

IN THE SUPREME COURT OF PENNSYLVANIA

TOM WOLF, et al.,

Petitioners,

v.

**GENERAL ASSEMBLY OF THE
COMMONWEALTH OF
PENNSYLVANIA,**

Respondent.

No. 73 MM 2022

**APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE
IN SUPPORT OF APPLICATION FOR INVOCATION
OF KING’S BENCH POWER**

Pursuant to Pa. R.A.P. 531(b)(i)(iii), the Pennsylvania AFL-CIO, American Federation of State, County and Municipal Employees (“AFSCME”), Council 13, SEIU Pennsylvania Joint Council and UFCW Local 1776 Keystone State (collectively, “Amici Curiae,”), by and through the undersigned attorneys, hereby seek leave from this Honorable Court to file a brief in support of the Application for Invocation of King’s Bench Power to Declare Senate Bill 106 of 2021 Invalid and Enjoin Further Action on Constitutional Amendments (“King’s Bench Application”). In support of this Application, the Amici Curiae aver as follows:

1. The Amici Curiae are four, state-wide labor organizations representing hundreds of thousands of public and private sector Pennsylvania workers.

2. Among the Amici Curiae's goals are the protection, assurance and advancement of the cause of social and economic justice for the residents and citizens of our Commonwealth at the workplace, in civic affairs, in their Pennsylvania communities, and in political participation as voters electing representatives who are to carry out their duties in a manner consistent with the requirements of our Constitution, and with respect for and accountability to the ultimate sovereign - the people of this Commonwealth.

3. Therefore, the Amici Curiae have a direct and substantial interest in ensuring that Pennsylvania's duly-elected legislators carry out their role in proposing amendments to our foundational document, the Pennsylvania Constitution, in a manner consistent with constitutional processes and safeguards, as sought by Petitioners in their Application for Invocation of King's Bench Power to Declare Senate Bill 106 of 2021 Invalid and Enjoin Further Action on Constitutional Amendments ("King's Bench Application").

4. If this Application is granted, Amici intend to file the brief attached to this Application as Exhibit "A." The Amici Curiae believe this Honorable Court will benefit from the brief they seek to file, because it provides historical context and discussion of the purpose and intent of the constitutional safeguards applicable to the amendment process set forth in Article XI, Section 1 of our Constitution, and in

particular their necessity to the preservation and protection of popular sovereignty in our Commonwealth.

WHEREFORE, Amici Curiae respectfully request, pursuant to Pa. R.A.P. 531(b)(1)(iii), that this Court grant its application and permit them to file the attached brief in support of the King's Bench application.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this application 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.

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EXHIBIT A

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

Docket No. 73 MM 2022

TOM WOLF, et al.,

Petitioners,

v.

**THE GENERAL ASSEMBLY OF
THE COMMONWEALTH OF PENNSYLVANIA,**

Respondents.

**BRIEF OF AMICI CURIAE PENNSYLVANIA AFL-CIO, AFSCME
COUNCIL 13, SEIU PENNSYLVANIA JOINT COUNCIL
AND UFCW LOCAL 1776 KEYSTONE STATE IN SUPPORT OF
APPLICATION FOR INVOCATION OF KING'S BENCH POWER**

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

Pursuant to Pennsylvania Rule of Appellate Procedure 531, the following Amici Curiae submit this brief in support of Petitioners:¹

The Pennsylvania AFL-CIO is a federation of labor organizations whose affiliated local unions, district councils, regional councils, central labor councils and area labor federations represent over 700,000 working men and women across the Commonwealth of Pennsylvania (“Commonwealth”). The American Federation of State, County and Municipal Employees, Council 13, AFL-CIO and its affiliates represent more than 60,000 employees of the Commonwealth and hundreds of public and private sector employers across Pennsylvania. The SEIU Pennsylvania State Council works to coordinate and unify the collective political, administrative, and legislative priority of all SEIU locals and districts throughout Pennsylvania. The affiliated locals of the SEIU Pennsylvania State Council represent nearly 60,000 workers throughout Pennsylvania in the areas of healthcare, public services, property services, school employees, and laundry and distribution services. The United Food and Commercial Workers, Local 1776 Keystone State, represents employees of the Commonwealth, as well as other public and private sector employees across the Commonwealth, totaling 30,000 workers.

