Received 1/24/2020 4:19:41 PM Commonwealth Court of Pennsylvania

Filed 1/24/2020 4:19:00 PM Commonwealth Court of Pennsylvania
578 MD 2019

Steven E. Bizar (Pa. 68316)
Tiffany E. Engsell (Pa. 320711)
Craig J. Castiglia (Pa. 324320)
William C. Kuzma (Pa. 327814)
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
215.994.4000

Mary Catherine Roper (Pa. 71107)
Andrew Christy (Pa. 322053)
ACLU OF PENNSYLVANIA
PO Box 60173
Philadelphia, PA 19102
215.592.1513

Attorneys for Petitioners League of Women Voters of PA and Lorraine Haw

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, LORRAINE HAW, AND RONALD L. GREENBLATT, ESQUIRE, Petitioners, v. KATHY BOOCKVAR, THE ACTING SECRETARY OF THE COMMONWEALTH, SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN JUNE IRWIN, AND KELLY WILLIAMS, Respondents.	COMMONWEALTH COURT OF PENNSYLVANIA ORIGINAL JURISDICTION No. 578 MD 2019

PETITIONERS' OMNIBUS REPLY BRIEF IN SUPPORT OF APPLICATION FOR SUMMARY RELIEF

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

INTRODUCTION

Acting Secretary of the Commonwealth Kathy Boockvar (the "Secretary" or "Respondent") and Respondent Party Intervenors Shameekah Moore, Martin Vickless, Kristin June Irwin, and Kelly Williams ("Intervening Respondents") (collectively, "Respondents") chiefly counter arguments that Petitioners have not made, and cite law that does not exist.[1] A straightforward application of the Supreme Court's clear precedent under Article XI, § 1 compels the conclusion that the Proposed Amendment violates the constitutional requirement that "[w]hen two or more amendments shall be submitted they shall be voted upon separately." Pa. Const. art. XI, § 1.

There is less precedent concerning the form of the ballot question itself. Contrary to the Secretary's claims, neither this Court nor the Supreme Court has addressed the question whether the ballot question must provide voters with the text they are voting on. Petitioners believe the better view—supported by the persuasive authority of the Supreme Court of Kentucky, which recently considered this precise question—is that the voters are entitled to read, at the point of their decision, the changes they are making to their constitution.

[1] Petitioners' Omnibus Reply Brief in Support of their Application for Summary Relief addresses arguments made by both Respondent and Intervening Respondents.

Even if the law does not require that voters see the full text they are voting on, it certainly requires that, at a minimum, they be presented with a ballot question that fairly and completely describes the Proposed Amendment. Respondents concede, as they must, that the ballot question presented to the voters did not list all of the proposed changes they were voting to make to the Constitution. Therefore, Respondents argue that it is enough simply to give voters the "gist" of the thing at the polls, or to provide a more abundant description at some other place and some other time than when they are in the voting booth making their decision. That position—apart from shifting the power to amend the Constitution from the voters to those who will translate their actions for them—cannot be squared with existing precedent.

Petitioners' Application for Summary Relief should be granted and the Proposed Amendment declared void.

ARGUMENT

I. THE PROPOSED AMENDMENT VIOLATES ARTICLE XI, § 1'S REQUIREMENT THAT "WHEN TWO OR MORE AMENDMENTS SHALL BE SUBMITTED THEY SHALL BE VOTED UPON SEPARATELY."

