

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

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LEAGUE OF WOMEN VOTERS OF	:	No. 83 MAP 2019
PENNSYLVANIA and LORRAINE	:	
HAW	:	
	:	
	:	
	:	
v.	:	
	:	
	:	
KATHY BOOCKVAR, THE	:	
ACTING SECRETARY OF THE	:	
COMMONWEALTH	:	
	:	
	:	
APPEAL OF: SHAMEEKAH	:	
MOORE, MARTIN VICKLESS,	:	
KRISTIN JUNE IRWIN and KELLY	:	
WILLIAMS	:	

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**BRIEF OF THE APPELLANTS  
SHAMEEKAH MOORE, MARTIN VICKLESS,  
KRISTIN JUNE IRWIN and KELLY WILLIAMS**

Appeal from the Order of the Commonwealth Court,  
entered October 30, 2019, at No. 578 M.D. 2019

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**LAMB McERLANE PC**

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## **I. STATEMENT OF JURISDICTION**

The Supreme Court has exclusive jurisdiction over this interlocutory appeal as of right under Pa.R.A.P. 311(a)(4) and 1101(a)(1), from an Order of the Commonwealth Court acting in its original jurisdiction, granting a preliminary injunction, pursuant to Section 723 of the Judicial Code, 42 Pa.C.S. § 723(a).



## **II. ORDER IN QUESTION**

Appellants, Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams, appeal from Order of the Commonwealth Court entered October 30, 2019, which provided as follows:

AND NOW, this 30th day of October, 2019, Petitioners' Application for Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532 is **GRANTED**. The Acting Secretary of the Commonwealth, and her agents, servants and officers, are enjoined from tabulating and certifying the votes in the November 2019 General Election relating to the ballot question asking voters whether the Pennsylvania Constitution should be amended to include a new section providing for victims' rights until final disposition of the Petition for Review, including appeals.

Petitioners' Application for Relief for a Nominal Preliminary Injunction Bond Under Pa.R.C.P. No. 1531(b) is **GRANTED**. Petitioners shall deposit with the Prothonotary of the Commonwealth Court a bond of \$500.00 within five (5) days of the date of this Order.

In the interest of judicial economy and expeditious resolution of the matter, upon the filing of any appeal resulting in an automatic supersedeas pursuant to Pa.R.A.P. 1736(b), the automatic supersedeas is lifted without further application to this Court. The criteria to lift an automatic supersedeas have been met as outlined in the foregoing opinion. *Dep't of Env'tl. Res. v. Jubelirer*, 614 A.2d 199 (Pa. 1989).

(Cmwlth. Ct. ord., 10/30/19 (bold typeface in original)) (*see* Appendix "A" hereto).

### **III. STATEMENT OF THE STANDARDS AND SCOPES OF REVIEW**

“Any preliminary injunction is an extraordinary, interim remedy that should not be issued unless the moving party's right to relief is clear and the wrong to be remedied is manifest.” *Ambrogi v. Reber*, 932 A.2d 969, 974 (Pa. Super. 2007) (citing *Anchel v. Shea*, 762 A.2d 346, 351 (Pa. Super. 2000)). “Otherwise, the preliminary injunction will be dissolved”. *Id.*

“[I]n reviewing the grant or denial of a preliminary injunction, an appellate court is directed to ‘examine the record to determine if there were any apparently reasonable grounds for the action of the court below.’” *Warehime v. Warehime*, 860 A.2d 41, 46 (Pa. 2004) (quoting *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc.*, 828 A.2d 995, 1000 (Pa. 2003)). In granting a preliminary injunction, a court below must have “apparently reasonable grounds” to find that *all* of the “essential prerequisites” for a preliminary injunction are satisfied. *Warehime*, 860 A.2d at 46. If even one element has not been met, a preliminary injunction must be dissolved. *Id.* “[T]he scope of review in preliminary injunction matters is plenary.” *Id.* at 46 n.7.

Whether there has been a violation of the single subject requirement of Article XI, § 1 of the Pennsylvania Constitution involves a pure question of law. Thus, the “standard of review is *de novo*, and [the] scope of review is plenary.” *In re Milton Hershey School*, 911 A.2d 1258, 1261 (Pa. 2006).

#### **IV. STATEMENT OF THE QUESTION INVOLVED**

- A. Whether the Commonwealth Court abused its discretion and/or erred as a matter of law in granting the request for a preliminary injunction where the essential prerequisites necessary to support the extraordinary remedy of preliminary injunctive relief were not satisfied?

*Answered in the negative by the Commonwealth Court below.*

## **V. STATEMENT OF THE CASE**

On October 10, 2019, Appellees, the League of Women Voters of Pennsylvania and Lorraine Haw (“Petitioners”), filed an Original Jurisdiction Petition for Review in the Commonwealth Court, naming as Respondent Appellee, Kathy Boockvar, the Acting Secretary of the Commonwealth (the “Secretary”), and seeking a declaratory judgment and permanent injunctive relief based on allegations that: (1) the constitutional amendment proposed by Senate Bill 276, now known as Joint Resolution 2019-1, proposing as a constitutional amendment a new Article IX, § 1, creating a crime victims’ bill of rights (the “Proposed Amendment”), violates the single subject requirement of Article XI, § 1 of the Pennsylvania Constitution (Count I); (2) the text of the ballot question prepared by the Secretary, to be submitted to the electorate for a vote on the Proposed Amendment, violates Article XI, § 1 of the Pennsylvania Constitution because the ballot question does not contain the entire text of the Proposed Amendment (Count II); and (3) the ballot question violates the electorate’s right to be fully informed on the Proposed Amendment because the ballot question does not fairly, accurately and clearly apprise the electorate of the question on which to be voted (Count III).

Also on October 10, 2019, Petitioners filed in the Commonwealth Court an “Application for Special Relief in the Form of a Preliminary Injunction under Pa.R.A.P. 1532”, seeking to enjoin the Secretary from submitting the ballot

question on the Proposed Amendment to Pennsylvania voters in the November 2019 General Election. On October 18, 2019, the Secretary filed an Answer in Opposition to the Application for Special Relief in the Form of a Preliminary Injunction.

By *per curiam* Order entered October 22, 2019, the Commonwealth Court granted intervention applications of Appellants, and also of Ronald L. Greenblatt, Esquire as an intervenor principally aligned with Petitioners (“Intervenor Greenblatt”). In granting intervention, the Commonwealth Court docketed Appellants’ Answer in Opposition to the Application for Special Relief in the Form of a Preliminary Injunction and Memorandum of Law in Support,<sup>1</sup> which accompanied Appellant’s Intervention Application as required by Pa.R.A.P. 106 and Pa.R.C.P. No. 2328.

A preliminary injunction hearing was held in the Commonwealth Court, before the Honorable Ellen Ceisler, on October 23, 2019.<sup>2</sup> At the outset of the hearing, Petitioners withdrew their request that the Secretary be enjoined from

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<sup>1</sup> By opposing the Application for Special Relief in the Form of a Preliminary Injunction, and raising the same arguments contained herein, Appellants thereby initially raised and preserved the issues presented in this appeal pursuant to Pa.R.A.P. 302(a).

<sup>2</sup> By appearing before the Commonwealth Court, continuing to oppose the Application for Special Relief in the Form of a Preliminary Injunction and presenting the same arguments contained herein, Appellants thereby continued to properly preserve the issues presented in this appeal. *See, e.g., Nabisco Brands, Inc. v. Workers’ Comp. Appeal Bd. (Tropello)*, 763 A.2d 555, 558 n.6 (Pa. Cmwlth. 2000) (an issue must be preserved at every stage in the proceeding, otherwise it is waived).

submitting the ballot question on the Proposed Amendment to the electorate in the November 2019 General Election, and sought as alternate relief that the Secretary be enjoined from certifying the votes on the Proposed Amendment pending disposition of the Petition for Review on the merits.

By Memorandum Opinion and Order entered October 30, 2019, the Commonwealth Court, per Judge Ceisler, granted Petitioners' request for preliminary injunctive relief. (*See* Appendix "A" hereto.) The Commonwealth Court's Order constitutes the first time in Pennsylvania history that a court has preliminarily enjoined the Secretary from tabulating and certifying the electorate's vote on a constitutional amendment ballot question.

On October 31, 2019, Appellants timely filed a Notice of Appeal to this Court. Also on October 31, 2019, the Secretary timely filed a Notice of Appeal to this Court, which appeal has been docketed at No. 84 M.D.A. 2019.

Within minutes of receiving those notices of appeal and noting probable jurisdiction, this Court established accelerated briefing schedules in both companion appeals, thereby enabling this Court to expeditiously address the issues of immediate public importance presented therein.

## **VI. SUMMARY OF ARGUMENT**

At the preliminary injunction hearing before the Commonwealth Court, Petitioners alleged that two categories of immediate and irreparable harm would occur if the Secretary was not preliminarily enjoined from tabulating and certifying the electorate's vote on the Proposed Amendment. First, Petitioners presented the testimony of Intervenor Greenblatt, who *speculated* as to the *possible* harms that *might* be suffered by criminal defendants and convicted criminals with respect to their constitutional rights, as a result of the passage of the Proposed Amendment. Second, Petitioners argued harm to the electorate's "rights to vote separately" for each of the rights sought to be extended to crime victims through passage of the Proposed Amendment, in violation of the single subject requirement of Article XI, § 1 of the Pennsylvania Constitution.

However, Intervenor Greenblatt provided no actual evidence to substantiate his legal theories. Instead, he merely provided personal opinion testimony and dubious policy arguments. Petitioners' assertion that the Proposed Amendment would result in irreparable harm to the electorate's "rights to vote separately" is belied by the history of past challenges to constitutional amendment ballot questions in the Commonwealth. The courts of this Commonwealth have repeatedly declined to hold that irreparable harm occurs when a challenged proposed constitutional amendment is permitted to go before the electorate and be

tabulated and certified by the Secretary. That is because a challenge to a constitutional amendment is just as justiciable after an election, as it is before the election. As a matter of law, Petitioners' hearing evidence did not support the Commonwealth Court's finding of immediate and irreparable harm necessary for issuance of the extraordinary remedy of preliminary injunctive relief.

As to the merits of Petitioners' single subject argument, it is abundantly clear that the Proposed Amendment is sufficiently interrelated so as to justify inclusion in a single question, and that no other provisions of the Pennsylvania Constitution would be patently or facially affected by adoption of the Proposed Amendment. The Commonwealth Court erred in finding to the contrary.

The Commonwealth Court's preliminary injunction must be dissolved. For if it is upheld, voter confusion will occur and misinformation will be spread. Newspapers across this Commonwealth have already heralded the headline: "Votes for Constitutional Amendment Will Not Be Counted." As a result, there is now a cloud around the election, and the Commonwealth Court's issuance of the preliminary injunction will have the effect of suppressing the will of the electorate. It is not hyperbole to suggest that an average voter, after seeing the headlines described above, may decide to refrain from voting on the proposed amendment because they think that their vote will not be counted. That is the definition of disenfranchisement.



## **VII. ARGUMENT**

The Legislature of Pennsylvania has proposed an amendment to the Constitution of the Commonwealth of Pennsylvania to provide crime victims certain rights (“Marsy’s Law”). The proposed language for an amendment to the Constitution is as follows:

### § 9.1. Rights of victims of crime.

- (a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused: [1] to be treated with fairness and respect for the victim’s safety, dignity and privacy; to reasonable and timely notice of and to be present at all proceedings involving the criminal or delinquent conduct; [2] to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; [3] to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; [4] to be notified of any pretrial disposition of the case; [5] with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon; [6] to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; [7] to reasonable protection from the accused or any person acting on behalf of the accused; [8] to reasonable notice of any release or escape of the accused; [9] to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; [10] full and timely restitution from the person or entity convicted for the unlawful conduct; [11] full and timely restitution as determined by the court in a juvenile delinquency proceeding; [12] to the prompt return of property when no longer needed as

evidence; [13] to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings; [14] to confer with the attorney for the government; [15] and to be informed of all rights enumerated in this section.

- (b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.
- (c) As used in this section and as further defined by the General Assembly, the term “victim” includes any person against whom the criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act. The term “victim” does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Pa. S.B. No. 1011 of 2018 (bracketed numbers supplied for ease of analysis).

The Proposed Amendment is comprised of three different sections that can be summarized as follows: Section (a) is a list of rights to be given to victims of a crime; Section (b) authorizes Pennsylvania Courts to enforce the rights enumerated in Section (a) and disclaims any liability on behalf of the government or its officers based on enforcement of this amendment; and Section (c) defines the word “victim” as it is used within the amendment.

Importantly, Pennsylvania already has a Crime Victims Act that, while not part of the Constitution, provides for almost all of the rights that are proposed by the Legislature in the Proposed Amendment. *See* 18 P.S. §§ 11.101 *et seq.*<sup>3</sup> (A copy of the current Crime Victims Bill of Rights, set forth at 18 P.S. § 11.201, is attached as Appendix “B” hereto for the Court’s convenience.)

**A. The Essential Prerequisites Necessary To Support The Extraordinary Remedy Of Preliminary Injunctive Relief Were Not Satisfied**

The purpose of a preliminary injunction is to preserve the status quo and prevent imminent and irreparable harm which might occur before the merits of the case can be heard and determined. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 1131 (Pa. Super. 1987). Preliminary injunctive relief is also appropriate where necessary to restore the parties to their status immediately prior to the wrongful conduct of which the movant complains. *Commonwealth v. Coward*, 414 A.2d 91, 99 (Pa. 1980). “The status quo to be maintained by a preliminary injunction is the last, actual, peaceable and lawful uncontested status which preceded the pending controversy.” *Valley Forge Historical Soc’y v. Washington Mem’l Chapel*, 426 A.2d 1123, 1129 (Pa. 1981). A preliminary injunction is usually restrictive and prohibitory, but in unusual cases, it may go beyond restraint and command action. *Soja*, 522 A.2d at 1131.