¹ No person or entity other than these Amici Curiae or their counsel has paid for the preparation of this brief or authored the brief, in whole or in part.

Together, the Amici Curiae represent hundreds of thousands of public and private sector employees who, along with their families, comprise a substantial proportion of the voting age citizens of Pennsylvania. Among their goals are the protection, assurance, and advancement of the cause of social and economic justice for the residents and citizens of our Commonwealth at the workplace, in civic affairs, in their Pennsylvania communities, and in political participation as voters electing representatives who are to carry out their duties in a manner consistent with the requirements of our Constitution, and with respect for, and accountability to, the ultimate sovereign—the people of this Commonwealth.

Therefore, the Amici Curiae have a direct and substantial interest in ensuring that Pennsylvania’s duly elected legislators carry out their role in proposing amendments to our Constitution, in a manner consistent with constitutional processes and safeguards, as sought by Petitioners in their Application for Invocation of King’s Bench Power to Declare Senate Bill 106 of 2021 Invalid and Enjoin Further Action on Constitutional Amendments (“King’s Bench Application”).

In this Brief, Amici Curiae demonstrate that the Legislature’s recent passage of SB 106 acted without regard for the processes laid out in Article XI, Section 1 of our Constitution, which are designed to preserve the sovereignty of the people in determining the foundational law of our Commonwealth, the Pennsylvania Constitution. As discussed at length below, Amici Curiae believe that this Court’s

intervention at this time is critical to prevent an infringement of the constitutional rights of all Pennsylvanians, including the hundreds of thousands of whom are union members represented by Amici Curiae.

II. STATEMENT OF THE QUESTION PRESENTED

Whether this Court should exercise its King's Bench authority to review the unconstitutional enactment of Senate Bill 106 of 2021?

Suggested answer: Yes.

III. SUMMARY OF ARGUMENT

This Court should exercise its King’s Bench authority over this matter, which concerns a matter of critical public importance—the inappropriate and unconstitutional method by which the majority of the General Assembly of Pennsylvania (“General Assembly” or “Legislature”) sought, through Senate Bill 106 (“SB 106”), an omnibus joint resolution, to amend several critical constitutional guarantees protected under our foundational governing instrument—the Pennsylvania Constitution. SB 106, as passed, would radically change multiple and diverse provisions of our Constitution, including the right to vote, the authority of our courts to hear and determine election disputes, personal privacy, the rulemaking authority of the executive branch, and the manner by which a Lieutenant Governor is chosen as a candidate and elected by Pennsylvanians.

The General Assembly’s decision to seek such multifaceted changes to our foundational document through a single resolution violates Article XI, Section 1 of the Pennsylvania Constitution, whose purpose in part is to protect the sovereignty of the people regarding amendments to that document. In passing SB 106 as an omnibus joint resolution with one vote, the General Assembly undermined the popular sovereignty of Pennsylvanians and thereby violated Article XI, Section 1 in three areas. First, the General Assembly denied the Pennsylvania electorate its constitutional guarantee to express their pleasure or displeasure over proposed

constitutional amendments in the upcoming November 2022 election of their representatives to the Legislature. Second, the General Assembly engaged in clear and unconstitutional logrolling prohibited by Article XI, Section 1, in which members of the General Assembly did not express their support or opposition to the five proposed amendments and denied the voters the knowledge of where they stand on each amendment. Lastly, the majority of the General Assembly knowingly permitted members to vote on amendments that contain more than one issue and substantially affect more than one existing constitutional provision in derogation of the single subject test of Article XI, Section 1.

For these reasons, this Court should and must exercise its King's Bench authority to decide this matter of public importance prior to the upcoming election.

IV. ARGUMENT

THIS COURT SHOULD EXERCISE ITS KING’S BENCH AUTHORITY TO REVIEW THE UNCONSTITUTIONAL ENACTMENT OF SENATE BILL 106.

Amici Curiae strongly support this Court’s exercise of its King’s Bench authority over this matter which concerns a subject of critical public importance—the proper method and manner of amending the foundational law of our Commonwealth, the Pennsylvania Constitution, and the General Assembly’s recent disregard for those procedures. Such a matter squarely falls within this Court’s King’s Bench authority “to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2022) (quoting *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2016)); *see also In re Bruno*, 101 A.3d 635, 670 (Pa. 2013) (“Indeed, [this] Court will generally employ the King’s Bench authority when the issue requires timely intervention by the court of last resort of the Commonwealth and is one of public importance.”) (citations omitted). Unlike extraordinary jurisdiction under 42 Pa. C.S. § 726, this Court may exercise its King’s Bench authority to “assume plenary jurisdiction over a matter *even where no dispute is pending in a lower court.*” *In re Bruno*, 101 A.3d at 669 (emphasis added).