There is only one standard that governs this case and one standard that Petitioners ask this Court to apply to determine whether the Proposed Amendment constitutes multiple amendments within the meaning of Article XI, § 1: the analysis set forth in Chief Justice Saylor's concurring opinion in *Bergdoll v. Kane*, 731 A.2d

1261 (Pa. 1999), and the majority opinion in *Grimaud v. Commonwealth*, 865 A.2d 835 (Pa. 2005). Indeed, before *Bergdoll*, no Pennsylvania court had ever addressed the separate vote requirement. *See Bergdoll v. Kane*, 694 A.2d 1155, 1160 (Pa. Commw. Ct. 1997) (Pellegrini, J., dissenting) (noting that "Pennsylvania Courts have not yet faced this issue"). Respondents are mistaken that Petitioners advocate a new standard or want this Court to deviate from the standard set forth by the Supreme Court. Indeed, proper application of *Bergdoll* and *Grimaud* shows that the Proposed Amendment is unconstitutional both because it contains multiple subjects and because it facially affects multiple constitutional provisions.

This governing standard does not defer to the Legislature's decision to cram a whole host of substantive changes into a single block of text and call that "a single subject." Rather, the *Bergdoll/Grimaud* standard requires all of the analyses that the Respondents eschew and even mock—including a practical evaluation of the "effect" that the Proposed Amendment will have on existing provisions of the Constitution: "We analyze the ballot question's substantive affect on the Constitution, examining the content, purpose, and effect." *Grimaud*, 865 A.2d at 842.

Under these cases, the Proposed Amendment fails the separate vote requirement in two ways.

A. The Proposed Amendment Violates The Separate Vote Requirement Because It Encompasses More Than A Single Subject.

The single subject test is about substance, not labels. *Grimaud*, 865 A.2d at 842 ("We analyze the ballot question's ***substantive*** affect on the Constitution, examining the content, purpose, and effect.") (emphasis added). The test is satisfied only where the proposed amendment accomplishes a single change, not multiple changes. Under this analysis, the proposed amendment in *Bergdoll* failed because it both empowered the Legislature to create special procedures for the testimony of child witnesses and, independently, changed the right of confrontation in all cases, whether or not they involved child witnesses:

> It is apparent from a review of the initiative that one principal aim was to confer upon the General Assembly the power to expand the permissible manner for presenting trial testimony of child witnesses in criminal proceedings. As the proposed amendment would accomplish this precise objective "notwithstanding" all other provisions of Article I, Section 9, there was no apparent need to separately alter Section 9's face-to-face clause. More fundamentally, the alteration of the face-to-face provision would affect a broader segment of rights than the category connected with the confrontation of a child witness; therefore, the changes lacked the interdependence necessary to justify their presentation to voters within the framework of a single question.

Bergdoll, 731 A.2d at 1271 (Saylor, J., concurring). The proposed amendment in *Pa. Prison Society v. Commonwealth*, 776 A.2d 971 (Pa. 2001), failed this standard according to Chief Justice Saylor's concurrence, when it ***both*** restructured the pardoning power of the Board of Pardons ***and*** altered the process by which members

are appointed to the Board. *Id.* at 984. The proposed amendment in *Grimaud* satisfied this standard because one proposed amendment expanded the circumstances under which a defendant could be denied pretrial release, while a separate proposed amendment created a right to a jury for the Commonwealth—but neither proposed amendment accomplished more than one substantive change. *See Grimaud*, 865 A.2d at 841-42 ("The changes [concerning pretrial release] were sufficiently interrelated (all concerned disallowance of bail to reinforce public safety) to justify inclusion in a single question."); *see also id.* at 845 ("Only one substantive change is made, that is, to give the Commonwealth the right to trial by jury.").

The Proposed Amendment here, however, does a great deal more than any proposed amendment ever previously reviewed by this Court or the Supreme Court.[2] As set forth more fully in Petitioners' principal brief, the Proposed Amendment creates new procedural rights for crime victims to ensure their ability to participate in almost every stage of criminal proceedings that may affect them: notice, the right to be present, and the right to be heard, plus a constitutional mechanism to enforce

[2] For example, the Supreme Court's decision in *Stander v. Kelley*, 250 A.2d 474, (Pa. 1969), was explicitly not a decision pursuant to Article XI: "These new amendments to or revision of the Constitution were not adopted pursuant to the provisions of Article XI of the Constitution of 1874, but were adopted pursuant to and through a different manner of amendment—the Constitutional Convention." *Id.* at 479.