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<sup>3</sup> Act of November 24, 1998, P.L. 882, No. 111, §§ 101 *et seq.*

Under Pennsylvania law, the essential prerequisites for a preliminary injunction are:

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity. Sixth and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

*Summit Towne Centre, Inc. v Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003) (citations omitted).

“Any preliminary injunction is an extraordinary, interim remedy that should not be issued unless the moving party's right to relief is clear and the wrong to be remedied is manifest.” *Ambrogi v. Reber*, 932 A.2d 969, 974 (Pa. Super. 2007) (citing *Anchel v. Shea*, 762 A.2d 346, 351 (Pa. Super. 2000)). “Otherwise, the preliminary injunction will be dissolved”. *Id.*

Petitioners did not meet their high burden of proving the elements necessary to entitle them to the extraordinary grant of preliminary injunctive relief, and the

Commonwealth Court erred in finding to the contrary. The preliminary injunction should be dissolved by this Court.

**1. Petitioners did not satisfy their burden of proving that an injunction is necessary to prevent immediate and irreparable harm**

At the October 23, 2019 preliminary injunction hearing before the Commonwealth Court, Petitioners alleged that two categories of immediate and irreparable harm would occur if the Secretary was not preliminary enjoined from tabulating and certifying the electorate's vote on the Proposed Amendment. First, Petitioners presented the testimony of Intervenor Greenblatt, who *speculated* as to the *possible* harms that *might* be suffered by criminal defendants and convicted criminals with respect to their constitutional rights, as a result of the passage of the Proposed Amendment. Second, Petitioners argued harm to the electorate's "rights to vote separately" for each of the rights sought to be extended to crime victims through passage of the Proposed Amendment, in violation of the single subject requirement of Article XI, § 1 of the Pennsylvania Constitution.

While Intervenor Greenblatt is a criminal defense attorney licensed to practice law in the Commonwealth, he is neither a constitutional scholar, nor was he identified pre-hearing—or qualified at the hearing—as an expert in criminal constitutional law. Demonstrating his obvious bias, Intervenor Greenblatt was erroneously permitted to testify, over Appellants' objection, as to his *personal*

*belief* that the new constitutional provisions would “eviscerate his ability to effectively represent his clients and throw the criminal justice system into turmoil.” (Cmwlth. Ct. slip op. at 9.) Intervenor Greenblatt provided no actual evidence to substantiate his legal theories. Instead, he merely provided opinion testimony and dubious policy arguments.

Moreover, the Secretary’s cross-examination of Intervenor Greenblatt revealed that he was unfamiliar with the myriad provisions of the Crime Victims Act. As a result, Intervenor Greenblatt was unable to defend his unsupported hypothesis when confronted with the indisputable fact that many of the same rights set forth in the Proposed Amendment had been statutorily enacted over twenty-years ago in the Crime Victims Act, yet they had not thrown the “criminal justice system into turmoil”.

The Commonwealth Court explicitly recognized that Petitioners needed to “present ‘concrete evidence’ demonstrating ‘actual proof of irreparable harm’” in order to satisfy the immediate and irreparable harm requirement, and also that “[a] claim of irreparable harm cannot be based on speculation and hypothesis”. (Cmwlth. Ct. slip op. at 8 (citing *Greenmoor, Inc. v. Burchick Constr. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super. 2006)).) However, the Commonwealth Court nevertheless improperly credited Intervenor Greenblatt’s rank speculation as “concrete evidence” and “actual proof” of immediate and irreparable harm. The

Commonwealth Court's reliance on Intervenor Greenblatt's speculative opinion testimony was clear error.

Petitioners' assertion that the Proposed Amendment would result in irreparable harm to the electorate's "rights to vote separately" similarly fails. This allegation is, again, purely speculative as no "concrete evidence" or "actual proof" of an alleged harm was offered by Petitioners at the hearing. Moreover, Petitioners' assertion is belied by the history of past challenges to constitutional amendment ballot questions in the Commonwealth.

The courts of this Commonwealth have repeatedly declined to hold that irreparable harm occurs when a challenged proposed constitutional amendment is permitted to go before the electorate and be tabulated and certified by the Secretary. That is because a challenge to a constitutional amendment is just as justiciable after an election, as it is before the election.

In *Pennsylvania Prison Soc'y v. Commonwealth*, 776 A.2d 971 (Pa. 2001), the petitioners in a similar challenge to a ballot question sought a preliminary injunction and a temporary restraining order, both of which were denied by the Commonwealth Court. That case continued for another sixteen months before the Commonwealth Court declared the electorate's vote on the ballot question to be null and void on the basis that the proposed amendment contained multiple amendments to the Pennsylvania Constitution. *Id.* at 975-76. Subsequently, another

twenty-eight months later, this Court reversed the Commonwealth Court's decision and upheld the vote by the electorate on the proposed amendment. *Id.* at 984. Obviously, any harm that could have occurred by the invalidation and revalidation of the proposed amendment in that case was not irreparable.

Similarly, a preliminary injunction against counting votes on a proposed ballot question in *Bergdoll v. Commonwealth*, 858 A.2d 185, 190 (Pa. 2004), was also denied. There, the injunction was denied in October of 2003 regarding a proposed constitutional amendment that was on the ballot in November of 2003. That case continued for almost one year after the election in which the electorate voted in favor of the proposed amendment, with a final decision being rendered by this Court in September of 2004. *Id.* at 203.

As demonstrated by these prior cases, there is no palpable harm to the electorate's fundamental right to vote on separate amendments simply by permitting the Secretary of the Commonwealth to tabulate and certify the results of the election in which the proposed amendment appears on the ballot, subject to constitutional review by the appellate courts. Petitioners' alleged ephemeral harm to the electorate's right to vote on each proposed "right" separately provides no basis for the extraordinary grant of preliminary injunctive relief.



**2. The Proposed Amendment does not violate the single-subject requirement of Article XI, § 1 of the Constitution<sup>4</sup>**

The Pennsylvania Constitution, at Article XI, Section 1, delineates the procedure for the Legislature’s proposals for, and the electorate’s adoption of, constitutional amendments. The “single-subject” requirement requires that “when two or more amendments shall be submitted they shall be voted upon separately.” PA. CONST. art. XI, § 1.

To determine whether a ballot question violates the Article XI, Section 1 single-subject requirement, this Court adopted the “subject matter test” in the seminal case of *Grimaud v. Commonwealth of Pennsylvania*, 865 A.2d 835, 841 (Pa. 2005). The subject matter test contains two prongs: (1) whether the subject matter is *sufficiently interrelated* so as to justify inclusion in a single question, and (2) whether the proposed amendment does not *facially affect* other parts of the Constitution.

In *Grimaud*, two separate constitutional amendments were challenged for allegedly violating the single-subject requirement. *Id.* The first amendment that was challenged in *Grimaud* related to bail procedures and was stated as follows:

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<sup>4</sup> Appellants hereby join, rely on, and adopt by reference in whole, the Secretary’s arguments regarding the remaining essential prerequisites for issuance of a preliminary injunction, and the Secretary’s arguments in opposition to Petitioners’ claims that the ballot question does not fairly and accurately reflect the proposed amendment, and that the entire text of the proposed amendment must be set forth in the ballot question itself, as set forth in the Secretary’s Brief of the Appellant filed in the companion appeal docketed at No. 84 M.A.P. 2019. *See generally* Pa.R.A.P. 2137.

Shall the Pennsylvania Constitution be amended to disallow bail when the proof is evident or presumption great that the accused committed an offense for which the maximum penalty is life imprisonment or that no condition or combination of conditions other than imprisonment of the accused will reasonably assure the safety of any person and the community?

*Id.*

The appellants in *Grimaud* argued that the proposal twice amended Article I, Section 14 of the Constitution by “(1) expanding the capital offenses bail exception to include life in prison and (2) adding preventative detention to the purpose of bail.” *Id.* at 841. This Court analyzed case law from other jurisdictions and prior Pennsylvania cases, and failed to reach a majority on the standard to apply in situations such as these. *Id.* In doing so, this Court was persuaded by Chief Justice Saylor’s concurring opinion in *Pennsylvania Prison Soc’y v. Commonwealth* that suggested “a subject-matter focus to their presentation to the electorate in a single question.” *Grimaud*, 865 A.2d at 841 (quoting *Pennsylvania Prison Soc’y v. Commonwealth*, 776 A.2d 971, 984 (Pa. 2001) (plurality)). This Court also cited various opinions from other jurisdictions in order to explain its test:

*See, e.g., Korte v. Bayless*, [16 P.3d 200, 203–05] (Ariz. 2001) (explaining a “common-purpose formulation” to inquire into whether the proposed amendments are sufficiently related to “constitute a consistent and workable whole on the general topic embraced”); *Clark v. State Canvassing Bd.*, [888 P.2d 458, 462] (N.M. 1995) (applying a “rational linchpin” of interdependence test); *Sears v. State*, [208 S.E.2d 93, 100] (Ga. 1974) (inquiring into whether all of the proposed changes “are germane to the accomplishment of a single objective”) (quotations and citations omitted); *Fugina v. Donovan*, [104 N.W.2d

911, 914] (Minn. 1960) (upholding separate propositions that, although they could have been submitted separately, were rationally related to a single, purpose, plan, or subject); *Manduley v. Superior Court*, 27 Cal.4th 537, 117 Cal.Rptr.2d 168, 41 P.3d 3, 28 (2002) (various provisions must be reasonably related to common theme or purpose); *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984) (amendment must manifest “a logical and natural oneness of purpose ...”).

*Grimaud*, 865 A.2d at 841.

In adopting the “subject matter test” described above, this Court determined that the ballot question regarding the constitutional amendment to the bail provision was “sufficiently interrelated (all concerned disallowance of bail to reinforce public safety) to justify inclusion in a single question.” *Id.*

The appellants in *Grimaud* further argued that the single ballot question above implicitly amended multiple other provisions of the Pennsylvania Constitution and, therefore, violated the second prong of the single-subject rule. *Id.* at 842. This argument too was rejected by this Court. This Court determined that the test to be applied is not “whether the amendments might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution.” *Id.* (emphasis in original). The fact that an amendment to one provision of the Constitution may possibly affect other provisions of the Constitution does not, of itself, violate the single-subject requirement. *Id.* In so holding, this Court ultimately determined that the ballot question regarding bail procedures, while implicitly having an effect on other

provisions of the Constitution, *patently* affected only Article I, Section 14 and, therefore, the single-subject rule was not violated when the question was submitted to the electorate. *Id.*

The second ballot question that was challenged in *Grimaud* asked “shall the Pennsylvania Constitution be amended to provide that the Commonwealth shall have the same right to trial by jury in criminal cases as does the accused?” *Id.* at 845. The appellants argued that this provision, in addition to amending Article I, Section 6 (trial by jury), also amended Article V, Section 10(c) (judicial administration) because the authority to govern jury waiver was taken from the Courts, and Article I, Section 25 (reservation of rights in people) because the original purpose of a jury trial was to prevent oppression by the government, but the amendment had changed this purpose by giving the Commonwealth the right to a jury trial. *Id.* In applying the *Grimaud* test, this Court determined that only one substantive change was made—to give the Commonwealth the right to a trial by jury—and thus the ballot question did not violate the single-subject requirement of Article XI, Section 1. *Id.*

An example of an amendment that was found to violate the single-subject requirement can be found in *Pennsylvania Prison Soc’y v. Commonwealth*, 776 A.2d 971 (Pa. 2001). There, a single ballot question was presented to the electorate, which asked:

Shall the Pennsylvania Constitution be amended [1] to require a unanimous recommendation of the Board of Pardons before the Governor can pardon or commute the sentence of an individual sentenced in a criminal case to death or life imprisonment, [2] to require only a majority vote of the Senate to approve the Governor's appointments to the Board, and [3] to substitute a crime victim for an attorney and a corrections expert for a penologist as Board members?

*Pennsylvania Prison Society*, 776 A.2d at 974 (numbering added for ease of analysis).

Although the proposed amendment in that case amended only one section of the Constitution (Article IV, Section 9), this Court determined that it did, in fact, violate the single-subject requirement because the amendment had more than one purpose. *Id.* at 981. First, this Court found that the amendment restructured the pardoning power of the Board of Pardons by requiring a unanimous recommendation (part 1) and changed the composition of the Board itself (part 3). *Id.* Although this was, in effect, two changes, they could be properly submitted as one single question because they both had the purpose of altering the function of the Board of Pardons. *Id.* This Court did, however, take issue with the fact that the amendment also attempted to change the confirmation process for gubernatorial appointees (part 2). *Id.* In so holding, this Court determined that the amendment violated the single-subject requirement and should have been presented as two separate ballot questions.

Another example of a ballot question that violated the single subject requirement can be found in *Bergdoll v. Kane*, 731 A.2d 1264 (Pa. 1999). There, a single ballot question asked:

Shall the Pennsylvania Constitution be amended to provide (1) that a person accused of a crime has the right to be “confronted with the witnesses against him,” instead of the right to “meet the witnesses face to face,” and (2) that the General Assembly may enact laws regarding the manner by which children may testify in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television?

*Bergdoll*, 731 A.2d at 1265–66.

