, plan, or subject)). This "single subject test" is the standard that controls—notably, there is no mention of an examination of the law's "effects" as part of the analysis.

Here, the Amendment pertains to a single subject matter—securing victims' rights in the criminal cases in which they suffered direct harm. Every subpart of the Amendment relates to this goal and serves this singular objective. The rational linchpin of interdependence is easily identified as the provision of basic protections for victims, and the Amendment provides for a workable framework on the general

topic. It would make no sense as a practical matter, and the law does not require, that each individual right be separately voted upon to eventually create the desired framework.

Petitioners' attempt to interpret *Grimaud* as applying a narrow approach to the single subject test should be rejected as unsupported by the law. Petitioners allege the parts are not related because they concern different aspects of the criminal justice process. They argue that, for example, because the Amendment provides a victim the right to be notified of public proceedings *and* to have their safety considered when bail is set *and* to have restitution of their property, that different subject-matters have been invoked. But, Petitioners' interpretation is an absurd application of the law. The Constitution requires separate votes for separate amendments—not a dissection of an amendment followed by separate votes on its parts. Stated otherwise, the parts should not be viewed so narrowly as to lose sight of a general plan or framework. This is counterproductive to the intent of the General Assembly, and, ultimately, the will of the people in attempting to advance a new Amendment that encapsulates a general subject-matter and framework.

In sum, the Petitioners' argument, resting on form and punctuation, fails. The bottom line is that all of the parts serve the singular purpose of providing victims rights in their criminal cases, which is all that the law requires.

B. **<u>THE AMENDMENT DOES NOT FACIALLY ALTER ANY EXISTING PROVISIONS OF THE CONSTITUTION</u>.**

The Amendment does not actually facially amend any other part of the Constitution. As a result, Petitioners have to facially amend other parts of the Constitution themselves in their brief to make their case.

To be sure, the standard enunciated by the Supreme Court is clear. In order to avoid the trouble created in exploring implicit implications, our high Court has ruled that "[t]he test to be applied is not merely whether the amendments might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution." *Grimaud*, 865 A.2d at 842. If the word facially was not clear enough, the Court reiterated that "[t]he question is whether the single ballot question *patently* affects other constitutional provisions, not whether it implicitly has such an effect, as appellants suggest." *Id.* (emphasis added). The Court used the word facially literally, as illustrated by the fact that it held that an existing right in that case was not effectively amended by the proposed amendments because the "language is the same now as it was prior to the amendments." *Id.*

Under this standard, the Amendment undisputedly passes muster. It simply does not facially or patently change, alter or delete any existing provision of the Constitution. It does not even reference or cite any other part of the Constitution. The analysis should end here under *Grimaud*.

This case is not akin *Bergdoll v. Kane*, 731 A.2d 1261 (Pa. 1999), where the proposed amendment not only added language to the Constitution by way of a new provision, but also *deleted* existing language from the Constitution. Specifically, there, the amendment, on one hand, removed an accused's right to face-to-face confrontation, while on the other hand, added a provision that shifted courtroom procedures regarding the manner in which children can testify from the Judiciary to the General Assembly. *Id.* Nothing of the sort happened in this case.

Petitioners identify three provisions in their brief that the Amendment purportedly "expressly alters." But, there is nothing "express" about these purported alterations at all. Oppositely, they are all premised upon speculation of the implicit impacts of the law, coupled with rank pessimism of the ability of the Courts to apply the amendment in a rational way.

To be sure, Petitioners first claim that the Amendment creates an "express exception" to the judiciary's authority over court procedure. Petitioners argue that there is an express exception in the Amendment, not because the Amendment actually contains an express exception, but by way of the creation of a right to privacy for victims. They argue that the inclusion of a right to privacy means that a victim *could* "demand closed proceedings," and accepting this premise as unequivocally true, Petitioners conclude that an exception has, therefore, been made to Article I, Section 11's requirement that courts be open to all. Brief, p. 29.

Putting aside the obvious reality that there is nothing "express" about this purported exception, this argument also lacks logical foundation. There already exists in the Pennsylvania's Constitution a Right to Privacy, and the same argument could be made in connection with the existing right. Courts apply the laws in a rational manner, however, and are tasked with balancing considerations and rights. *See Stenger v. Lehigh Valley Hosp. Ctr.*, 609 A.2d 796, 800 (Pa. 1992) ("As the right of privacy is a well-settled part of the jurisprudential tradition in this Commonwealth, we are mindful, as ever, to avoid unjustified intrusions into the private zone of our citizens' lives. We must bear in mind, however, that the right is not an unqualified one; it must be balanced against weighty competing private and state interests.").