Exercise of King’s Bench at this time over this matter is not only necessary but required to prevent an infringement of the constitutional rights of Pennsylvanians—hundreds of thousands of whom are union members represented by Amici Curiae. Specifically, Pennsylvanians have a right to ensure that the Pennsylvania Constitution is only amended in a manner authorized thereunder in Article XI, Section 1—the provision which outlines the manner and method by which (1) the General Assembly may consider, debate, and vote upon amendments to the Constitution, and (2), if passed in two separate legislative sessions by that body, the Pennsylvania electorate may adopt or reject those amendments. *See* PA. CONST., art. XI, § 1.

Given that amendments constitute changes to our foundational democracy, adherence to the provisions of Article XI, Section 1 are subject to the most exacting judicial scrutiny, and the General Assembly must assiduously follow its dictates. *See Pa. Prison Soc’y v. Commonwealth*, 776 A.2d 971, 977 (Pa. 2001) (quoting *Commonwealth ex rel. Schnader v. Beamish*, 164 A. 615, 616-17 (Pa. 1932) (“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.”); *Kremer v. Grant*, 606 A.2d 433, 436 (Pa. 1992) (“Nothing short of literal compliance with the mandate [in Article XI, Section 1] will suffice.”) (quoting *Tausig v. Lawrence*,

197 A. 235, 238 (Pa. 1938); *Stander v. Kelley*, 250 A.2d 474, 479 (Pa. 1969) (“All the clear and mandated provisions of the Constitution must be strictly followed and obeyed and no departures from or circumventions or violations of existing mandatory Constitutional amendment requirements will be permitted.”) (citations omitted)). To guarantee such compliance, it is a “bedrock principle” of this Court that it has a “duty under the Pennsylvania Constitution ‘to insure that the provisions of the Constitution establishing the procedure for the proposal and adoption of constitutional amendments are satisfied.’” *League of Women Voters v. Degraffenreid*, 265 A.3d 208, 226 (Pa. 2021) (citing *Prison Society*, 776 A.2d at 977).

By enacting SB 106, in which five separate amendments involving diverse and separate issues were voted on in one omnibus joint resolution, the General Assembly clearly violated Article XI, Section 1, undermining provisions meant to protect popular sovereignty. First, the General Assembly denied voters the ability to know which of the five amendments their elected state senators and representatives supported or opposed, as required by Article XI, Section 1. Second, the General Assembly allowed the impermissible practice of logrolling proposed amendments when it allowed one vote on a joint resolution that contained multiple, dissimilar, and unrelated amendments. Third, the General Assembly violated the separate vote requirement when it passed five separate amendments, one of which contains two

separate issues and four of which would materially change the meaning of other existing provisions of the Pennsylvania Constitution. By proceeding in this manner, the majority of the General Assembly ignored not only the dictates of Article XI, Section 1, but also the principle that creating and amending a state constitution concerns critical issues of popular sovereignty, which Pennsylvania’s citizens need this Court to safeguard.

A. Pennsylvania’s Creation of a Constitution and a Process of Amendment Constitutes a Recognition and Preservation of Popular Sovereignty, Which This Court Must Protect.

“The clearest and most longstanding commitment of state constitutions is to popular sovereignty.” Jessica Bulman-Pozen and Miriam Seftor, *Democracy Principals in State Constitutions*, 119 MICH. L. REV. 859, 881 (2021). As the authors explain, “state constitutions facilitate constitutional self-rule. Further, numerous state constitutions establish direct democracy as a path for popular self-rule in a subconstitutional register, and still more model representative democracy on direct democracy through mechanisms intended to keep government officials directly accountable to the people.” *Id.*