those rights. It also creates at least one procedural right that is not about ensuring crime victims an opportunity to participate in criminal proceedings, but rather about shielding crime victims from undesired participation in those proceedings: the right to refuse discovery from the defendant. It also creates new constitutional property rights for crime victims: a right to full and timely restitution, as well as a right to the return of property. It also creates undefined rights to "dignity" and "fairness" and a phenomenon otherwise unknown in our constitutional law: a right to protection from private actors. *Robbins v. Cumberland Cty. Children & Youth Servs.*, 802 A.2d 1239, 1245 (Pa. Commw. Ct. 2002) ("In general, the State has no constitutional obligation to protect individuals from harm inflicted by private actors.") (citing *DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189 (1989)). And it authorizes the General Assembly (not the courts themselves) to determine how these rights will be implemented in the criminal courts—indeed, according to the Secretary, none of these changes can take effect without action from the General Assembly. Hr'g Tr. at 58-62 (attached to Pet'rs' App. for Summary Relief as Exhibit D).

Respondents do not even attempt to argue that all of these new rights are interdependent, as they obviously are not. They could be voted upon separately, and some accepted, while others are rejected. That is, in fact, what our Constitution and the *Bergdoll/Grimaud* standard require.

Instead, Respondents argue that the Proposed Amendment actually does not change anything, because some crime victims have had some of these rights through statute for years. The creation of new ***constitutional*** rights and procedures, however, is unlike legislation. That, of course, is why the Proposed Amendment exists: to create a new class—crime victims—and set forth a collection of constitutional rights and protections for the benefit of this class and no others.

The Proposed Amendment fails the single-subject test because it makes many independent changes at once, changes that the voters should be permitted to evaluate separately.

B. The Proposed Amendment Fails The Separate Vote Requirement Because It Substantively Affects, And Therefore Amends, More Than One Part Of The Constitution.

It bears repeating: the single-subject test and the separate vote requirement are about substance, not labels. Petitioners have argued that the Proposed Amendment makes changes to multiple existing provisions of the Constitution, but even ***one*** change, beyond the insertion of the new section 9.1, will invalidate the Proposed Amendment. That test is more than met here.

The Secretary focuses on the adverb "facially" and suggests this means that to affect other parts of the Constitution, the Proposed Amendment must explicitly reference those provisions. That is not the test set forth in *Grimaud*, which instead asks whether, considering its "content, purpose, and effect," the Proposed

Amendment would substantively alter any part of the Constitution. *Grimaud*, 865 A.2d at 845 ("Only one substantive change is made, that is, to give the Commonwealth the right to trial by jury."). The *Grimaud* majority used the terms "facially" three times, "patently" twice, and "substantive" or "substantively" five times—all apparently interchangeably.[3] It did not, through that verbiage, create multiple standards. Instead, the Court used those terms to explain that indirect changes to an existing constitutional provision could not state a violation of the separate vote requirement. *Grimaud*, 865 A.2d at 842.

The Proposed Amendment may not call out other provisions of the Constitution by chapter and verse, but it explicitly addresses—and changes—multiple existing provisions of the Constitution. As Petitioners set forth more fully in their principal brief in Support of their Application for Summary Relief and omnibus brief in opposition to Respondents' Applications for Summary Relief, the Proposed Amendment creates an exception to the Judiciary's exclusive prerogative to control criminal court proceedings, set forth in Article V, § 10; creates an

[3] *See, e.g.*, *Grimaud*, 865 A.2d at 842 ("We analyze the ballot question's ***substantive*** affect on the Constitution . . . . 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. . . . The question is whether the single ballot question ***patently*** affects other constitutional provisions . . . The bail amendments do not ***substantively*** affect the right to defend one's self . . . Because the proposed amendments only ***patently*** affected Article I, § 14 . . . .") (emphasis added).

exception to the defendant's right to use compulsory process, set forth in Article I, § 9; alters the pardon procedure set forth in Article IV, § 9; and sets a new condition on the availability of bail, which changes Article I, § 14, among other changes. Petitioners revisit just a few of those changes again here.