In *Bergdoll*, this Court determined that it was clear that this single question facially amended two separate portions of the Constitution: the text of the Constitution regarding the right to meet a witness face to face was changed *and*, separately, the General Assembly was authorized to enact laws regarding the manner in which a child may testify in a criminal proceeding. *Id.* at 1270.

Therefore, the test to determine whether a ballot question meets the single-subject requirement of Article XI, Section 1 is whether the subject matter is sufficiently interrelated so as to justify inclusion in a single question *and* whether the proposed amendment does not facially affect other parts of the Constitution.

**a. The Proposed Amendment is sufficiently interrelated so as to justify inclusion in a single question**

It is abundantly clear that the Proposed Amendment satisfies the first prong of the single-subject test; that is, whether the Proposed Amendment is sufficiently interrelated to as to justify inclusion in a single question.

On the surface, the Proposed Amendment grants additional rights to victims of a crime. As previously stated, Section (a) details the rights to be afforded to victims, Section (b) details the mechanism for enforcing the rights enumerated in Section (a), as well as clarifying that there can be no cause of action against the government or its employees/agents for compensation or damages as a result of this amendment, and Section (c) defines “victim” as it relates to the Proposed Amendment.

All three provisions are interrelated so as to ensure that victims’ rights are protected throughout the legal process. Furthermore, there can be no doubt that the objectives contained within the amendment are “rationally related to a single purpose, plan, or subject,” are sufficiently related to “constitute a consistent and workable whole on the general topic embraced,” are “reasonably related to a common theme or purpose,” and would “manifest ‘a logical and natural oneness of purpose,’” so as to meet the various “subject matter tests” from around the United States that this Court cited in *Grimaud*.

Additionally, to require each section of the Proposed Amendment to be voted on individually could defeat the purpose of the entire amendment. For example, if the people approve Sections (b) or (c), but do not approve Section (a), the effect would be that a victim has a mechanism to enforce certain rights that do not exist within the Constitution because the list of rights in Subsection (a) was disapproved. Similarly, Subsection (c) would define the word victim “as used within this section,” but it is possible that there would be no other use of the word “victim” because the language of Section (c) may be the only portion of the proposal that passed. This outcome would frustrate the entire purpose of the proposal and would result in an amendment to the Constitution that, at best, does nothing, and, at worst, makes no sense.

The individual rights that would be given to a victim, as found in Section (a) of the Proposed Amendment, are also so interrelated so as to constitute a single purpose, plan or subject and manifests a “logical and natural oneness of purpose,” namely memorializing certain rights, which are already largely granted by statute, in the Pennsylvania Constitution. Significantly, the Proposed Amendment seeks to add these rights by the addition of a new section to the Constitution, instead of changing provisions that already exist. In fact, the Proposed Amendment does not facially change *any* existing provision of the Constitution. Accordingly, this Court



must hold that the Proposed Amendment is sufficiently interrelated so as to justify inclusion in a single question.

**b. The Proposed Amendment does not facially affect other parts of the Constitution**

An analysis of each clause of the Proposed Amendment (reproduced in bold font, *infra*), to determine whether any other provisions of the Pennsylvania Constitution would be patently/facially affected by its adoption, follows.

**“(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused:”**

This clause is merely an introduction to the rights enumerated below and provides the intent for enacting this amendment. The language in the proposal is nearly identical to the language within the Pennsylvania Crime Victims Act’s legislative intent section, which states that “the rights extended to the victims of crime in [the Crime Victims Act] are to be honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.” 18 P.S. § 11.102(2).

As a practical matter, the similarities to the Crime Victims Act enumerated herein is indicative that the proposed constitutional amendment does not violate the Pennsylvania Constitution. As a matter of law, this language is presumed to be constitutional since it was passed by the legislature before and it has not been

challenged. *See Pennsylvania State Ass'n of Jury Com'rs v. Commonwealth*, 64 A.3d 611, 618 (Pa. 2013) (stating that “acts passed by the General Assembly are strongly presumed to be constitutional, including the manner in which they were passed”).

**“[1] to be treated with fairness and respect for the victim’s safety, dignity and privacy;”**

Once again, this language is very similar to language contained in the Crime Victims Act, which states that “all victims of crime are to be treated with dignity, respect, courtesy and sensitivity.” 18 P.S. § 11.102(1). The only addition in the Proposed Amendment is the “privacy” provision.

This “privacy” language was challenged in legal proceedings in Montana because, according to the petitioners there, it “effectively” amends the right-to-know provision of the Montana Constitution. *See Montana Ass'n of Counties v. State by and through Fox*, 389 Mont. 183 (Mont. 2017). Pennsylvania’s Right-to-Know Law, however, derives from various acts of the Legislature, and is not contained within the text of the Pennsylvania Constitution.

In fact, there are no explicit privacy clauses anywhere within the Pennsylvania Constitution. The right to privacy for Pennsylvania citizens originates from the United States Constitution and case law interpreting Article I, Section 1 of the Pennsylvania Constitution, which grants certain inherent rights of mankind. PA. CONST. art. I, § 1 (“All men are born equally free and independent,

and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”).<sup>5</sup> Because there are no specific references to privacy elsewhere within the Constitution, and the language in the Proposed Amendment does not change the common law right to privacy, this Court must hold that this provision would not facially affect any other provisions of the Constitution.

**“[2] to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused;”**

Petitioners have incorrectly and misleadingly stated that this provision will change the current language of the Pennsylvania Constitution. That is not the case. Instead, like many of the other provisions proposed by this constitutional amendment, this new “right” perfectly complements the plain language of the Constitution. In support of their argument below, Petitioners cited to Article I, Section 14, stating that “all persons have a right to be released on bail prior to trial in all cases.” (Petitioner’s Brief in Support of Application for Special Relief at 37.)

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<sup>5</sup> The right to privacy in Pennsylvania is older than either the federal or state constitution. *Commonwealth v. Palms*, 15 A.2d 481 (Pa. Super. 1940); *Commonwealth v. Beauford*, 475 A.2d 783 (Pa. Super. 1984); *see also Shelby v. Second Nat’l Bank of Uniontown*, 19 Pa. D. & C. 202, 209 (C.P. Fayette Cty. 1933) (“The right to privacy in the conduct of one’s personal and private affairs is a right derived from natural law. . . . The right to privacy in one’s affairs is a right guaranteed to all its citizens by the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania.”).

Had Petitioners provided the actual language contained within the Pennsylvania Constitution, however, it would be clear that their argument is fatally flawed:

*All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or 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; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.*

PA. CONST. art. I, § 14 (emphasis supplied).

As is clear from the language of the Constitution, the safety of any person and the community *must already be considered* when bail is set. So, to now argue that this facially changes a provision within the Pennsylvania Constitution is misleading and simply untrue.

**“[3] to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct;”**  
**and**

**“[4] to be notified of any pretrial disposition of the case;”**

These provisions would simply have the effect of requiring notice to the victim of any proceeding involving the accused, providing the right to be present at all such proceedings, and to be notified of certain dispositions. None of these rights would facially change any other portion of the Pennsylvania Constitution.

Once again, these rights have already been granted to victims in Pennsylvania through the Crime Victims Act. Specifically, the Crime Victims Act requires that victims “be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case,” and gives victims the right “to be accompanied at all criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.” 18 P.S. § 11.201(2) and (3). These provisions were already passed by the General Assembly and their constitutionality has not been challenged. As previously discussed, the Crime Victims Act is presumed to be constitutional.

There is nothing contained within the Pennsylvania Constitution that prohibits notice to a victim of an upcoming proceeding or of the disposition of the case, or allowing a victim’s presence at such a proceeding. In fact, the United States Supreme Court has held that people have a First Amendment right to attend criminal trials, *Richmond Newspapers, Inc. v. Virginia*, 48 U.S. 555, 581 (1980), and the Pennsylvania Supreme Court has interpreted Article I, Section 11 of the Pennsylvania Constitution, which provides that “all courts shall be open,” to mean that the public should be allowed in a courtroom during criminal trial proceedings. *Commonwealth v. Fenstermaker*, 530 A.2d 414, 417 (Pa. 1987). Furthermore, the General Assembly has passed legislation allowing victims of crimes by juveniles to

be present at such proceedings, even when the general public is not allowed to attend.

Thus, giving a victim of a crime the right to notice and presence at a criminal proceeding, as well as notice of a pretrial disposition, would not facially affect another portion of the Pennsylvania Constitution, and does not violate the single-subject requirement.

**“[5] with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon;”**

Giving a victim the right to be heard in a proceeding regarding release, plea, sentencing, disposition, parole, or any other proceeding that might impact the victim, does not facially alter any other provisions within the Pennsylvania Constitution.

The Pennsylvania Constitution is wholly silent on who may speak at certain proceedings in a criminal trial; instead these proceedings are regulated by the Pennsylvania Rules of Criminal Procedure and, once again, the Crime Victims Act. In fact, this provision is supported by Article I, Section 9 of the Pennsylvania Constitution, which allows for an accused person “to be confronted with the witnesses against him.” PA. CONST. art. I, § 9.

The Crime Victims Act currently allows for a victim to provide prior written comments to the prosecution and to the court in the following circumstances: prior

to the potential reduction or dropping of any charge or change of a plea, prior to sentencing of a defendant or disposition of a delinquent child, prior to a judicial recommendation that a defendant participate in a motivational boot camp, prior to a juvenile's dispositional review hearing, and prior to post-sentencing release decisions for defendants of personal injury crimes where the adult is sentenced to a State correctional facility. 18 P.S. § 11.201(4)-(5.2), (7). Once again, none of these provisions have been challenged or deemed to be unconstitutional.

The petitioners in the Montana challenge to the adoption of Marsy's Law, *Montana Ass'n of Counties v. State by and through Fox*, 389 Mont. 183 (Mont. 2017), asserted that this provision would violate the right of an accused to a speedy trial, as granted in both the Montana Constitution and the Pennsylvania Constitution (at Article I, Section 9), because a trial may be delayed if "the rights of victims cannot be accommodated in a speedy manner." (Petition for Declaratory and Injunctive Relief, *Montana Ass'n of Counties v. State by and through Fox*, Case No. OP 17-0358, at 14 (Mont. 2017)). This argument, however, has no merit in Pennsylvania because, while the Proposed Amendment may have a latent impact on the speedy trial provision, it does not patently or facially amend the right as granted by the Constitution, as is required to violate the single-subject requirement for an amendment.

Therefore, this Court must find that this provision does not facially amend any other portion of the Pennsylvania Constitution.

**“[6] to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender;”**

Once again, the rights that are memorialized in this provision are rights that are, by statute, already afforded victims of crime in Pennsylvania. Specifically, the Crime Victims Act states that victims of a crime are to be “given the opportunity to provide prior comment on and to receive ... postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement.” 18 P.S. § 11.201(7)(i) & (8)(i). Moreover, the Crime Victims Act also requires that:

No later than 90 days prior to the parole date of an offender, the victim advocate shall notify the victim of the offense for which the offender was sentenced, the parent or legal guardian of a victim who is a minor or a member of the family if the victim is incapable of communicating or has died and shall provide the appropriate person with an opportunity to submit a preparole statement expressing concerns or recommendations regarding the parole or parole supervision of the offender.

18 P.S. § 11.501(a).

None of this statutory language contained in the Crime Victims Act has been held to violate any currently-existing provisions of the Pennsylvania Constitution, and the inclusion of this provision in the Proposed Amendment simply



memorializes these pre-existing statutory rights in the Constitution so that these rights cannot be easily eroded by the whim of the legislature. Moreover, the plain language of the Proposed Amendment does not come close to facially amending any other section of the Pennsylvania Constitution. Accordingly, this provision, too, passes the single-subject test.

**“[7] to reasonable protection from the accused or any person acting on behalf of the accused;”**

All Pennsylvania citizens are given certain “inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” PA. CONST. art. I, § 1. Furthermore, the government is created for the “peace, safety and happiness” of the people. PA. CONST. art. I, § 2. These two provisions provide the right to safety for the citizens of Pennsylvania.

The creation of an explicit right to be protected from another person, as would be created here, could not be found to change any other provision of the Constitution. Nowhere in the Constitution is a proposition that a person should not be protected from harm, nor, obviously, is there a provision that gives a criminal defendant a right to inflict further harm on a victim.

Therefore, this provision cannot be found to patently amend any other portion of the Constitution and, therefore, passes the single-subject requirement.

**“[8] to reasonable notice of any release or escape of the accused;”**

There is nothing contained within the Pennsylvania Constitution that addresses the release or escape of an accused, or the notice to a victim thereof. Various provisions of the Crime Victims Act, however, in almost all situations require notice to a victim in the case of release or escape of a defendant. *See* 18 P.S. § 11.201(2), (7)-(9).

The Crime Victims Act also delineates the responsibilities of state and local law enforcement agencies, prosecutor’s offices, Pennsylvania Department of Corrections, local correctional facilities, Pennsylvania Board of Probation and Parole, Department of Public Welfare, mental health institutions, and juvenile probation offices, with regard to notification of victims in the case of an escape or release of an accused.

Because the Constitution is silent on notice of a release or escape, this provision does not patently amend any other section of the Constitution, and does not violate the single-subject requirement.

**“[9] to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused;”**

Pennsylvania’s Constitution contains a provision that states that an accused in a criminal prosecution has the right “to be confronted with the witnesses against him, [and] to have compulsory process for obtaining witnesses in his favor.” PA.