Petitioners next claim that the Amendment expressly amends the right to compulsory process. Again, Petitioners contend that there is an express alteration to the existing right, not because there actually is an express alteration to the existing right, but because the Amendment guarantees the "safety, dignity, and privacy" of victims, and because the Amendment continues to permit victims to refuse an interview, deposition or other discovery request in the criminal justice process. Brief, pp. 31-32. Petitioners' argument is that an offender's right to compulsory process will incidentally be "expressly" impacted by these rights.

Petitioners' contentions are troublesome. In addition to the fact that there is no express alteration, Petitioners exaggerate the scope of the Amendment. As the law currently stands, victims, or anyone for that matter, can refuse an interview or discovery request in the criminal justice process. The Amendment does not depart from that status quo. Yet, Petitioners would have this Court believe that the Amendment provides that a victim could refuse a court order or subpoena. This assertion is wholly baseless. Although a victim can refuse an interview, he or she can still be compelled by the court to appear, and there is no support in the Amendment to hold otherwise.

Intervenor Greenblatt admitted that the Amendment, in his opinion, would not prevent him from seeking judicial intervention to gather evidence. He testified as follows at the Preliminary Injunction hearing:

> Q. If a prosecutor has cell phone records, medical records, social media posts, anything that constitutes exculpatory evidence, that has to be turned over to you, doesn't it?
>
> A. Yes. Key word is if they have it. Often in my experience, they do not have it.
>
> Q. And you at that point have the ability to subpoena a cell phone provider. Isn't that right?
>
> A. If I know who the cell phone provider is, I can subpoena it. Ordinarily in discovery you do not know that. They don't like who—the cell phone number of the person or provider. That is why the way you get that information is by bringing a motion in court because the prosecutor doesn't have that information.

> Q. [T]here's nothing in the proposed amendment that prohibits you from filing a motion with the Court to obtain a court order to obtain that information, is there?
>
> A. To file the motion? No.

P.I. Transcript, pp. 56-57. There is no language in the Amendment, let alone explicit language, that supports the bold proposition that the Amendment allows victims to avoid the reach of the judiciary, and Mr. Greenblatt admits as much.[2] In sum, there is no implicit amendment, let alone a facial or "express" amendment, to the compulsory right to process.

Finally, Petitioners allege that the Amendment expressly "alters an accused's right to pretrial release." Again, there is no express, facial or patent alteration to Article 1, Section 14 of the Pennsylvania Constitution, governing bail, made by the Amendment. Yet, Petitioners, again, argue that express means

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[2] Mr. Greenblatt goes on to testify that he does not believe the motion would be granted under the new law, but his testimony is nothing more than speculation and conjecture as to how the court may apply the law. Mr. Greenblatt admitted that his testimony was based upon speculation and his unilateral interpretations of the law, including about whether the Amendment encompassed court orders. *See* Transcript, pgs. 70-71 ("I'm trying to say that is the irreparable harm of this law, so, of course, there is some speculation to it."). Mr. Greenblatt's lay opinion should not be given any weight over the Respondent's position that the Amendment does not impact other rights, nor accepted as fact. At best, there is a question of fact created by Mr. Greenblatt's thoughts on the impact of the Amendment. *See e.g.,* Amicus Curiae Brief of Pennsylvania District Attorney's Association.

implicit,[3] and that the Amendment does impact the right to bail as a matter of law. This argument fails under *Grimaud* absent the necessary facial alteration.

Indeed, the challengers in *Grimaud* advanced the same arguments as the Petitioners in this case. The amendment at-issue in *Grimaud* broadened the exceptions to bail (by expanding the capital offenses exception to include life imprisonment and adding preventative detention to the purpose of bail), and the challengers alleged that a multitude of other rights were "effectively" impacted including: Article I, § 1's right to defend one's self, Article I, § 9's presumption of innocence; and, Article I, § 13's right to be free from excessive bail. Their argument was unavailing. The High Court noted that, "merely because an amendment 'may possibly impact other provisions' does not mean it violates the separate vote requirement." *Grimaud*, 865 A.2d at 842. It stated that, "[i]ndeed, it is hard to imagine an amendment that would not have some arguable effect on another provision; clearly the framers knew amendments would occur and provided a means for that to happen." *Id*. The same holds true here.