Exception to the Judiciary's exclusive prerogative to control criminal court proceedings, set forth in Article V, § 10: Respondents have offered no response to Petitioners' argument that the Proposed Amendment, like the stricken amendment in *Bergdoll*, grants the General Assembly the power to dictate court procedure in derogation of the Judiciary's exclusive authority over court proceedings set forth in Article V, § 10. Instead, the Secretary repeats her disingenuous claim that the amendment in *Bergdoll* failed because it both removed and added text to the Constitution. Resp't's Br. in Opp'n at 10. That is nonsense. The majority in *Bergdoll* held that the proposed amendment facially altered more than one provision of the Constitution because it both changed the standard for confrontation of witnesses in Article I, § 9 and granted the General Assembly a power theretofore reserved to the Judiciary:

> We are also unpersuaded by Secretary Kane's alternative argument that the purported grant of rulemaking authority to the General Assembly in the context of children's testimony in criminal proceedings does not amount to an amendment of Article 5, § 10(c) as that section contemplates that the Supreme Court's rulemaking authority may be affected or limited by other parts of the Constitution. Article 5, § 10(c) of the Constitution grants the power to the Supreme Court "to prescribe general rules governing practice, procedure and the conduct of all

> court…." As we stated in *In Re 42 Pa. C.S. § 1703*, 482 Pa. 522, 534, 394 A.2d 444, 451 (1978), "the Pennsylvania Constitution grants the judiciary—and the judiciary alone—power over rule-making."
>
> In that decision, we rejected the notion that Article 5, § 10(c) allows the General Assembly to exercise concurrent power in the area of rule making.

Bergdoll, 731 A.2d at 1270. The same result must follow here.

Exception to the accused's right to use compulsory process, set forth in Article I, § 9: Respondents claim that the accused's right to compulsory process is unchanged because the defendant can seek a subpoena to obtain evidence or testimony from the victim and the victim cannot resist that subpoena. But that is not the law. In fact, anyone can seek to quash a subpoena or resist a discovery order on the grounds that they have a privilege—including one rooted in a constitutional right—not to provide a response. *See, e.g.*, *Ben v. Schwartz*, 729 A.2d 547, 552 (Pa. 1999) (allowing interlocutory appeal to determine whether subpoena sought privileged information); *Commonwealth v. Davis*, No. 56 MAP 2018, 2019 Pa. LEXIS 6463, at *1 (Pa. Nov. 20, 2019) (vacating trial court's order directing the defendant to provide his computer password because the order violated defendant's right against self-incrimination). The Proposed Amendment would provide victims a constitutional privilege to resist any discovery request, or order enforcing such a request, from a defendant.

Alteration to the pardon procedure set forth in Article IV, § 9 and factors to be considered in granting bail under Article I, § 14: Respondents claim that the new requirements for pardons and new condition on the right to pretrial release do not actually change anything because some victims already have the right to submit a position on a pardon request under the Crime Victims' Act ("CVA"), and because current court rules include consideration of community safety as one of the factors in setting bail. The relevant question is not whether there are statutes or rules currently on the books that resemble to some degree the procedures required by the Proposed Amendment. Instead, the question is whether those procedures currently exist ***in the Constitution***. The Constitution sets forth procedures for the consideration of pardons that do not include the opportunity for any victim to "be heard." And the Constitution's provision guaranteeing a right to pretrial release for most defendants does not presently define ***any*** condition to be "considered in fixing the amount of bail and release conditions for the accused," as opposed to conditions sufficient to deny pretrial release altogether. Those are substantive changes to the existing provisions of the Constitution. They doom the Proposed Amendment, which simply changes far too much to be determined in a single vote.