CONST. art. I, § 9. The Confrontation Clause of the United States Constitution has been interpreted to mean that a criminal defendant has the right to confront the witnesses against him *at trial*, not necessarily in pretrial discovery. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). While Pennsylvania Courts have interpreted the Pennsylvania Constitution's confrontation clause to allow for certain pretrial discovery based on the right of confrontation and compulsory process, the plain language of the Constitution does not contain this qualifier. *See Commonwealth v. Kennedy*, 604 A.2d 1036 (Pa. Super. 1992) (defendant was entitled to subpoena non-privileged therapeutic records of a child victim in possession of a hospital in effort to prepare for a defense); *Commonwealth v. French*, 611 A.2d 175 (Pa. 1992) (defense could inspect pretrial statements of prosecution witnesses in order to prepare for cross-examination). Moreover, none of the cases referencing pretrial discovery have extended the right of confrontation or compulsory process to interviews, depositions, or other discovery requests directed at the victim of a crime. The Proposed Amendment is consistent with current law.

Therefore, this provision does not facially amend any other section of the Constitution and, therefore, can be submitted to the electorate as a single amendment and still comply with the single-subject requirement of Article XI, Section 1.

**“[10] full and timely restitution from the person or entity convicted for the unlawful conduct;”**

**and**

**“[11] full and timely restitution as determined by the court in a juvenile delinquency proceeding;”**

Nothing within the Pennsylvania Constitution specifically touches on the restitution of a victim from a defendant in a criminal proceeding or a juvenile delinquency proceeding. A victim does, however, have the inherent right to acquire, possess, and protect their own property, based on Article I, Section 1 of the Pennsylvania Constitution. Accordingly, the full and timely restitution of a victim is a way for the State to protect that inherent right. This does not alter or amend that provision, however, it merely provides a means to fulfill that right.

Additionally, the Crime Victims Act already provides that a victim has the right “to be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case.” 18 P.S. § 11.201(6).

Furthermore, the Pennsylvania Crimes Code’s sentencing provisions require a court to order full restitution “upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value

substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime.” 18 Pa.C.S. § 1106(a). This statute has been challenged repeatedly and has been upheld each time. *See, Commonwealth v. Atanasio*, 997 A.2d 1181 (Pa. Super. 2010); *Commonwealth v. Burwell*, 58 A.3d 790 (Pa. Super. 2012). While there have been claims that requiring full restitution could be a violation of a defendant’s due process rights, this argument has been rejected because the *amount* of “full restitution” must still “be determined under the adversarial system with considerations of due process.” *Commonwealth v. Ortiz*, 854 A.2d 1280, 1282 (Pa. Super. 2004).

Because nothing within the Constitution touches on this subject, and statutory authority already requires full restitution, this provision cannot be found to facially alter the Pennsylvania Constitution. Therefore, it does not violate the single-subject requirement.

**“[12] to the prompt return of property when no longer needed as evidence;”**

As established, the vast majority of the provisions of the Proposed Amendment are already the law within the Commonwealth. This provision is no exception. The Crime Victims Act explicitly states that “[t]he appropriate law enforcement agency shall return to the victim property seized as evidence if the prosecutor's office determines that the evidence is no longer needed for prosecution.” 18 P.S. § 11.212(g). No constitutional rights exist in Pennsylvania

wherein the property of a victim could be held by the Commonwealth in perpetuity if that property is no longer needed as evidence. To hold otherwise would be absurd. Similar to the restitution provisions above, this provision does not affect, in any way, other provisions contained within the Pennsylvania Constitution and, therefore, it satisfies the single-subject test.

**“[13] to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings;”**

An accused in a criminal proceeding has a right to “a speedy public trial by an impartial jury.” PA. CONST. art. I, § 9. Nothing within the Constitution contemplates a right for a victim to have proceedings that are free from unreasonable delay, thus resulting in a prompt conclusion of the case. The provision proposed here does not facially alter any other provisions, but instead is consistent with Article I, Section 9, as quoted above. The two provisions clearly go hand-in-hand and provide both an accused and a victim the right to a speedy trial.

Therefore, because this provision does not patently alter any other provisions within the Constitution, its inclusion does not violate the single-subject requirement.

**“[14] to confer with the attorney for the government;”**

The right to confer with an attorney for the government regarding an ongoing criminal case is one that, in practice, is already present in Pennsylvania.

Although the Constitution does not touch on the right of a victim to confer with a prosecutor, the Crime Victims Act details various responsibilities of a prosecutor's office. Under the Crime Victims Act, a prosecutor's office is required to provide an opportunity for a victim to submit prior comment on: (1) the potential reduction or dropping of any charge or change in a plea, (2) the sentencing of an adult or disposition of a juvenile, and (3) State correctional facility release decisions. 18 P.S. § 11.213(b)-(d). Furthermore, a prosecutor's office is required to provide assistance to victims of a crime in preparing the comments detailed above, as well as in submission and follow-up on financial assistance claims filed with the Office of Victim Services.

This provision within the Proposed Amendment does not require the prosecutor to act in any certain way, nor does it impose any duties on behalf of the prosecutor other than to talk to a victim of a crime. Because this subject does not facially amend any other portion of the Constitution, its inclusion in a single ballot question does not violate the single-subject requirement as set forth in Article XI, Section 1.

**“[15] and to be informed of all rights enumerated in this section.”**

If adopted, this provision would only apply to this particular section of the Constitution. Therefore, an analysis of whether it would patently amend another portion of the Constitution is unnecessary. Furthermore, a similar provision is

already enacted in the Crime Victims Act, which states that a victim of a crime has the right “to receive basic information concerning the services available for victims of crime.” 18 P.S. § 11.201(1).

**“(b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.”**

As detailed previously, requiring a separate vote for this provision could result in an amendment to the Constitution that is completely and utterly pointless. If separate votes are required, and the list of rights as enumerated in Section (a) does not pass, then this section would be describing a mechanism to achieve a remedy that is not attainable because the rights on which it is predicated would not be part of the Constitution. For this reason alone, the inclusion of this provision within one amendment cannot violate the single-subject requirement.

Moreover, nothing within this provision patently amends any other provision of the Constitution. First, the right to assert the enumerated rights in a court with jurisdiction over the case is permissive, not compulsory. This simply gives the ability to sue to enforce a victim’s right, but does not require anyone to do so. Second, the provision stating that the court or authority “shall act promptly on such



a request” does not facially amend any other portion of the Constitution. In fact, Article I, Section 11 states that every person whom has been injured “shall have remedy by due course of law, and right and justice administered without sale, denial *or delay*.” PA. CONST. art. I, § 11 (emphasis supplied). Therefore this proposal is in conformity with another section of the Constitution, as opposed to altering it. Finally, the final clause of this section cannot be found to facially alter any other portion of the Constitution because it applies only to this section. By saying that “*this section* does not create any cause of action for compensation or damages,” it is clear that the purpose of this section is not to affect any portion of the Constitution, but only to modify the rights that have been enumerated herein.

Furthermore, the Crime Victims Act has a similar provision that states that nothing within the Act “creates a cause of action or defense in favor of any person arising out of the failure to comply with any of these chapters.” 18 P.S. § 11.5101.

Therefore, because submitting this section as a separate amendment to the Constitution would frustrate the purpose of the entire amendment, and because it does not patently affect any other portions of the Constitution, its inclusion in a single amendment does not violate the single-subject requirement.

**“(c) As used in this section and as further defined by the General Assembly, the term “victim” includes any person against whom the criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act. The term “victim” does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.”**

This provision cannot be found to violate the single-subject requirement because, as previously discussed, the potential result of this portion of the amendment passing, while there is a chance that the list of rights does not pass, would create an outcome that would make no sense whatsoever. Furthermore, the introductory phrase “as used in this section” clearly shows that the definition of “victim” as used here would not alter any other sections of the Constitution.

It should be noted that the Crime Victims Act currently has a fairly broad definition of “victim”:

“Victim.” The term means the following:

(1) A direct victim.

(2) A parent or legal guardian of a child who is a direct victim, except when the parent or legal guardian of the child is the alleged offender.

(3) A minor child who is a material witness to any of the following crimes and offenses under 18 Pa.C.S. (relating to crimes and offenses) committed or attempted against a member of the child's family:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 3121 (relating to rape).

(4) A family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act, except where the family member is the alleged offender.

18 P.S. § 11.103.

In *Montana Ass'n of Counties v. State by and through Fox*, 389 Mont. 183 (Mont. 2017), the definition of “victim” was much broader than the definition that is proposed here. The definition of “victim” in Montana explicitly included kinship relationships, such as spouses, parents, children, etc., which was challenged by the petitioners there.

Because the proposed language here is much narrower, the General Assembly has already adopted a definition of “victim” that includes more than just a “direct victim,” and the definition would apply only to the victim’s rights section of the Constitution, this Court must hold that this provision does not violate the single-subject requirement and, thus, does not require a separate vote.

## **VIII. CONCLUSION**

As is clear from the analysis above, the Commonwealth Court's grant of the Petitioners' preliminary injunction was improper. Since the challenge to the Proposed Amendment has no likelihood of success on its merits, the preliminary injunction must be dissolved.

WHEREFORE, for the foregoing reasons, and for the reasons argued by Appellee, Kathy Boockvar, the Acting Secretary of the Commonwealth, in the Secretary's Brief filed in the companion appeal docketed at No. 84 M.D.A. 2019, Appellants, Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams, respectfully request that the Supreme Court of Pennsylvania DISSOLVE the preliminary injunction entered by the Commonwealth Court on October 30, 2019.

Respectfully submitted,

**LAMB McERLANE PC**

Dated: November 1, 2019

By: /s/ Scot R. Withers

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**Pa.R.A.P. 2135(d) CERTIFICATE OF COMPLIANCE**

It is hereby certified that the foregoing Brief complies with the word count limit contained in Pa.R.A.P. 2135(a) because it contains 9,898 words, as computed by the “Word Count” function in Microsoft Word 2013, excluding the parts exempted by Pa.R.A.P. 2135(b).

Dated: November 1, 2019

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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: November 1, 2019

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## **APPENDIX “A”**



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

League of Women Voters of	:	
Pennsylvania and Lorraine Haw,	:	
Petitioners	:	
	:	
v.	:	No. 578 M.D. 2019
	:	HEARD: October 23, 2019
Kathy Boockvar, the Acting Secretary	:	
of the Commonwealth,	:	
Respondent	:	

BEFORE: HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE CEISLER

FILED: October 30, 2019

Before the Court is Petitioners' Application for Special Relief in the Form of a Preliminary Injunction pursuant to Pa.R.A.P. 1532 (Application) and Respondent's Answer thereto. The League of Women Voters (League)<sup>1</sup> and Lorraine Haw (Haw)<sup>2</sup>

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<sup>1</sup> The League is a nationwide, nonpartisan grassroots organization that believes that through informed action, people can make profound changes in their communities. Pet. for Review, ¶ 5. The goal of the League is to help create an informed, empowered citizenry and a responsible, responsive government. *Id.* ¶ 8. One way the League works to fulfill its mission is through education and awareness of election and voting issues.

<sup>2</sup> Ms. Haw is a resident and registered voter in the Commonwealth. *Id.* ¶ 10. Haw alleges that her brother was murdered and her son is serving a life sentence without the possibility of parole. *Id.* ¶ 11. Haw seeks to free her son and brother's murderer from what she calls "deaths by incarceration." *Id.* ¶ 12. Haw also has a criminal record, for which she is seeking a pardon. *Id.* ¶¶ 14, 15. She is concerned about what will happen to her request for a pardon if a purported victim of her crimes comes forward to object to her pardon request. *Id.* The Petition for Review (Petition) alleges that Haw agrees with some parts of the proposed constitutional amendment but disagrees with others, and she cannot separately vote on each right the proposed amendment would establish. *Id.* ¶ 16.

(collectively, Petitioners) seek to enjoin Kathy Boockvar, Acting Secretary of the Commonwealth (Secretary), from presenting a ballot question to the electorate during the November 2019 General Election.<sup>3</sup> The ballot question asks the electorate to decide whether a new amendment (Section 9.1) should be added to Article I, Section 9 of the Pennsylvania Constitution. This proposed amendment, which has been called The Victims' Rights Amendment, creates a number of new rights for **victims** of crime and those **directly impacted** by crimes.

### **Background**

On June 19, 2019, the Senate passed House Bill 276, which now is known as Joint Resolution 2019-1 (Proposed Amendment). It states at length in relevant part:

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:  
That Article I be amended by adding a section to read:

§9.1. Rights of victims of crime.

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<sup>3</sup> On October 22, 2019, the Court granted the unopposed Application for Leave To Intervene filed on behalf of Shameekah Moore, Martin Vickless, Kristin June Irwin, and Kelly Williams (collectively, Moore Intervenors), who are aligned with the Secretary. The Court further granted the unopposed Application for Leave to Intervene Pursuant to Pa.R.A.P. 1531 filed by Ronald L. Greenblatt, Esq., (Greenblatt Intervenor), who is aligned with Petitioners. The Court accepted for filing the answer and briefs in support of Intervenors' respective positions.

Also on October 22, 2019, the Court granted the Republican Caucus of the House of Representatives' Application for Leave To File *Amicus Curiae* Brief. The Court denied the Application for Relief to File *Amicus Curiae* Brief filed by the Pennsylvania Association of Criminal Defense Lawyers (PACDL) on October 24, 2019. We denied the PACDL's Application because it was filed after the Preliminary Injunction proceedings concluded.

(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as further provided and as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused: to be treated with fairness and respect for the victim's safety, dignity and privacy; to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; to reasonable protection from the accused or any person acting on behalf of the accused; to reasonable notice of any release or escape of the accused; to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; full and timely restitution from the person or entity convicted for the unlawful conduct; full and timely restitution as determined by the court in a juvenile delinquency proceeding; to the prompt return of property when no longer needed as evidence; to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related post[-]conviction proceedings; to confer with the attorney for the government; and to be informed of all rights enumerated in this section.

