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IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA and LORRAINE HAW,	:	No. 578 M.D. 2019
Petitioners	:	
v.	:	
KATHY BOOCKVAR, THE ACTING SECRETARY OF THE COMMONWEALTH,	:	
Respondent	:	

REPLY BRIEF OF RESPONDENT PARTY INTERVENORS, SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN JUNE IRWIN AND KELLY WILLIAMS, IN FURTHER SUPPPORT OF APPLICATION FOR SUMMARY RELIEF

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I. THE "SUBJECT MATTER" TEST

Petitioners, the League of Women Voters of Pennsylvania and Lorraine Haw, agree with Respondent, Kathy Boockvar, the Acting Secretary of the Commonwealth, and Respondent Party Intervenors, Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams, that the issue of whether the Proposed Amendment required multiple votes is governed by the Supreme Court's adoption of Chief Justice Saylor's "subject matter" test in *Grimaud v. Commonwealth of Pa.*, 865 A.2d 835 (Pa. 2005). (Petitioners' Brief in Opposition to Respondents' Applications for Summary Relief ("Petitioners' Brief") at 5-8.) However, Petitioners' arguments only pay lip service to the *Grimaud* "subject matter" test. It therefore is necessary to explicate what the "subject matter" test requires and, equally importantly, what it does **not** require. There are two parts to the "subject matter" test, both of which are satisfied by the Proposed Amendment.

A. The "Single Subject Interrelationship" Requirement

As the name itself mandates, the first requirement is that the Proposed Amendment cover a "single subject". In *Grimaud*, one of the single subjects was "bail"[1] and the Supreme Court "conclude[d] the proposed [constitutional] changes were related to a single subject, bail." 865 A.2d at 841. As the Supreme Court

[1] There were two separate ballot questions before the Supreme Court in *Grimaud*: (1) Article I, § 14 involving bail; and (2) Article I, § 6 involving trial by jury. 865 A.2d at 838-40.

amplified, "[t]he [bail] changes were sufficiently interrelated (all concerned disallowance of bail to reinforce public safety) to justify inclusion in a single question." *Id.* Here, it is undeniable that the proposed constitutional changes all relate to and concern a single subject, namely, enhancement of victims rights, and, thus, justify inclusion in a single question. In fact, this conclusion is so obvious that no more need be said on this subject.

However, in artful obfuscation of this truth, Petitioners argue that, because the Proposed Amendment encompasses multiple victims rights subject matters, it must be submitted to multiple votes. In making their argument, Petitioners admit that Chief Justice Saylor's concurrence in *Pennsylvania Prison Soc'y v. Commonwealth*, 776 A.2d 971, 984 (Pa. 2001), is applicable here:

> Properly stated, the test is "whether [the] alterations are **sufficiently interrelated** to justify their presentation to the electorate in a single question."

(Petitioners' Brief at 7-8 (emphasis supplied), quoting *Grimaud*, 865 A.2d at 841, quoting *Prison Soc'y*, 776 A.2d at 984 (Saylor, C.J., concurring).)

But, in making their argument, Petitioners elide the fact that the term "interrelated" means that each of the fifteen parts of the Proposed Amendment need **only** have "a mutual or reciprocal relation or parallelism." WEBSTER'S NEW COLLEGIATE DICTIONARY 604 (1977). It is undisputed that each of the provisions in the Proposed Amendment has a mutual and reciprocal relationship with the other

provisions. Indeed, this is clearly a case where the whole of the victims rights set forth in the Proposed Amendment is, in fact, greater than the sum of its parts because of their interrelationship. Viewing each part individually, as Petitioners do, simply ignores the fact that it was the General Assembly's intent to enshrine in the Constitution a group of related victim rights protections which would, as a whole, benefit victims of crime.

Simply stated, just as the bail constitutional changes in *Grimaud* were found to relate to a single subject, namely, bail, the constitutional changes here—although more numerous—all relate to a single subject, namely, victims rights.