Further, Petitioners' arguments with regard to bail are, again, underpinned by hyperbole. Petitioners argue that consideration of the victim's safety in setting

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[3] A quandary befitting Alice in Wonderland: "'When I use a word,' Humpty Dumpty said, in a rather scornful tone, 'it means just what I choose it to mean—neither more nor less.'" "'The question is,' said Alice, 'whether you can make words mean so many different things.'" Lewis Carroll, Through the Looking-Glass (1871).

bail will trample the "bedrock constitutional provision." Yet, the Constitution, as they acknowledge, already provides that bail should be granted "unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great." Pa. Const. art. I, § 14. The new victims' right providing that safety of the victim should merely be *considered* in setting bail folds nicely into, and is less burdensome than, the rule already governing bail.

For the foregoing reasons, Petitioners' argument that the Amendment facially amends existing provisions of the Constitution fails.

C. **PETITIONERS' SPECULATIVE PONDERINGS ABOUT THE PURPOSE AND EFFECT OF THE AMENDMENT ON OTHER CONSTITUTIONAL PROVISIONS ARE IRRELEVANT AS A MATTER OF LAW AND NOT PROPERLY BEFORE THIS COURT**.

In addition to arguing that the Amendment facially alters the Constitution in the three foregoing ways, Petitioners include a section in their brief wherein they argue to this Court that the "purpose and effect" of the Amendment is to "alter multiple other sections of the Constitution." *See* Brief, p. 37.

This argument cannot possibly square with *Grimaud*—unless, of course, Petitioners are asking this Court to overrule the Supreme Court. As discussed, the holding of the Supreme Court could not be any more clear—a proposed amendment will not be deemed to alter any existing rights unless it "facially" and

"patently" does so. It must literally change the language of the current provision. *Grimaud* expressly rejected that the "purpose and effect" of a proposed amendment should be examined, stating that it is not enough for an amendment to "implicitly [have] *such an effect*." *Grimaud*, 865 A.2d at 842 (emphasis added). The amendment here simply does not change any existing language in any manner whatsoever. No argument to be proffered under the binding case law makes the Petitioners' claim valid as a matter of law, due to the absence of the requisite patent and facial change to the Constitution. Petitioners' speculations about the impacts of the Amendment, and creative rewritings of the Constitution, do not change this reality. They are improper under *Grimaud*.

To the extent that *Bergdoll* appears to hold otherwise, it has been overturned by the later precedent of *Grimaud*. Indeed, Justice Cappy, in his *Grimaud* dissent, noted that it obviated *Bergdoll*. And, regardless, Petitioners' overstate *Bergdoll* holding. As previously noted, in *Bergdoll*, the court held that the proposed amendment violated the separate vote requirement because it not only added a new provision to the Constitution, but also facially deleted an existing provision. It, on one hand, removed an accused's right to face-to-face confrontation, while, it, on the other hand, added a provision that shifted courtroom procedures regarding the manner in which children can testify from the Judiciary to the General Assembly. *Bergdoll,* 731 A.2d at 1269-70. The deletion of the existing right was particularly

dispositive in that case, coupled with the addition. The Supreme Court also did not undertake to establish a bright-line standard as to when a proposed amendment amends other provisions as a matter of law—as the Court has since done through *Grimaud*.

Finally, although irrelevant, the "purpose and effect" of the Amendment is not to undermine every single other existing provision of the Constitution having to do with criminal rights as Petitioners would lead the Court to believe. The Amendment is intended to co-exist with all existing rights (as evidenced by the fact that it does not facially alter any existing right), and can co-exist with all existing rights. This is illustrated by the fact that the CVA has been the law of the Commonwealth since 1998—providing for many of the rights being enshrined in the Amendment—including the right to be notified of and not be excluded from any proceeding. The CVA has never been deemed to be inconsistent with existing constitutional rights. Moreover, Pennsylvania has a strong right to privacy that is even more protective than its federal corollary. None of the exaggerated concerns complained of by the Petitioners have come to fruition over the decades that these laws have been in place.[4]

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[4] As an aside, Petitioners find it particularly offensive that the Amendment provides that victims be "treated with fairness and respect for the victim's safety, dignity and privacy." They claim that this phrase alone undermines the majority of the Pennsylvania Constitution. Brief, pp. 38-48. Beyond the fact that the precepts are thankfully commonly accepted, and are already in application as a function of

Petitioners' argument that the purpose and effect of the Amendment should be examined should be rejected under binding precedent. And, even if the Court were to consider the purpose and effect of the Amendment, it is not to undermine the criminal justice system, it is merely to secure basic rights for victims suffering through the criminal justice process.