(b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.

(c) As used in this section and as further defined by the General Assembly, the term "victim" includes any person against whom the

criminal offense or delinquent act is committed or who is directly harmed by the commission of the offense or act. The term “victim” does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Pet. for Review, Ex. A (some underline and bold emphasis deleted); HB 276, 2019-2020 Gen. Assemb., 203d Reg. Sess. (Pa. 2019); Pet’rs’ Ex. P-1.

As required, the Secretary then prepared the text of the ballot question to be posed to the electorate for a vote as to whether the Constitution should be amended. Pet. for Review, ¶ 30. The ballot question is as follows:

Shall the Pennsylvania Constitution be amended to grant certain rights to crime victims, including to be treated with fairness, respect and dignity; considering their safety in bail proceedings; timely notice and opportunity to take part in public proceedings; reasonable protection from the accused; right to refuse discovery requests made by the accused; restitution and return of property; proceedings free from delay; and to be informed of these rights, so they can enforce them?

Pet. for Review, Ex. A; Pet’rs’ Ex. P-1.

In response to this Proposed Amendment and the ballot question, on October 10, 2019, Petitioners filed an original jurisdiction, three-count Petition for Review (Petition) and the Application.

### **Count I of the Petition for Review**

Petitioners assert that the ballot question violates Article XI, Section 1 of the Pennsylvania Constitution, which states, in relevant part, that “[w]hen two or more amendments shall be submitted they shall be voted upon separately.” PA. CONST. art. XI, § 1 (emphasis added).

Petitioners aver that the Proposed Amendment imposes multiple and significant changes to the Constitution by mandating a wide range of new and mutually independent rights to victims of crime and anyone who is directly impacted by a crime. Petitioners assert that the Proposed Amendment impermissibly extends new powers to the General Assembly in violation of the Constitution and patently and substantially amends multiple existing constitutional articles and sections pertaining to multiple subject matters, including:

**Article I, Section 9** (an accused’s right to be confronted with witnesses against him; the right to compulsory process for obtaining witnesses in the accused’s favor; and the right to be free from being placed in jeopardy for the same offense twice); Pet. for Review, ¶ 43.

**Article I, Section 14** (the general right of the accused to bail); *id.*

**Article IV, Section 9** (Governor’s power to, among other things, commute sentences and grant pardons); *id.*

**Article V** (Supreme Court of Pennsylvania’s power to prescribe general rules governing practice, procedure and the conduct of all courts). *Id.*

For these reasons, Petitioners argue that the Proposed Amendment does not encompass a single subject and thus prevents Haw, and the electorate in general, from voting “yes” to the Proposed Amendment provisions they approve and “no” to the Proposed Amendment provisions they oppose.

### **Count II of the Petition for Review**

Petitioners assert that the ballot question also violates Article XI, Section 1 because the question does not contain the actual text of the Proposed Amendment. *Id.* ¶ 46. Article XI, Section 1 provides that “such proposed amendment or

amendments shall be submitted to the qualified electors of the State in such a 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. Petitioners interpret this Section to require publication of the entire text of the Proposed Amendment. Pet. for Review, ¶ 46.

### **Count III of the Petition for Review**

Petitioners allege that the ballot question does not fairly, accurately, and clearly apprise the electorate of the issues because it fails to enumerate all the rights set forth in the Proposed Amendment and omits many of the changes that the Proposed Amendment would have on existing constitutional rights of the accused. *See Sprague v. Cortes*, 145 A.3d 1136, 1141 (Pa. 2016); *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969).

### **Application for Preliminary Injunction**

Concomitantly with their Petition for Review, Petitioners filed this Application and a brief in support thereof seeking a preliminary injunction. As relief, Petitioners seek to enjoin certification of the votes on the Proposed Amendment pending disposition of the Petition on the merits.<sup>4</sup>

A hearing on the injunction request was held on October 23, 2019. Immediately prior to this hearing, counsel for the parties and Intervenors stipulated to the following: 1) Haw and Moore Intervenors are registered voters in the Commonwealth; 2) the General Assembly and Office of Attorney General properly

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<sup>4</sup> Petitioners initially sought an order enjoining the Secretary, and her agents, servants and officers, from submitting the ballot question to the electorate in the November 2019 General Election, but subsequently withdrew that request for relief during the hearing.

adhered to the process by which the General Assembly and the Secretary can place the Proposed constitutional Amendment ballot question on the November 2019 ballot; and 3) the costs incurred by the Department of State for publication of the Proposed Amendment, the plain English statement, and the ballot question throughout the Commonwealth.

The focus of the October 23, 2019 hearing was on whether Petitioners met their burden of proving they met the criteria for obtaining a preliminary injunction.<sup>5</sup>

### **Criteria to Obtain a Preliminary Injunction**

A party seeking a preliminary injunction must meet all of the following criteria: 1) an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by money damages; 2) greater injury would result from refusing the injunction than from granting it, and concomitantly, that issuance of an injunction will not substantially harm other interested parties; 3) a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4) the activity is actionable, that the right to relief is clear, and that the wrong is manifest (meaning that the applicant is likely to prevail on the merits); 5) an injunction is reasonably suited to abate the offending activity; and 6) the injunction will not adversely affect the public interest. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995 (Pa. 2003); *Pa. State Educ. Ass'n v. Dep't of Cmty. and Econ. Dev.*, 981 A.3d 383 (Pa. Cmwlth. 2009) (Friedman, J., single judge op.), *aff'd*, 2 A.3d 558 (Pa. 2010). The party

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<sup>5</sup> The Secretary and Moore Intervenors raise laches as a defense to the Application. The Supreme Court has declared, "laches cannot be invoked to prevent the determination of the propriety of the submission of an amendment." *Tausig v. Lawrence*, 197 A. 235, 239 (Pa. 1938).

seeking a preliminary injunction must satisfy all of the above criteria. *Pa. AFL-CIO v. Commonwealth*, 683 A.2d 691 (Pa. Cmwlth. 1996).

### **Immediate and Irreparable Harm**

Petitioners must first demonstrate that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495 (Pa. 2014); *see also Summit Towne Ctr., Inc.*, 828 A.2d at 1001. To meet this burden, Petitioners must present “concrete evidence” demonstrating “actual proof of irreparable harm.” *Greenmoor, Inc. v. Burchick Constr. Co., Inc.*, 908 A.2d 310, 314 (Pa. Super. 2006). A claim of irreparable harm cannot be based on speculation and hypothesis, and for purposes of a preliminary injunction, the harm must be irreversible before it is deemed irreparable. *Id.* at 314.

### **Petitioners’ Arguments**

To prove immediate and irreparable harm, Petitioners presented the testimony of Ronald L. Greenblatt, Esq., an attorney with nearly 30 years’ practical experience working within the criminal justice system in Pennsylvania representing individuals accused of committing crimes.

Citing to the plain language of the Proposed Amendment, Mr. Greenblatt testified that pursuant to the new rights, victims of crime, and anyone directly impacted by those crimes, will have the absolute constitutional right “**to reasonable protection from the accused or any person acting on behalf of the accused**” as well as the right “**to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused.**” Pet. for



Review, Ex. A; Pet'rs' Ex. P-1 (some emphasis deleted). Hearing Transcript (H.T.) at 24-25. Mr. Greenblatt asserts that these new constitutional provisions will essentially eviscerate his ability to effectively represent his clients and throw the criminal justice system into turmoil.

First, Mr. Greenblatt stated that he will be stymied in his ability to obtain discoverable material, which is part of the compulsory process guaranteed under the Article I, Section 9 of the Pennsylvania Constitution.<sup>6</sup> H.T. at 30.

Mr. Greenblatt explained that as counsel for an accused, he takes immediate steps to preserve crucial evidence as part of his investigations.<sup>7</sup> H.T. at 26, 32. Such evidence could include text messages, e-mails, Facebook posts, evidence from other social media platforms, medical and financial records, cell phone data, and security videos. Such evidence can be critical to building a defense and proving innocence. H.T. at 27-29, 32, 56-57, 65. If not obtained as soon as possible, such evidence can easily be lost forever. H.T. at 27.

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<sup>6</sup> Article I, Section 9, titled Rights of Accused in Criminal Prosecutions, provides:

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, **to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor,** and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.

PA. CONST. art. I, § 9 (emphasis added).

<sup>7</sup> Mr. Greenblatt correctly asserts that defense counsel cannot simply rely upon the good faith efforts of the Commonwealth to conduct comprehensive investigations on behalf of the accused. Prosecutors have no obligation to do such investigations. The Commonwealth is only mandated to provide the defense with evidence that the Commonwealth has obtained.

According to Mr. Greenblatt, once the Proposed Amendment is enacted, victims of crimes, and anyone else who has been directly impacted by the crimes, will immediately have the absolute right **“to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused.”** Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (some emphasis deleted); H.T. 31-32, 76. Furthermore, victims of crimes, and anyone else who has been directly impacted by the crimes, will have the right to refuse to produce requested evidence citing their absolute constitutional right to privacy, that is **“to be treated with fairness and respect for the victim’s safety, dignity and privacy.”** Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (some emphasis deleted).

Acknowledging that he will try to obtain court orders compelling the production of such evidence, Mr. Greenblatt testified that if a victim of a crime, or anybody that is impacted by a crime, asserts a constitutional right to privacy, even relevant evidence could not be obtained because a court cannot issue an order, including a subpoena, that violates the Constitution. H.T. at 59, 66, 70, 81.

Mr. Greenblatt further testified that if the Proposed Amendment went into effect prior to a final disposition on the merits of the Petition, he and defense attorneys around the state will be forced to immediately file pretrial motions and appeals setting forth the nature of the case, the relevance of the requested discovery, and the reason why the discovery request was denied in order to protect the accused, and the record, for future appeals. H.T. at 45-46, 51. This will clog the courts’ dockets, delaying dispositions and trials to the detriment of those accused of crimes *and* victims alike.

Furthermore, according to Mr. Greenblatt, victims of crimes, and anyone directly impacted by those crimes that have the absolute right to be treated with

fairness and with dignity and privacy, will directly implicate any accused's ability to conduct effective cross-examination. Where the accused seeks to examine a crime victim, or anyone who is impacted by a crime (which could oftentimes include witnesses) on delicate, personal matters, which are completely germane to the case, the victim, and anyone who is impacted by the crime, could invoke the right to dignity and privacy established in the Proposed Amendment. H.T. at 36-37.

Mr. Greenblatt further testified that without compulsory discovery as mandated by Article I, Section 9 of the Constitution, the Proposed Amendment would hamstring defense attorneys' efforts to negotiate reasonable and informed plea agreements because neither defense counsel, nor the accused, would have a complete understanding of the case. H.T. at 41-42. It is axiomatic that a guilty plea is not knowing, intentional, or voluntary if the accused does not know the full extent of the evidence that would be available at trial. Despite this, if the Proposed Amendment is later determined to be unconstitutional, those who pled guilty under duress<sup>8</sup> would be unable to withdraw their guilty pleas and thus be tarnished for life with a criminal conviction that carries with it profoundly negative implications in one's life. H.T. at 42-43, 50.

Additionally, the increase in pretrial motions, the delays in obtaining discovery, the uncertainty of who, and how, to identify and notify victims of crimes and those directly impacted by the crimes, will all impede the right to a speedy trial, another constitutional protection. H.T. at 44-45. Such delays will harm both the accused and victims as prosecutions are dismissed or withdrawn because of the Commonwealth's inability to bring trials with the time frame of Pennsylvania Rule of Criminal Procedure 600, Pa.R.Crim.P. 600. H.T. 40-41.

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<sup>8</sup> Fear of the unknown and the desire to get out of jail are just two well-known reasons that defendants plead guilty to crimes they may not have committed.

Mr. Greenblatt and Petitioners argue that these harms would be immediate. If the Proposed Amendment is passed, it immediately becomes part of the Constitution.<sup>9</sup>

Petitioners also claim that an injunction is necessary to protect the electorate's fundamental right to vote by failing to provide the citizens with an opportunity to vote on each proposed change to the Constitution and preventing the General Assembly from usurping that right by impermissibly packaging multiple changes to the Constitution in one amendment. Appl. ¶ 11.

### **Secretary's Response**

Counsel for the Secretary argued that if the injunction is granted, this could potentially impact voter behavior. Counsel for the Secretary suggested that if voters know that the results of the ballot question may not be certified, and they have no other reason to vote, they may stay away from the polls on Election Day. As a result, the election results cannot be dependably relied upon.

Counsel for the Secretary also suggested that if the Proposed Amendment is passed, the effects on the rights of the accused or the functioning of the criminal justice system would not be immediate since there was no evidence that the Proposed Amendment would be effective upon a favorable majority vote. In support of this argument, Counsel relies upon subsection (a) of the Proposed Amendment, which states that a victim "shall have the following rights, as further provided and as defined by the General Assembly . . . ." *See* H.T. at 59 ("In this case, the proposed amendment says that it shall be further provided and as defined by the General

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<sup>9</sup> 1 Pa.C.S § 903 provides that after certification of the results of the ballot question, the Governor shall issue a proclamation as to whether a majority of the electorate passed the proposed amendment. This section does not address the date upon which a proposed amendment becomes part of the Constitution.

Assembly. So in this case, it's not clear that the amendment would immediately go into effect."); *see also* H.T. at 61-62.

### **Analysis**

This Court finds that Petitioners have met their burden of proving immediate and irreparable harm for purposes of the preliminary injunction.