B. <u>The "Facially/Patently" Test</u>

Again, Petitioners concede that, in order to pass single vote muster, the Proposed Amendment "must not facially or patently affect any other part of the Constitution." (Petitioners' Brief at 5.) However, in doing so, they have disregarded what the Supreme Court held in *Grimaud* as to what this narrow test does **not** mean. We quote this passage at length because it so clearly refutes Petitioners' arguments that the Proposed Amendment unconstitutionally implicitly amends other constitutional provisions:

> Here, the Commonwealth Court properly noted that merely because an amendment "may possibly impact other provisions" does not mean it violates the separate vote requirement. *Grimaud*, at 930. The 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. Indeed, 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. **The question is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect, as appellants suggest.**

865 A.2d at 842 (italicized emphasis in original; bold emphasis supplied). All of Petitioners' arguments merely relate to how various parts of the Proposed Amendment impact, touch and implicitly amend other constitutional provisions. (Petitioners' Brief at 16-19.)

However, as the Supreme Court made abundantly clear in *Grimaud*, this is not the relevant test. This conclusion is underscored by the dictionary definitions of "facially" and "patently"—of or relating to the face and clearly, openly and plainly. Taken together, they require that the provisions of the Proposed Amendment expressly—**not implicitly—**amend another constitutional provision to run afoul of constitutional requirements. It is undeniable that none of the victims rights provisions expressly amend any other constitutional provisions and, hence, are not subject to separate votes.

The *Grimaud* decision demonstrates the meritless nature of Petitioners' arguments. In *Grimaud*, there were, of necessity, two ballot questions—one expressly amending Article I, § 6 trial by jury and the other expressly amending Article I, § 14 bail. *Id*. at 838-41. The appellants contended that the single bail vote was insufficient because, *inter alia*, the bail question implicitly amended Article I,

§ 1's right to defend one's self, Article I, § 9's presumption of innocence, Article I, § 13's right to be free from excessive bail and Article I, § 25's reservation that Article I rights remain inviolate. *Id*. at 842. The Supreme Court squarely rejected the appellants' implicit amendment arguments because "[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.*

The same is true here. Thus, Petitioners contend that the Proposed Amendment implicitly amends Article V's authority of the Judiciary over court proceedings and Article IV, § 9's procedure for pardons. (Petitioners' Brief at 17-19.) This argument is no more valid here than it was in *Grimaud*.

What has elided Petitioners' zealous advocacy of their cause is that it will be up to the Supreme Court to decide whether the provisions in the Proposed Amendment implicitly amend any other constitutional provisions and, if so, whether the new provisions are constitutional. However, the voters have validly spoken—indeed, overwhelmingly so[2]—and Petitioners cannot invalidate their votes given *Grimaud's* precedential primacy.

[2] Based on unofficial published reports, in the November 2019 General Election the electorate approved the Proposed Amendment by an overwhelming supermajority. *E.g.*, *https://ballotpedia.org/Pennsylvania_Marsy's_Law_Crime_Victims_Rights_Amendment_(2019)* (last visited December 13, 2019) (reporting that the Proposed Amendment garnered 74.01% of votes with 100% of precincts reporting (citing Pennsylvania Department of State 2019 Municipal Election Unofficial Returns at *https://www.electionreturns.pa.gov/*)).

II. PETITIONERS' BALLOT QUESTION ARGUMENTS HAVE NEITHER LEGAL NOR FACTUAL MERIT

In an indirect concession, Petitioners admit that "[i]t is true that this Court has at least twice implicitly blessed the practice of presenting a ballot question that differs from the wording of the amendment", citing *Bergdoll v. Commonwealth*, 858 A.2d 185, 194-95 (Pa. Cmwlth. 2004); *Costa v. Cortes*, 142 A.3d 1004, 1017 (Pa. Cmwlth. 2016). (Petitioners' Brief at 25.) However, Petitioners have left unsaid the undeniable fact that the **Supreme Court has never required that a proposed constitutional amendment be placed on the ballot in *haec verba***. In fact, contrary to Petitioners' contentions, in *Stander v. Kelley*, 250 A.2d 474 (Pa. 1969)—involving a ballot question which was "but a tiny and minuscular statement of the very lengthy provisions of the [constitutional amendment to] Judiciary Article V"—the Supreme Court held that the only valid question was whether "the ballot fairly, accurately and clearly apprize the voter of the question or issue to be voted on." 250 A.2d at 480.