II. THE FORM OF THE BALLOT QUESTION VIOLATES ARTICLE XI, § 1, BECAUSE IT DOES NOT SET FORTH THE TEXT OF THE PROPOSED AMENDMENT.

Petitioners do not, as the Secretary contends, "admit that the Pennsylvania Supreme Court has held that the ballot need not contain the full text of the proposed amendment." Resp't's Br. in Opp'n at 18. What Petitioners do concede is that the Supreme Court, without ever ruling on the question, has decided other issues in cases concerning ballot questions that did not allow the voters to see the precise change they are asked to approve. The Secretary is less forthright, as she claims that both this Court and the Supreme Court have held that the ballot question need not set forth the language of the proposed amendment to comply with Article XI, § 1, Resp't's Br. in Opp'n at 5, 18, when neither Court has addressed the issue.[4]

This is, as Petitioners frankly admit, an issue of first impression for Pennsylvania courts. The fact that prior constitutional amendments have gone to the voters without placing before them the actual changes for consideration cannot bar review of the question now. It is the duty of the Pennsylvania courts to answer these

[4] *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016), could not resolve this issue, nor any other. *Id*. at 1141. The Secretary quotes a non-precedential, three-justice opinion in that split decision. The Secretary, again, misrepresents precedent when she contends that this Court answered the question in *Bergdoll v. Commonwealth*, 858 A.2d 185, 194-95 (Pa. Commw. Ct. 2004). The quoted passage from *Bergdoll* addressed a different question: whether the General Assembly was permitted to delegate to the Secretary the power to draft the ballot question or whether the General Assembly had to draft the ballot question itself.

types of fundamental constitutional questions when those questions are properly brought before them. And it is never too late to do so. For example, in *Armstrong v. King*, 126 A. 263 (Pa. 1924), the Supreme Court ruled for the first time that constitutional amendments could only be considered once every five years—even though the Constitution had been repeatedly amended without regard to such time limit. *Id.* at 265. As the Court explained then: "Had injunctions been sought at an appropriate time against their then present submission, doubtless they would have been enjoined." *Id.*[5] There, as here, however, no one had previously asked Pennsylvania's courts to consider exactly what Article XI requires. This case is not about mere statutory changes but instead a change to the fundamental charter that governs our Commonwealth, and this Court should carefully consider what constitutes "literal compliance" with the Constitution. *Tausig v. Lawrence*, 197 A. 235, 238 (Pa. 1938).

Intervening Respondents imply that because the Proposed Amendment was published in newspapers prior to the election, the text of the amendment need not appear on the ballot. Intervening Resp'ts' Br. in Opp'n at 1-2. However, under Article XI, §1, the constitutional requirement that the amendment be published in

[5] More than a decade later, the Court broke from the holding in King and concluded that the five-year requirement only applied to the same amendment when it is offered more than once every five years. *See Commonwealth ex rel. Margiotti v. Lawrence*, 193 A. 46, 50 (Pa. 1937).

newspapers is separate and apart from the requirement that a proposed amendment be presented to the electorate on the ballot on Election Day. The newspaper publication requirement in Article XI is tied to both the amendment's drafting by the General Assembly during the two-year legislative process and the advertising of proposed amendments several months before the election. Neither is related to Election Day practices or the content of the ballot question itself. Article XI, § 1 contains an entirely separate requirement that "***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." *Id.* (emphasis added). These are distinct and separate requirements—dealing with separate stages of the detailed process for amending the Constitution—within Article XI, § 1.