Article I of the Pennsylvania Constitution is the Commonwealth's Declaration of Rights, which delineates the terms of the social contract between government and the people that are of such "general, great and essential" quality as to be ensconced as "inviolable." PA. CONST. art. I, Preamble & § 25; *see also* PA. CONST. art. I, § 2; *Robinson Twp., Wash. Cty. v. Commonwealth*, 83 A.3d 901, 947 (Pa. 2013).

"In considering the text of the provisions, we first look to their placement in the larger charter. The structure of the Pennsylvania Constitution highlights the primacy of Pennsylvania's protection of individual rights: 'The very first Article of the Pennsylvania Constitution consists of the Pennsylvania Declaration of Rights, and the first section of that Article affirms, among other things, that all citizens 'have certain inherent and inalienable rights.'" *Commonwealth v. Molina*, 104 A.3d 430, 442 (Pa. 2014) (quoting *Pap's A.M. v. City of Erie*, 812 A.2d 591, 603 (Pa. 2002)). Moreover, our charter further protects the rights detailed in Article I, in Section 25, providing, "To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate." *Id.* (quoting PA. CONST. art. I, § 25). "Unlike the Bill of Rights of the United States Constitution which emerged as a later addendum in 1791, the Declaration of Rights in the Pennsylvania Constitution was an organic part of the state's original constitution of

1776, and appeared (not coincidentally) first in that document.” *Id.* (quoting *Commonwealth v. Edmunds*, 586 A.2d 887, 896 (Pa. 1991)).

“Under our system, one accused of a crime is presumed innocent until the prosecuting attorney has demonstrated beyond a reasonable doubt to an impartial jury of the vicinage that he and the malefactor are identical, or that his actions match the definition or conform to the elements of the malefaction of which he stands accused.” *Commonwealth v. Raffensberger*, 435 A.2d 864, 865 (Pa. Super. 1981). “*This* presumption of innocence is but one of the many aspects of the fundamental law of our land. Like its counterparts, it emanates from the core concept which seeks to restrain governmental excess and prevent abuse by those exercising state power.” *Id.* (Emphasis added.) “As it pursues justice the Commonwealth is thus committed not only to the principle that one is innocent until proven guilty, but also to the principle of fairness in criminal prosecutions. Indeed, these principles are complementary, one without the other would frustrate the ends and objectives of justice.” *Id.*

“The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error.” *In re Winship*, 397 U.S. 358, 363 (1970). The presumption of innocence is a bedrock, axiomatic and elementary principle, the enforcement of which lies at the foundation of the administration of our criminal law. *Id.*; *Coffin v. United States*, 156 U.S. 432, 453 (1895).

“Our state Constitution, by various sections of [A]rticle I, provides that all men ‘have certain inherent and indefeasible rights,’ among others to address by petition those invested with the powers of government, and that this ‘shall forever

remain inviolate.” *Spayd v. Ringing Rock Lodge No. 665, Bhd. of R.R. Trainmen of Pottstown*, 113 A. 70, 72 (Pa. 1921)

Moreover, “[t]he right in question is a fundamental one, expressly recognized in the organic law of our state as belonging to ‘citizens.’” *Id.* “In other words, it is possessed by members of the state, or ‘citizens’ to work out the public weal, rather than by individuals, to protect their persons or property or to serve private ends. The Constitution does not confer the right, but guarantees its free exercise, without let or hindrance from those in authority, at all times, under any and all circumstances; and, when this is kept in view, it is apparent that such a prerogative can neither be denied by others nor surrendered by the citizen himself.” *Id.* (Citation omitted.)

Applying these basic precepts of our Constitution, and our democracy, to the matter at hand, it is clear that the Proposed Amendment, by its plain language, will immediately, profoundly, and irreparably impact individuals who are accused of crimes, the criminal justice system as a whole, and most likely victims as well.

If approved by a majority of the electorate, every stage of the criminal proceedings, including bail hearings, pretrial proceedings, trials, guilty pleas, sentencing proceedings, and parole and pardon reviews, will be put into doubt. The absolute rights afforded victims, and all persons directly impacted by these crimes, will effectively require all such proceedings to be re-evaluated and possibly rescheduled if the court is not satisfied that the victims of crime, and those who are directly impacted by the crimes, received proper notice and an opportunity to be heard. Moreover, confusion will occur as the stakeholders in the criminal justice system, from bail commissioners to probation and parole officers, will need to determine all others persons who are “directly harmed by the commission of the offense or act.” Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (emphasis deleted).

Passage of the Proposed Amendment immediately interrupts matters within the Department of Corrections and local county jails. Release of inmates, by either parole, probation, or completion of a term of incarceration, would be delayed because the victim, and anyone directly impacted by the crime, would have the right to be heard in “any proceeding where the right of the victim is implicated, including, but not limited to, release . . . .” Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (emphasis deleted). Agencies responsible for the release of inmates would need to verify whether victims and anyone directly impacted by the crime were provided notice and opportunity to be heard on the inmate’s release. This is particularly harmful to those inmates who have completed the term of their sentences and can lawfully be released.

If passed, the Proposed Amendment would immediately and irreparably hamstring defendants’ rights to have full and effective investigations carried out on their behalf. By invoking their absolute right “**to be treated with fairness and respect for the victim’s safety, dignity and privacy,**” victims and witnesses (in the likely scenario they are directly impacted by the crime) would stymie the accused’s constitutional rights to confront witnesses through cross-examination or to enforce subpoenas compelling their cooperation in criminal proceedings.

The inevitability of these harms is assured by the plain language of the Proposed Amendment.

The Secretary presented no evidence whatsoever to verify the theory that voter behavior would be impacted if the Proposed Amendment vote was not immediately certified. This Court finds that argument purely speculative.

Additionally, this Court rejects the Secretary’s argument that it is unclear whether the Proposed Amendment would be effective immediately. Pursuant to



*Commonwealth v. Tharp*, 754 A.2d 1251, 1254 (Pa. 2000), a constitutional amendment is self-executing and becomes effective upon approval of the electorate, unless the Constitution or the amendment specifies a different date; it can be given effect without the aid of legislation and when the language does not indicate the intent to require legislation. The Proposed Amendment can be implemented without further legislation and would therefore become part of the Constitution immediately.

Furthermore, the Proposed Amendment specifically states that the rights stated therein “shall be protected in a manner no less vigorous than the rights afforded to the accused.” Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (emphasis deleted).

Petitioners further argue that the proposed question on the November 2019 General Election ballot will result in irreparable harm to the electorate’s fundamental right to vote.

Article I, Section 5 of the Constitution provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” PA. CONST. art. I, § 5. The Constitution is the fundamental law of our Commonwealth, *Pennsylvania Prison Society v. Commonwealth*, 776 A.2d 971 (Pa. 2001) (plurality), and, therefore, there is a fundamental right to vote. *Bergdoll v. Kane*, 731 A.2d 1261, 1268 (Pa. 1999) (recognizing that challenge to ballot question regarding amendment to Confrontation Clause was in fact a challenge brought to protect the fundamental right to vote).

In particular, Petitioners maintain that the electorate must be given the opportunity to vote on *each* proposed right, because each is a separate amendment to the Constitution. Pursuant to Article XI, Section 1 of the Constitution, separate

votes are required when two or more amendments are submitted to the electorate. PA. CONST. art. XI, § 1.<sup>10</sup>

As will be more fully discussed below, it appears that the Proposed Amendment violates the single subject-matter rule of Article XI, Section 1. Where the Constitution mandates that there be separate votes on each proposed constitutional amendment, and the Proposed Amendment appears not to satisfy this mandate, disenfranchisement occurs. Our goal is to protect the right to vote and not to disenfranchise voters. *Appeal of Weiskerger*, 290 A.2d 108 (Pa. 1972).

**Greater Injury by Refusing the Injunction, Maintaining the Status Quo, Injunction Reasonably Suited to Abate Activity, Public Interest**

As stated earlier, in order to grant a preliminary injunction, Petitioners must also prove each of the following:

2) That greater injury would result from refusing the injunction than from granting it, and concomitantly, that issuance of an injunction will not substantially harm other interested parties;

3) That a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;

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<sup>10</sup> The Secretary suggests that the Department advertised the Proposed Amendment, the plain English statement, and the ballot question as required by statute in August, September and October 2018, as well as in August, September, and October 2019. In addition, the documents are available on the Department's website. Thus, the electorate was provided many opportunities to inform itself of the Proposed Amendment.

Neither Petitioners nor the Court suggests that the General Assembly, Office of Attorney General, or the Secretary failed to follow the law in getting the ballot question on the ballots. That is not the issue. The issue is whether the ballot question violates the single subject matter rule of Article XI, Section 1, requiring separate votes by the electorate on each proposed right.

5) That an injunction is reasonably suited to abate the offending activity; and

6) That the injunction will not adversely affect the public interest.

*SEIU Healthcare Pa.*, 104 A.3d at 582.

As these four prongs are closely interrelated and involve similar issues and analysis, they will be addressed together.

The remedy proposed by Petitioners satisfies these four prongs and effectively addresses the concerns raised by the parties to this action. In light of the preceding discussion regarding Petitioners' claim of immediate and irreparable harm, it is clear that greater harm would result if the injunction is refused. Furthermore, granting this preliminary injunction with the remedy provided herein will maintain the status quo, is reasonably suited to abate the alleged offending conduct, and will not adversely affect the public interest.

As it relates to the status quo<sup>11</sup> and an adverse effect on the public interest, it is important to note that the Pennsylvania Constitution does not currently contain an article or amendment guaranteeing constitutional rights to victims, and those directly impacted by crimes. *Thus, no rights are being taken away.* Furthermore, many of the rights to be afforded under the Proposed Amendment are currently available in the Crime Victims Act, Act of November 24, 1998, P.L. 882, 18 P.S. §§11.101-11.5102. *See* Sections 201 of the Crime Victims Act, 18 P.S. § 11.201 (rights of victims); Section 212 and 214, 18 P.S §§ 11.212-.214 (responsibilities of state and local law enforcement agencies and Department of Corrections; local correctional

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<sup>11</sup> The status quo for a preliminary injunction is “the last peaceable and lawful uncontested status preceding the underlying controversy.” *Hatfield Twp. v. Lexon Ins. Co.*, 15 A.3d 547, 555 (Pa. Cmwlth. 2011) (quoting *In re Milton Hershey Sch. Trust*, 807 A.2d 324, 333 (Pa. Cmwlth. 2002)). One purpose of a preliminary injunction is to keep the parties in the same positions they had when the case began in order to preserve the court’s ability to decide the issues before it.

facilities and Pennsylvania Board of Probation and Parole, respectively); Section 215, 18 P.S. § 11.215 (responsibilities of Department of Human Services and mental health institutions under basic bill of rights); Section 216, 18 P.S. § 11.216 (responsibilities of juvenile probation officers); Section 501, 18 P.S. § 11.501 (pre-parole notification to victim); Section 502, 18 P.S. § 11.502 (petitions to deny parole upon expiration of minimum sentence); and Section 701, 18 P.S. § 11.701 (persons eligible for compensation from the Crime Victims Fund).<sup>12</sup> Victims may continue to assert these rights under the Crime Victims Act, and the myriad of protections and services provided by other statutes, while the courts resolve the compelling constitutional issue presented in the Petition for Review.

This Court has carefully considered the Secretary's arguments about the costs incurred and the speculative concerns about the impact the delay would have on absentee ballots and voting behavior.

The remedy provided will *temporarily* enjoin the Secretary from tabulating and certifying the votes on the Proposed Amendment. Upon final resolution of the Petition for Review, the Proposed Amendment will be declared either constitutional or unconstitutional. If deemed constitutional, the Secretary will tabulate and certify the votes. If the Proposed Amendment is approved by the majority of the electorate, the Proposed Amendment will immediately become part of our Constitution. No vote would go uncounted. If the Proposed Amendment is declared unconstitutional, the Secretary would have been mandated to incur the costs regardless. This remedy does not summarily dismiss the Secretary's arguments regarding the financial resources used to publish the required documents or voter turnout. Nor are the rights of victims of crime being disregarded.

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<sup>12</sup> In their well-written brief, Moore Intervenors identify certain rights within the Crime Victims Act that have been upheld as constitutional.

When balancing the efforts and costs expended to pass Joint Resolution 2019-1 and get the ballot question before the electorate, compared to the profound implications that this Proposed Amendment may have on other fundamental constitutional rights, and the efficient functioning of the criminal justice system, it is clearly prudent to first determine whether the Proposed Amendment passes constitutional muster *before* attachment of the proposed rights, *before* additional and scarce resources are used to protect those rights, and *before* assertions of those rights adversely affects other constitutional rights.

**Activity is Actionable and Petitioners are Likely to Prevail on the Merits  
Separate Vote Requirement**

This Court will now address the final prong to obtain a preliminary injunction, specifically that the activity is actionable, that the right to relief is clear, and that the wrong is manifest (meaning that the applicant is likely to prevail on the merits).

Petitioners assert that the Proposed Amendment violates Article XI, Section 1 of the Constitution, which provides in relevant part, that “[w]hen two or more amendments shall be submitted they shall be voted upon separately.” PA. CONST. art. XI, § 1. Petitioners argue that nearly every right provided in the Crime Victims’ Rights Amendment constitutes a separate amendment to the Constitution. Petitioners maintain that despite the numerous changes proposed to the Constitution, voters only have one option: to either vote “yes” or “no” to the entirety of the Proposed Amendment, which is constitutionally prohibited. *Pa. Prison Society v. Commonwealth*, 776 A.2d 971, 981. Compounding this problem, the full text (or even a fair summary) of the Proposed Amendment will not be on the ballot.