What's more, in *Stander*, despite the "tiny and minuscular" ballot question before it, the Supreme Court held that "[o]ur answer to this question is 'Yes.'" *Id.* In fact, given the Supreme Court's holding in *Stander*, Petitioners' citations to a Kentucky decision requiring that ballot questions repeat in *haec verba* the actual proposed constitutional amendment are irrelevant. (*See* Petitioners' Brief at 26-28.)

Although Petitioners criticize Justice Baer's plurality opinion in *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016), it is clear from the face of his opinion that he relied upon the *Stander* precedent in holding that the ballot question there "fairly, accurately and clearly apprise[d] the voter of the question or issue on which the electorate must vote." 145 A.3d at 1139-41. As Justice Baer stated:

> Thus, the question before us is not whether we believe one version of the ballot question is superior to another, nor is it relevant how we would phrase the ballot question if left to our own devices. Instead, our role in the constitutional amendment process is limited to a review of whether the ballot question fairly, accurately and clearly apprises the voter of the question on which the electorate must vote.

Id. at 1142.

Here, the ballot question fairly, accurately and clearly informed the voters of many of the numerous constitutional rights to be accorded to crime victims. The voters clearly knew that the Proposed Amendment was intended to enshrine numerous rights for crime victims in the Pennsylvania Constitution. The mere fact that some of the victims rights protections were omitted from the ballot question did not mislead the voters. They knew precisely what they were voting on—enhanced rights for the victims of crime! Since the ballot question here was certainly at least on a par with the kind of disclosure contained in the *Stander* ballot question, 250 A.2d at 480, it is sufficient. As Justice Baer declared in *Sprague*:

> The *Stander* ballot question did not specifically reference or explain the several substantive changes that would result from a "yes" vote, including that a retirement age of 70 was being imposed on jurists for the first time. More significantly, the ballot question did not set forth the existing constitutional language of those provisions that were to be amended or reference the particular effects resulting from the amendment. Nonetheless, our Court upheld the ballot question and determined that it "fairly, accurately and clearly apprize[d] the voter of the question or issue to be voted on."

145 A.3d at 1142. This applies with equal force here.

Moreover, the Attorney General's Plain English Statement set forth **all** fifteen of the victims rights contained in the Proposed Amendment.[3] Given that at least three copies of the Plain English Statement were published in or about each polling place and one copy was published in every publication of the Proposed Amendment, the voters had ample opportunity to read the entire Proposed Amendment if they so desired.

In sum, the voters were fully informed as to what was before them and they overwhelmingly voted in favor of the Proposed Amendment.

[3] As required, the Plain English Statement also disclosed the "purpose, limitations and effects of the ballot question." *See* Act of June 3, 1937, P.L. 1333, No. 320, § 201.1, *added by* the Act of February 19, 1986, P.L. 29, No. 11, § 1, 25 P.S. § 2621.1.

III. CONCLUSION

WHEREFORE, Respondent Party Intervenors, Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams, respectfully request that this Honorable Court GRANT Summary Relief in favor of Respondent Party Intervenors pursuant to Pa.R.A.P. 1532(b), and DENY the requests for declaratory judgments and ancillary permanent injunctive relief of Petitioners, the League of Women Voters of Pennsylvania and Lorraine Haw.

Respectfully submitted,

Dated: January 24, 2020

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PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned 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 require filing confidential information and documents differently than non-confidential information and documents.

Dated: January 24, 2020

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