D. **PENNSYLVANIA LAW DOES NOT REQUIRE THAT THE FULL TEXT OF A PROPOSED AMENDMENT BE SET FORTH ON THE BALLOT.**

Petitioners admit that the Pennsylvania Supreme Court has held that the ballot need not contain the full text of proposed amendment. *See* Brief, p. 50 (citing *Grimaud*). Yet, they ask this Court to deviate from precedent and apply the law of Kentucky. This request should be denied in favor of binding precedent.

For example, in addition to *Grimaud*, in *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016), the Supreme Court noted that "the Constitution does not speak to the wording of ballot questions but merely provides the General Assembly with the power to decide the manner and time to which to present proposed constitutional amendments to voters." *Id.* at 1141. It affirmed that the General Assembly

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our civilized society and justice system, this language is not defective to the extent that it is general. Other rights exist that are general in nature, including, for example, the Environmental Rights Amendment, and its mandate of clear air and water. It has not been held unconstitutional as too lofty, or as requiring absurd results with respect to other rights.

correctly delegated the job of crafting the question in an abbreviated form to the Secretary. *Id.*

This Court has also so ruled. In *Bergdoll v. Commonwealth*, 858 A.2d 185 (Pa. Cmwlth. 2004), *aff'd*, 874 A.2d 1148 (Pa. 2005), this Court described the amendment procedure stating that, "the General Assembly shall prescribe the manner in which the proposed amendments are to be submitted to the qualified electors. Pursuant to this authority and appearing in our Constitution as early as 1874, the General Assembly directed, in the relevant part of Section 605 of the Election Code, [25 P.S. §§ 2600 – 3591] that "proposed constitutional amendments shall be printed on the ballots or ballot labels in brief form to be determined by the Secretary of the Commonwealth with the approval of the Attorney General." *Bergdoll v. Commonwealth*, 858 A.2d at 194-95. This Court reiterated that, "[i]n light of the Constitution's grant of authority to prescribe the manner in which the amendments shall be presented to the electorate, the General Assembly quite properly directed in the Election Code that proposed amendments to the Constitution shall be presented as ballot questions composed by the Secretary." *Id.* at 195.

Under the plain language of our Constitution and *Bergdoll*, among other authority, the Petitioners' claim fails. And, Petitioners cannot overcome the clear

language of our Constitution and our cases by reference to a Kentucky case. And, indeed, that case is distinguishable.

In *Westerfield v. Ward*, 2019 WL 2463046, at *7 (Ky. June 13, 2019), the Supreme Court of Kentucky considered whether its Constitution required that the full text of a proposed amendment be set forth on a ballot. In undertaking to make the determination, the Court noted that it had only ever considered the question only once before in a 1951 case (dissimilarly from Pennsylvania's long-standing precedent and tradition). The court ruled that, ultimately, the Kentucky Constitution did require publication of the entire text. The Kentucky Constitution provides that:

> [S]uch proposed amendment or amendments shall be submitted to the voters of the State for their ratification or rejection at the next general election for members of the House of Representatives, the vote to be taken thereon in such manner as the General Assembly may provide...

Ky. Const. § 257. The Court ruled that "in such manner as the General Assembly may provide" modified "the vote to be taken." In other words, the Kentucky Constitution charges the General Assembly with the logistics of how the vote is taken, not with how the amendment should be proposed.

The Pennsylvania Constitution does not contain identical language. The Pennsylvania Constitution states that:

> [A]nd such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three

> months after being so agreed to by the two Houses, as the General Assembly shall prescribe...