The Secretary responds by arguing that the new rights afforded to victims are related to the single subject of “victim’s rights.” In particular, the Secretary

maintains that the single subject matter relates to securing victims' rights in the criminal cases in which they suffer direct harm. Every component of the Proposed Amendment, according to the Secretary, advances this goal. The Secretary further contends that the ballot question fairly and accurately reflects the Proposed Amendment. She asserts that merely because the Proposed Amendment contains subparts does not mean that it is unconstitutional.

Our Supreme Court has considered the separate vote requirement in a number of cases, three of which provide guidance in this matter. The Pennsylvania Supreme Court has held that ballot questions far less wide-ranging than the November 2019 ballot question violated Article XI, Section 1.

First, in *Bergdoll*, the General Assembly, by joint resolution, drafted a proposed amendment that would have deleted the Confrontation Clause's face-to-face requirement and would have given the General Assembly the authority to establish by statute the manner in which child testimony could be taken. The Court ruled that a November 1995 ballot question violated the separate-vote requirement. The ballot question at issue was as follows:

Shall the Pennsylvania Constitution be amended to provide (1) that a person accused of a crime has the right to be "confronted with the witnesses against him," instead of the right to "meet the witnesses face to face," and (2) that the General Assembly may enact laws regarding the manner by which children may testify in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television?

*Bergdoll*, 731 A.2d at 1265-66.

Procedurally, the *Bergdoll* petitioners filed an action in the Supreme Court seeking to enjoin the secretary from placing on the ballot the proposed amendment.

The Supreme Court transferred the matter to this Court, which denied the petitioners' application for preliminary injunctive relief. On the merits, this Court determined that this ballot question violated Article XI, Section 1 since the question amended **both** Article I, Section 9's Confrontation Clause and Article V, which grants the Supreme Court the power to prescribe the general rules governing practice, procedure and the conduct of the courts, and thus the electorate had to vote on these two amendments separately.

On appeal, the Supreme Court affirmed. It found that the proposed amendment violated Article XI, Section 1 because it contained two proposals: amendments to Article I, Section 9, and Article V, but did not permit the electorate to vote separately on each amendment. Notably, in then Justice, now Chief Justice, Saylor's concurring opinion, he would have affirmed on the basis that the proposed amendment encompassed two separate, and non-interdependent, changes to the Constitution. He opined that the change to the Confrontation Clause "lacked the interdependence necessary to justify their presentation to voters within the framework of a single question." *Id.* at 1271 (Saylor, J. concurring).

*Pennsylvania Prison Society*, 776 A.2d 971, ended with a different result. The Pennsylvania Prison Society filed an action against the secretary, challenging a proposed constitutional amendment to Article IV, Section 9, relating to the Governor's power to remit fines and forfeitures and to grant reprieves to commutation of sentences and pardons. At the time, Article IV also mandated that no pardon or commutation be granted except upon the written recommendation of either two-thirds of or a majority of the Board of Pardons after a full public hearing. Article IV also addressed, in subsection (b), members of the Board and how their appointment and confirmation was made. The proposed amendment would have

required the Board's pardon recommendation to be unanimous, would have changed those who could be appointed to the Board, and would have changed the requirement that Board members be confirmed by two-thirds or a majority of the Senate to the requirement that a majority of the Senate confirm the nominees. The ballot question reflected these proposed changes.

The Commonwealth Court denied the Pennsylvania Prison Society's claim for injunctive relief but ultimately determined that the proposed amendment violated Article XI, Section 1, because it constituted five amendments to the Constitution and each amendment required a separate vote. In deciding the issue, this Court observed that it must "favor a natural reading [of constitutional provisions that] avoids contradictions and difficulties in implementation, which completely conforms to the intent of the framers and which reflects the views of the ratifying voter." *Id.* at 976.

The Supreme Court reversed. It observed that the *Bergdoll* Court considered the content, purpose, and effect of the proposed amendment even though the ballot question itself did not specifically refer to each constitutional provision that would have been effectively amended by its adoption. It distinguished *Bergdoll* on the basis that the proposed amendment in that case would have amended only one section of one article of the Constitution. The ballot question and the text of the proposed amendment in *Pennsylvania Prison Society*, however, encompassed two separate amendments (as opposed to the five amendments the Commonwealth Court discerned) to Article IV, Section 9, and did not permit the electorate to vote separately upon each proposed amendment. The Court determined that the proposed amendment restructured the pardoning power of the Board and altered the confirmation process for Board members. The Court further determined that the proposed amendment relating to the Board's composition and unanimous vote



requirement constituted a single question. The change in the process for confirmation of gubernatorial nominees, however, presented a separate amendment that a required a separate vote.<sup>13</sup>

In his concurring opinion, Justice Saylor opined that a single subject-matter focus should be used to determine whether alterations of the Constitution are sufficiently interrelated to justify their presentation to the electorate in a single question. *Id.* at 984 (Saylor, J., concurring opinion, joined by Justices Castille and Newman).

In *Grimaud v. Commonwealth*, 865 A.2d 835 (Pa. 2005), a majority of the electorate approved amendments to Article I, Section 6 of the Constitution (relating

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<sup>13</sup> Even though the question violated Article XI, Section 1's separate vote requirement, the Court declined to invalidate the question because the proposed amendment did not actually change the Senate's confirmation process. Rather, both Article IV, Section 9 and the proposed amendment provided that a majority of the Senate must confirm the Governor's Board nominees. The proposed amendment only deleted the "two-thirds" language but retained the "majority" language for confirmation. *Pa. Prison Soc'y*, 776 A.2d at 982. The Court determined that because the proposed amendment did not change the confirmation process, there was really only one issue to be presented to the electorate. Separate votes were therefore not required.

It noted, however, that Article XI, Section 1 "will require that a ballot question be declared null and void, except in the [unusual] circumstances presented [t]here." *Id.* at 982.

to trial by jury)<sup>14</sup> and Article I, Section 14 (relating to bail and habeas corpus).<sup>15</sup> The *Grimaud* petitioners filed an action in this Court, seeking a declaration that, among

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<sup>14</sup> Prior to amendment, Article I, Section 6 provided:

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in a civil case.

Section 6, as approved by a majority of the electorate, now provides:

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law that a verdict may be rendered by not less than five-sixths of the jury in a civil case. **Furthermore, in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused.**

*Grimaud*, 865 A.2d at 839, 840; *see also* PA. CONST. art. I, § 6.

<sup>15</sup> Prior to amendment, Article I, Section 14 provided:

All prisoners shall be bailable by sufficient sureties, unless for capital offense when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion the public safety may require it.

Section 14, as approved by a majority of the electorate, now provides:

All prisoners shall be bailable by sufficient sureties, unless for capital offense **or for offenses which the maximum sentence is life imprisonment or 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; and the privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion the public safety may require it.

*Grimaud*, 865 A.2d at 839; *see also* PA. CONST. art. I, § 14.

other things, the amendments were invalid because each ballot question proposed multiple amendments in violation of Article XI, Section 1. In part, this Court held that the jury trial and bail questions constituted a single amendment because they served one core purpose and effectuated one substantive change. *Id.* at 840.

The first issue the Supreme Court decided on appeal was the applicable standard used to determine whether the changes were properly presented as a single question. Noting that its decision in *Pennsylvania Prison Society* resulted in no clear majority on the standard to apply, the Court was persuaded by Justice Saylor's concurring opinion in that case suggesting the test should have a **“subject-matter focus to determine whether [the] alterations are sufficiently interrelated to justify their presentation to the electorate in a single question.”** *Grimaud*, 865 A.2d at 841 (quoting *Pennsylvania Prison Society*, 776 A.2d at 984 (Saylor, J. concurring, joined by Castille and Newman, JJ.)) (emphasis added).

The Supreme Court also found persuasive authority from other jurisdictions that have utilized a single subject test and examined the interdependence of the proposed constitutional changes in determining the necessity of separate votes. The Supreme Court expressly adopted the “subject-matter test” for determining whether a ballot question violates Article XI, Section 1 of the Pennsylvania Constitution. In *Grimaud*, the Court determined that the ballot questions related to a single subject to justify inclusion in a single question: bail.

The petitioners in *Grimaud* advanced similar arguments to those made here. In *Grimaud*, the petitioners asserted that the single ballot question amended four other amendments found in Article I of the Constitution. The Court analyzed the ballot question's substantive effect on the Constitution, examining its content, purpose and effect. *Id.* at 842. The Supreme Court agreed with this Court's

conclusion that “merely because an amendment ‘may possibly impact other provisions’ does not mean it violates the separate vote requirement.” *Id.* Rather, 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.”** *Id.* (Emphasis added.)

*Bergdoll*, *Pennsylvania Prison Society*, and *Grimaud* are readily distinguishable from the instant matter. These three Supreme Court opinions involved amendments to existing constitutional provisions, not adoption of an entirely new section that may conflict with other provisions of the Constitution. A exhaustive search of Pennsylvania case law reveals no other amendment to a section of the Constitution that was as sweeping in scope as the Proposed Amendment.

But we learn from *Bergdoll*, *Pennsylvania Prison Society*, and *Grimaud* that when determining whether a proposed amendment is constitutional, the courts must determine whether the proposed amendment encompasses a single subject that is sufficiently interrelated, and the courts also must consider the proposed amendment’s substantive effect on the Constitution by examining its content, purpose and effect.

Specifically, “[i]t is the responsibility of [the courts] to insure that the provisions of the Constitution establishing the procedure for the proposal and adoption of constitutional amendments are satisfied.” *Pa. Prison Soc’y*, 776 A.2d at 977. “The Constitution is the fundamental law of our Commonwealth, and in matters relating to alterations or changes in its provisions, the courts must exercise the most rigid care to preserve to the people the right assured to them by that instrument.” *Id.* (quoting *Commonwealth ex rel. Schnader v. Beamish*, 164 A. 615, 616-17 (Pa. 1932)).

Moreover, the process outlined in Article XI, Section 1 “was not designed to effectuate sweeping, complex changes to the Constitution,” *id.* at 976,<sup>16</sup> and

voters should be given free opportunity to modify the fundamental law as may seem to them fit, but this must be done in the way they themselves have provided, if stability, in the carrying on of government, is to be preserved. It is the duty of the courts to follow the rules fixed by the Constitution. If believed to be unwise, in the provisions expressed, it should be rewritten, or modified, but as long as plain words are used, directing what shall be permitted, it is imperative on the courts to restrain any actions that are forbidden.

*Id.* (quoting *Taylor v. King*, 130 A. 407, 409-10 (Pa. 1925), *overruled in part by Stander*)).

Applying the Supreme Court’s decisions here, the Proposed Amendment appears to implement sweeping and complex changes to the Constitution.

Here, the Proposed constitutional Amendment presented by the November 2019 ballot question (1) appears to contain multiple changes to the Constitution because it provides a whole series of new and mutually independent rights to victims of crimes, and (2) may amend multiple existing constitutional articles and sections across multiple subject matters. In specific, it proposes changes to multiple enumerated constitutional rights of the accused—including the right to a speedy trial, the right to confront witnesses, the right against double jeopardy, the right to pretrial release, the right to post-conviction relief, and the right to appeal—as well as changes to the public’s right of access to court proceedings. *See Pet’rs’ Brief* at 20.

First, Article I of our Constitution establishes rights that pertain to the relationship between the Commonwealth and its citizens. The majority of Article I

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<sup>16</sup> *See Pa. Prison Soc’y v. Commonwealth*, 727 A.2d 632, 634-35 (Pa. Cmwlth. 1999), *rev’d*, 776 A.2d 971 (Pa. 2001).

rights proscribe certain conduct by the Commonwealth. The Proposed Amendment appears to turn Article I on its head, enabling victims, and possibly witnesses, to prevent individuals accused of crimes from asserting their fundamental constitutional rights to defend themselves.

While the Proposed Amendment guarantees rights to victims, the substantive effect on the Constitution may be an infringement on the rights found in several articles of the Constitution particularly Article I, Sections 9<sup>17</sup> and 14,<sup>18</sup> which directly relate to Commonwealth's ability to take away an individual's freedom.

Petitioners' brief identifies the constitutional rights purportedly impacted by the Proposed Amendment, sets forth the right, and then inserts into the right the effect the Proposed Amendment would have on that right. The following are a few examples provided in the brief that bear repeating here.

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<sup>17</sup> Article I, Section 9, PA. CONST. art I, § 9, provides:

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.

<sup>18</sup> Article I, Section 14, PA. CONST. art. I, § 14, provides:

All prisoners shall beailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or 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; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

Petitioners propose that the Confrontation Clause of Article I, Section 9<sup>19</sup> would be amended effectively to read as follows:

In all criminal prosecutions the accused hath a right to . . . be confronted with the witnesses against him *so long as that does not infringe on the rights of any person who has been directly harmed by the conduct of which the defendant is accused to be treated with fairness and respect for the victim's safety, dignity and privacy, and with the exception that he may not compel any person who has been directly harmed by the conduct of which the defendant is accused to provide an interview or deposition or respond to any other discovery request.*

Pet'rs' Br. at 30.

Petitioners propose that the Compulsory Clause of Article I, Section 9 would be amended effectively to read as follows:

In all criminal prosecutions, the accused hath a right to . . . have compulsory process for obtaining witnesses in his favor *so long as that does not infringe on the rights of any person who has been directly harmed by the conduct of which the defendant is accused to be treated with fairness and respect for the victim's safety, dignity and privacy, and with the exception that he may not compel any person who has been directly harmed by the conduct of which the defendant is accused to provide an interview or deposition or respond to any other discovery request.*

Pet'rs' Br. at 32.