Although the newspaper publication requirement is designed "to afford the electorate abundant opportunity to be advised of proposed amendments and to let the public ascertain the attitude of the candidates for election to the General Assembly 'next afterwards chosen,'" that is not an excuse for the Legislature to ignore other provisions in the Constitution. *Kremer v. Grant*, 606 A.2d 433, 438 (Pa. 1992) (citing *Commonwealth ex rel. v. King*, 122 A. 279 (Pa. 1923) and *Tausig v. Lawrence*, 197 A. 235 (Pa. 1938)). The newspaper publication requirement is not designed to inform all electors ***on the day of the election*** what substantive changes

to the Constitution they are voting on. And giving the electorate the "opportunity to be advised of proposed amendments" does not actually inform the full electorate of the substance of the amendment at the ballot box. *Id.* The newspaper publication requirement is unrelated to Petitioners' argument that the text of the Constitution requires presenting the electorate with the full text of the Proposed Amendment, and for these reasons, Intervening Respondents' argument is unavailing.

Petitioners will not repeat here the arguments they have made in their principal and responsive briefs. Petitioners urge the Court to hold that the plain language of Article XI, supported by the persuasive reasoning of the Supreme Court of Kentucky in *Westerfield v. Ward*, No. 2018-SC-000583-TG, 2019 WL 2463046 (Ky. June 13, 2019), requires that the voters see the changes they are voting on.

III. THE FORM OF THE BALLOT QUESTION VIOLATES ARTICLE XI, § 1 BECAUSE IT DOES NOT FAIRLY, ACCURATELY, AND CLEARLY APPRISE VOTERS OF THE ISSUE TO BE VOTED ON.

If the law does not require that voters see the text they are voting on, it certainly still requires that they be presented with a ballot question that fairly and completely describes the Proposed Amendment. The Secretary argues that it is sufficient that the ballot question told the voters most of what was contained in the Proposed Amendment and then told voters, through the use of the word "including," that there was more they were not being told.

That is an extraordinary argument: that a ballot question can omit some of the changes in the Proposed Amendment so long as the voters are told they are being short-changed. How are they to know what else they are missing? The Secretary's argument is an affront to the purpose of Article XI: that "voters should be given free opportunity to modify the fundamental laws as may seem to them fit." *Pa. Prison Soc'y*, 776 A.2d 971, 985-98 (Pa. 2001) (Cappy, J. dissenting); *see also id.* at 978 ("[T]his must be done in the way [the voters] themselves provided, if stability, in carrying on of government, is to be preserved." (quoting *Taylor v. King*, 130 A. 407, 409-10 (Pa. 1925)).

The Secretary also argues that the ballot question need meet only a "low bar" of not actively deceiving the electorate, relying on Justice Baer's non-precedential opinion in *Sprague.* Justice Baer viewed the Court's prior decision in *Oncken v. Ewing*, 8 A.2d 402, 404 (Pa. 1939), as relevant to setting forth a standard that a ballot question is unlawful "only 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.'" *Sprague*, 145 A.3d at 1141. He viewed *Oncken* as complementing the binding standard in *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969), that a ballot question must "fairly, accurately and clearly apprize the voter of the question or issue to be voted on." Petitioners believe the better view is that the one set forth by Justice

Todd, in an opinion joined by Justices Wecht and Dougherty, expressly rejecting the relevance of *Oncken*:

> Unlike *Stander*, in *Oncken*, we were not addressing the *constitutional* requirements for the content of a ballot question. Rather, our Court was considering the discrete issue of whether the results of an election should be invalidated because the manner of printing of the ballot itself failed to precisely comport with the *statutory* requirements of the Election Code. . . . Moreover, *Stander* makes no reference to *Oncken*, and our research discloses no instance where *Oncken* has been used by our Court to assess whether the structure and content of the language of a ballot question involving a proposed constitutional amendment was misleading; hence, we consider it to be inapplicable to the resolution of the instant case.

Id. at 1149 n.8. As Justice Todd and her colleagues correctly noted, there is tension between *Oncken* and *Stander*.

Oncken essentially asks whether a voter is ***misled***; but *Stander* asks whether a voter is ***fully informed***. For the reasons articulated by Justice Todd, as well as the fundamental importance at stake when amending the Constitution, Petitioners urge the Court to hold that *Stander* is the correct standard by which to judge the ballot question.