Pa. Const. art. XI, § 1. In the Pennsylvania Constitution it is clear that it is the manner that amendments shall be proposed to the electorate is within the purview of the General Assembly. *See Costa v. Cortes*, 142 A.3d 1004 (Pa. Commw. Ct. 2016), aff'd, 636 Pa. 508, 145 A.3d 721 (2016) (noting that it is the "General Assembly's exclusive power under Article XI, section 1 of the Pennsylvania Constitution to prescribe both the time at which and manner by which the Secretary is to submit [a proposed amendment] to the qualified electors of this Commonwealth for their consideration."). Unlike the Kentucky Constitution, there is no other object to modify in the sentence in light of the comma structure.

Because binding Pennsylvania law holds that the entire text of a proposed amendment need not be printed on the ballot, and because the *Westerfield* case is non-binding and distinguishable, judgment should be entered in Respondent's favor on this claim.

E. <u>THE BALLOT QUESTION FAIRLY, ACCURATELY, AND CLEARLY APPRISES THE VOTERS OF THE AMENDMENT TO BE VOTED ON</u>.

Petitioners essentially argue that the ballot question can only fairly, accurately and clearly apprise voters of the amendment to be voted on if the entire text of the amendment is set forth on the ballot. Petitioners argue that the "ballot question clearly does not capture all of the components of proposed Section 9.1."

Brief, p. 52. Again, there is no requirement under Pennsylvania law that the entire text of the amendment be published.

Under the Pennsylvania Constitution, questions on constitutional amendments must "fairly, accurately and clearly apprize the voter of the question or issue to be voted on." *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969). Where "the form of the ballot is so lacking in conformity with the law and so confusing that the voters cannot intelligently express their intentions . . . it may be proper and necessary for a court to nullify an election. But where the irregularity complained of could not reasonably have misled the voters," there is no cause for judicial relief. *Oncken v. Ewing*, 8 A.2d 402, 404 (Pa. 1939).

A closer review of the facts of the *Stander* case provides even greater support that the ballot question here passes constitutional muster. The ballot question challenged in *Stander* was "but a tiny and minuscular statement of the very *lengthy* provisions of the proposed Judiciary Article V." *Stander*, 250 A.2d at 480 (emphasis added). The amendment at issue was a *complete* revision of Article V relating to the Judiciary. For that revision, the 54-word ballot question submitted to the electorate read as follows:

> 'JUDICIARY—Ballot Question V: Shall Proposal 7 on the JUDICIARY, adopted by the Constitutional Convention, establishing a unified judicial system, providing directly or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters, be approved?'

Id. Nothing in the *Stander* ballot question explained any of the several substantive changes that would result from a "yes" vote, including the adoption of 18 different sections of proposed Article V, including: the establishment of the unified judicial system; the different appellate courts, courts of common pleas and magisterial districts; appellate rights; judicial administration; qualifications for justices, judges and others; elections and vacancies; and myriad other provisions, all consisting of over 5,000 words.

Despite this lack of information, the Pennsylvania Supreme Court upheld the ballot question and determined that it "fairly, accurately and clearly apprized the voter of the question or issue to be voted on." *Id*. The Court reached this conclusion because it determined that the ballot question was buttressed by other information—namely, the publications showing the proposed amendatory language to the Constitution and notices (like the Attorney General's Plain English Statement) available in the polling places. *Stander*, 250 A.2d at 480. Those same accompanying documents exist here.

In short, the ballot question at issue in this case exceeds this relatively low bar. The Amendment begins by stating that the constitution will be changed to "grant certain rights to crime victims, *including*..." This informs the public, which also had available the text of the Amendment and the Plain English Statement at

the polling places, that not every single new right is included in the ballot question. It alerts the public that it is non-exhaustive.

Moreover, the ballot question contains the majority of the new rights, and accurately summarizes what the Amendment will provide as part of the criminal justice process. The ballot question contains seventy-three words which cover almost the entirety of the Amendment. The electorate was fairly apprised of what they were voting for or against in November of 2019.

IV. CONCLUSION

For the foregoing reasons, this Honorable Court should deny Petitioners' Application for Relief, and enter judgment in favor of the Respondent

Respectfully submitted,

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Date: January 10, 2020

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA ***and*** **LORRAINE HAW,**	:	
Petitioners	:	**No. 578 MD 2019**
v.	:	
KATHY BOOCKVAR, The Acting Secretary of the Commonwealth,	:	**Electronically Filed Document**
Respondent	:	

CERTIFICATE OF SERVICE

I, Nicole J. Boland, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on January 10, 2020, I caused to be served a true and correct copy of the foregoing document to the following:

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

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