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<sup>19</sup> Article I, Section 9 provides several independent and fundamental rights to the criminally accused, each of which is enforced separately and defined by its own body of law. Despite amendments over time, Article I, Section 9 “has consistently maintained the same **range of rights and privileges** to individuals accused of committing crimes.” Ken Gormley, *The Pennsylvania Constitution: A Treatise on Rights and Liberties* 329 (2004) (emphasis added). The rights in Article I, Section 9 are treated separately by Pennsylvania courts. Pet'rs' Br. at 27.

Petitioners propose that the right to a speedy trial of Article I, Section 9 would be amended effectively to read as follows:

*In all criminal prosecutions, the accused hath a right to . . . a speedy public trial by an impartial jury of the vicinage, except that no trial may occur until after reasonable and timely notice to every person who has been directly harmed by the conduct of which the defendant is accused, who shall have a right to be present and be heard.*

Pet'rs' Br. at 33-34.

Petitioners propose that the Right to Open Courts and Full Remedy, found in Article I, Section 11, would be amended effectively to read as follows:

*All courts shall be open so long as that does not infringe on the rights of any person who has been directly harmed by the conduct that is the subject of a criminal charge to be treated with fairness and respect for the victim's safety, dignity and privacy; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay, except that no public criminal proceeding may occur until after reasonable and timely notice to every person who has been directly harmed by the conduct of which the defendant is accused, who shall have a right to be present and be heard. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.*

Pet'rs' Br. at 37.

Petitioners' claim that the Proposed Amendment infringes on the Court's powers to prescribe rules governing the practice, procedure and conduct of all courts, is also well taken. The first sentence of subsection (b) of the Proposed Amendment provides: "The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with



jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law.” Pet. for Review, Ex. A; Pet’rs’ Ex. P-1 (emphasis deleted).

On the merits, it would be reasonable for this Court to conclude that the Proposed Amendment affects the courts in two ways. First, a victim asserting the constitutional privacy right could demand closed proceedings, contrary to Article I, Section 11’s requirement that the courts be open to all. Second, the Proposed Amendment gives victims the right to participate and be heard at all stages of the criminal justice process. This Court previously identified the issues that the Proposed Amendment would have on the day it becomes part of the Constitution. As the courts may not abridge, enlarge or modify the substantive rights of any litigant, the Proposed Amendment could impose on the courts’ ability to maintain its calendar in an efficient and expeditious manner.

For these reasons, Petitioners present a compelling argument that the Proposed Amendment does not merely “touch” other parts of the Constitution when applied, but rather, that the Proposed Amendment *facially, patently, and substantially* affects other parts of the Constitution.

Moreover, contrary to the Secretary’s assertions, the competing rights established in the Proposed Amendment are clearly **not so interrelated as to justify inclusion into a single subject**. The Proposed Amendment addresses a wide range of subject matters including bail, discovery, due process, restitution, the right to privacy, and evidence control, all under the auspices of connecting them to victims’ rights. However, it is not clear how the right to restitution is related to the right to be notified and participate in all public hearings or the right to curb the accused’s right to confront the witnesses against him. It not clear how the proposed right to

participate in bail hearings is related to the right to notification of (and participation in) release of the offender or commutation of his sentence.

This Court concludes that Petitioners have raised substantial questions as to the constitutionality of the Proposed Amendment in terms of both a violation of Article XI, Section 1's separate vote requirement, and its facial impact on other articles and sections of the Constitution. As a result, the electorate's right to vote separately on each right to be afforded may result in disenfranchisement. As stated earlier, in a democratic society, there is no greater adverse effect on the public interest if the electors are deprived of their constitutional right to vote.

Finally, Petitioners argue that the Proposed Amendment does not "fairly, accurately, and clearly" apprise the electorate of the question upon which it is asked to vote. This Court finds arguable merit to Petitioners' claim. As stated earlier, the Proposed Amendment. The ballot question provides:

Shall the Pennsylvania Constitution be amended to grant certain rights to crime victims, including to be treated with fairness, respect and dignity; considering their safety in bail proceedings; timely notice and opportunity to take part in public proceedings; reasonable protection from the accused; right to refuse discovery requests made by the accused; restitution and return of property; proceedings free from delay; and to be informed of these rights, so they can enforce them?

Pet. for Review, Ex. A; Pet'rs' Ex. P-1 (emphasis deleted).

In *Stander*, the plaintiffs initiated an action seeking to enjoin a vote by the electorate on a proposed constitutional amendment, initiated by a Constitutional Convention, that would completely revise Article V of the Constitution relating to the Judiciary. The Dauphin County Court of Common Pleas (common pleas court) denied the plaintiffs' preliminary injunction request to enjoin the secretary from

printing the ballots, which the Supreme Court affirmed. The plaintiffs then filed an amended complaint seeking permanent equitable relief. The common pleas court denied the request. One of the issues the plaintiffs raised on appeal to the Supreme Court challenged the form of the notice of the proposed amendment as it appeared on the ballot. To resolve the issue, the Court considered whether “the question as stated on the ballot fairly, accurately and clearly [apprised] the voter of the question or issue to be voted on?” *Id.* at 480. This standard continues to apply. *See Sprague*, 145 A.3d at 1139 (the only limit on the Secretary’s powers under the Election Code is that the language of the ballot question must fairly, accurately, and clearly apprise the voters of the question or issue on which the electorate must vote).

To the extent the ballot question sets forth certain rights the Proposed Amendment would guarantee, the ballot question is accurate. However, the Court may reasonably conclude that the Proposed Amendment is not accurate or clear as to certain other victims’ rights. In particular, the Proposed Amendment establishes a victim’s right to, among other things, (1) be heard in any proceeding where a right of the victim, or anyone directly impacted by a crime, is implicated, including release, plea, sentencing, disposition, parole, and pardon, (2) be reasonably notified of the release or escape of the accused, and (3) to participate in the parole process.

Neither the ballot question, the plain English statement, nor the Proposed Amendment addresses those circumstances where charges are dismissed or nolle prossed, or where there is an adjudication by a consent decree. The Court may therefore conclude that the ballot question appears inaccurate in that it affords a victim to be heard in **any** proceeding implicating the victims’ rights but fails to acknowledge those circumstances where victims’ rights may be affected but there are no proceedings.

The Court may also conclude that the ballot question does not fairly and adequately apprise voters of a victim's right to participate in the parole process or to be advised of an escape or release of the inmate because the ballot question does not inform the voter of these rights specifically. Conversely, it could be concluded that the ballot question's general statement that a victim has the right to reasonable protection from the accused is sufficient to encompass these two rights. More may be needed to determine whether the ballot question adequately apprises the electorate that the right to reasonable protection encompasses the right to notification of release or escape and the right to participate in the parole process (which are typically not a public proceeding).

For the purposes of this preliminary injunction only, Petitioners have persuaded the Court that the ballot question fails to fairly, adequately and clearly inform the electorate of the Proposed Amendment. *Sprague; Stander*.

### **Conclusion**

No doubt the remedy is rare; as it appears that delaying certification of the votes to a constitutional amendment has never occurred. The Court recognizes the seriousness of memorializing victims' rights, Petitioners' claims, and the potential consequences of the Proposed Amendment. We also recognize Secretary's claim that an adequate remedy exists because the courts could declare the Proposed Amendment unconstitutional at some later point in time. This position, however, fails to acknowledge that the Proposed Amendment will have an immediate, profound, and in some instances, irreversible, consequences on the constitutional rights of accused and in the criminal justice system.

After careful review of the pleadings, evidence, and relevant law, the Application is granted in part. The Secretary is enjoined from tabulating and certifying the election results for the ballot question.

### **Bond**

Pursuant to Pennsylvania Rule of Civil Procedure No. 1531(b), a preliminary injunction may only be granted if the plaintiff files a bond or deposits with the prothonotary United States legal tender in an amount fixed by the court. The purposes of the bond is to protect the Secretary in the event she succeeds in having the injunction dissolved because it was improperly granted. Pa.R.C.P. No. 1531(b); *The Woods at Wayne Homeowners Ass'n v. Gambone Bros. Constr. Co., Inc.*, 893 A.2d 196 (Pa. Cmwlth. 2006).

Petitioners filed an Application for Relief for a Nominal Preliminary Injunction Bond Under Pa.R.C.P. No. 1531(b), wherein they allege that Haw is indigent and that the League is a non-profit organization that finances its activities largely through donations. Assertions aside, we agree that the Secretary's harm resulting from the injunction, if any, is minimal. The Secretary cannot recover the costs of publication and preparing for the election in general because those costs were not incurred because of issuance of the injunction. Accordingly, we grant Petitioners' Application and will impose a nominal bond.



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ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

League of Women Voters of	:	
Pennsylvania and Lorraine Haw,	:	
Petitioners	:	
	:	
v.	:	No. 578 M.D. 2019
	:	
Kathy Boockvar, the Acting Secretary	:	
of the Commonwealth,	:	
Respondent	:	

**ORDER**

AND NOW, this 30th day of October, 2019, Petitioners' Application for Relief in the Form of a Preliminary Injunction Under Pa.R.A.P. 1532 is **GRANTED**. The Acting Secretary of the Commonwealth, and her agents, servants and officers, are enjoined from tabulating and certifying the votes in the November 2019 General Election relating to the ballot question asking voters whether the Pennsylvania Constitution should be amended to include a new section providing for victims' rights until final disposition of the Petition for Review, including appeals.

Petitioners' Application for Relief for a Nominal Preliminary Injunction Bond Under Pa.R.C.P. No. 1531(b) is **GRANTED**. Petitioners shall deposit with the Prothonotary of the Commonwealth Court a bond of \$500.00 within five (5) days of the date of this Order.

In the interest of judicial economy and expeditious resolution of the matter, upon the filing of any appeal resulting in an automatic supersedeas pursuant to Pa.R.A.P. 1736(b), the automatic supersedeas is lifted without further application to

this Court. The criteria to lift an automatic supersedeas have been met as outlined in the foregoing opinion. *Dep't of Env'tl. Res. v. Jubelirer*, 614 A.2d 199 (Pa. 1989).



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ELLEN CEISLER, Judge

Certified from the Record

OCT 30 2019

And Order Exit

## **APPENDIX “B”**



§ 11.201 Rights.

**Pennsylvania Statutes**

**18 P.S. CRIMES AND OFFENSES**

**Chapter 2 CRIME VICTIMS ACT**

**Chapter 2 CRIME VICTIMS**

**Subchapter A Bill of Rights**

*Current through P.A. Acts 2019-13*

**§ 11.201 Rights**

Victims of crime have the following rights:

- (1) To receive basic information concerning the services available for victims of crime.
- (2) To be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. This paragraph includes all of the following:
  - (i) Access to information regarding whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.
  - (ii) Immediate notification of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.
  - (iii) Access to information regarding the grant or denial of bail to an adult.
  - (iv) Immediate notification of an adult offender's pretrial escape from a local correctional facility and of the offender's subsequent apprehension.
- (3) To be accompanied at all criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.
- (4) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office or juvenile probation office, as appropriate to the circumstances of the case, on the potential reduction or dropping of any charge or changing of a plea in a criminal or delinquency proceeding, or, diversion of any case, including an informal adjustment or consent decree.
- (5) To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or presentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult.
- (5.1) To have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp pursuant to the act of December 19,

1990 (P.L. 1391, No. 215), known as the Motivational Boot Camp Act.

- (5.2) Upon request of the victim of a personal injury crime, to have the opportunity to submit written comment or present oral testimony at a disposition review hearing, which comment or testimony shall be considered by the court when reviewing the disposition of the juvenile.
- (6) To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case.
- (7) In personal injury crimes where the adult is sentenced to a State correctional facility, to be:
  - (i) given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement;
  - (ii) provided immediate notice of an escape of the adult and of subsequent apprehension; and
  - (iii) given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.
- (8) In personal injury crimes where the adult is sentenced to a local correctional facility, to:
  - (i) receive notice of the date of the release of the adult, including work release, furlough, parole, release from a boot camp or community treatment center placement; and
  - (ii) be provided with immediate notice of an escape of the adult and of subsequent apprehension.
- (8.1) If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, to:
  - (i) Receive prior notice of the date of the release of the juvenile, including temporary leave or home pass.
  - (ii) Be provided with:
    - (A) immediate notice of an escape of the juvenile, including failure to return from temporary leave or home pass; and
    - (B) immediate notice of reaprehension of the juvenile.

- (iii) Be provided with notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility that is contrary to a previous court order or placement plan approved at a disposition review hearing and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.
  
- (9) If the adult is subject to an order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and is committed to a local correctional facility for a violation of the order or for a personal injury crime against a victim protected by the order, to receive immediate notice of the release of the adult on bail.
  
- (10) To receive notice if an adult is committed to a mental health facility from a State correctional institution and notice of the discharge, transfer or escape of the adult from the mental health facility.
  
- (11) To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the bureau.
  
- (12) To be notified of the details of the final disposition of the case of a juvenile consistent with 42 Pa.C.S. § 6336(f) (relating to conduct of hearings).
  
- (13) Upon the request of the victim of a personal injury crime, to be notified of the termination of the courts' jurisdiction.

**Cite as 18 P.S. § 11.201**

**History.** 1998, Nov. 24, P.L. 882, No. 111, § 201, imd. effective. Amended 2000, Oct. 30, P.L. 641, No. 86, § 2, effective in 60 days; 2002, June 28, P.L. 496, No. 85, § 1, effective in 60 days.