Contrary to the Secretary's argument, *Stander* does not set forth a "low" bar. The Secretary suggests that *Stander* blesses the "gist" approach to ballot questions. But the *Stander* Court was ***explicit*** that the reason the "tiny and minuscular statement" on the ballot in *Stander* was sufficient to inform voters of what they were

voting on was because of the ***other*** information provided ***to each and every voter for use in the polling booth***:

> In recognition of this right of the electorate to be clearly and more fully informed of the question to be voted on, the Legislature by Act No. 2 of 1967 required the Secretary of the Commonwealth to 'also publish the Constitution showing the changes proposed by the convention in convenient form and send a copy thereof to each elector requesting it, and ten copies thereof through the County Board of Elections to each polling place ***for the use of the voters during the election***.' The Secretary of the Commonwealth complied with this mandate.

Stander, 250 A.2d at 418 (emphasis added).[6]

As that passage explains, voters had the option of having the ***actual text*** of the proposed amendment mailed to them ***and*** they had access to the ***actual text*** of the amendment at the polling place. Ten copies would be sufficient for every voter to carry the text into the actual voting booth, then return it for use by the next voter. This is all ***in addition*** to a newspaper publication requirement prior to the election. *Stander*, 250 A.2d at 417. The Secretary may both properly publish the text of the Amendment in newspapers ***and*** draft a ballot question that fails under the *Stander* test; the two are not mutually exclusive.

[6] This is in addition to the requirement that the "Secretary of the Commonwealth shall advertise the proposals of the convention in at least two newspapers of general circulation, if there are such, in every county of this Commonwealth once during the first week in April, 1968." *Stander*, 250 A.2d at 417.

The Secretary wrongly claims that "[t]hose same accompanying documents [from *Stander*] exist here." Resp't's Br. in Opp'n at 23. But that is untrue. One copy of the Attorney General's plain English statement is ***posted*** in each polling place. That is not even close to having copies of the lengthy proposed amendment—complete with both additions and strikethroughs—to hold and to read while voting, as the voters in *Stander* had. It turns out, with the "closer review of the facts" of *Stander* that Respondents suggest, that the standard for ballot language is not such a "relatively low bar" after all.

CONCLUSION

For the reasons herein, Petitioners respectfully request that the Court grant their Application for Summary Relief. The Proposed Amendment should be declared unconstitutional and void.

Dated: January 24, 2020

Respectfully submitted,

/s/ Steven E. Bizar
Steven E. Bizar (Pa. 68316)
Tiffany E. Engsell (Pa. 320711)
Craig J. Castiglia (Pa. 324320)
William C. Kuzma (Pa. 327814)
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
215.994.4000

/s/ Mary Catherine Roper
Mary Catherine Roper (Pa. 71107)
Andrew Christy (Pa. 322053)
ACLU OF PENNSYLVANIA
PO Box 60173
Philadelphia, PA 19102
215.592.1513

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellee has complied with the 14,000 word limit set forth in Pa. R.A.P. 2135(a)(1). According to the Word Count feature in Microsoft Office Word 2013, Petitioners' Brief contains 4,623 words, excluding the parts exempted by Pa. R.A.P. 2135(b).

Date: January 24, 2020 */s/ Tiffany E. Engsell*
Tiffany E. Engsell (Pa. 320711)

CERTIFICATION

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

Date: January 24, 2020

/s/ Tiffany E. Engsell
Tiffany E. Engsell (Pa. 320711)

CERTIFICATE OF SERVICE

I, Tiffany E. Engsell, hereby certify that on January 24, 2020, I caused a true and correct copy of the foregoing document titled Petitioners' Omnibus Reply Brief in Support of Application for Summary Relief to be served via electronic filing to all counsel of record.

Date: January 24, 2020

/s/ Tiffany E. Engsell
Tiffany E. Engsell (Pa. 320711)