From their inception, state constitutions declared that “the people were sovereign and the source of government power.” *Id.* In fact, in its first iteration in 1776, the Pennsylvania Constitution’s Declaration of Rights affirmatively stated “[t]hat all power [is] originally inherent in, and consequently derived from, the

people; ...And ... the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by the community judged most conducive to the public weal.” PA. CONST. of 1776, declaration of rights, arts. IV, V. Our Commonwealth’s first constitution further affirmed the importance of popular sovereignty by requiring that every seven years an election be held to choose two individuals in each city and county to form a “Council of Censors” whose duties included determining whether the Pennsylvania Constitution should be amended. PA. CONST. of 1776, ch. 2, § 47. While the Council of Censors was never successfully invoked, the Pennsylvania Constitution of 1790 removed that provision and strengthened popular sovereignty with its statement that “all power is inherent in the people,” and “they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.” KEN GORMLEY, ET AL., THE PENNSYLVANIA CONSTITUTION: A TREATISE ON RIGHTS AND LIBERTIES (2004), at 850 (quoting PA. CONST. of 1790, art XI, § 2). Every subsequent Constitution adopted in Pennsylvania, including our current Constitution, has retained some form of this provision. *See* PA. CONST. of 1838, art. IX, § 2; PA. CONST. of 1874, art. I, § 2; PA. CONST., art. I, § 2.

Through the Pennsylvania Constitution of 1838, the Commonwealth, for the first time, adopted an express provision for amending the state constitution.

GORMLEY, at 851; PA. CONST. of 1838, art X. The amendment procedure chosen by the delegates to the 1837 Convention contains the four basic elements that exist to this day. GORMLEY, at 857. First, the General Assembly could propose and vote on an amendment, but it required approval by majority vote in two successive legislative sessions. PA. CONST. of 1838, art X. Requiring majority approval over two legislative sessions provided accountability to the electorate by ensuring that there would be an election of members of the General Assembly after the first vote, but before the second. Next, three months before the elections following the first and second vote of the General Assembly, assuming a majority passed the amendment in each house of the Legislature, the Secretary of State was required to publish the amendment in at least one newspaper in each county of the Commonwealth, if it had a newspaper. *Id.* Third, if the amendment achieved majority support in two legislative sessions and was properly published, it was submitted to the Pennsylvania electorate to obtain their approval in an election. *Id.* Fourth, the amendment procedure barred submission to the voters of an amendment more than once every five years and required that voters be provided the opportunity to vote on each amendment separately and distinctly. *Id.*

As this Court has recognized, the decision to include an amendment provision sparked “vigorous debate [by the delegates to the 1837 Convention], because the committee had decided that the legislature, and not the people, would control the

process of proposing amendments.” *Degraffenreid*, 265 A.3d at 230. The Court explained:

This proposal conflicted with the perceived exclusive right of the people to change their charter of governance, as it transferred a key aspect of that procedure—the initiation and proposal of fundamental changes to the constitution—to the General Assembly. Many delegates were concerned this devolution of this power to the General Assembly would dilute the people’s fundamental rights to decide whether, or how, their Constitution should be changed.

Id. at 230. In the end, the delegates “address[ed] these concerns, and, ultimately, they achieved a compromise by adopting a number of provisions designed to constrain the legislature’s ability to propose amendments, and, at the same time, preserve the people’s right to make the final decision as to whether any amendments proposed by the legislature would become effective.” *Id.* (citing *GORMLEY*, at 852).

These checks on the ability of the General Assembly to amend the Pennsylvania Constitution were kept intact when the 1873-74 Convention was convened and considered changes to our foundational document, resulting in the adoption of the Pennsylvania Constitution of 1874. *GORMLEY*, at 856 (discussing PA. CONST. of 1874). The only change to the amendment provision was a minor revision that the Secretary of State must publish the amendment in two, rather than one, newspaper three months before each election. *Id.*; PA. CONST. of 1874, art. XVIII.

The Pennsylvania Constitution of 1968 maintained the same amendment procedure but added a provision for amending the state constitution during an emergency. *See* PA. CONST. art XI, § 1. The current article reads in its entirety:

Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted, they shall be voted upon separately.

(a) In the event a major emergency threatens or is about to threaten the Commonwealth and if the safety or welfare of the Commonwealth requires prompt amendment of this Constitution, such amendments to this Constitution may be proposed in the Senate or House of Representatives at any regular or special session of the General Assembly, and if agreed to by at least two-thirds of the members elected to each House, a proposed amendment shall be

entered on the journal of each House with the yeas and nays taken thereon and the official in charge of statewide elections shall promptly publish such proposed amendment in at least two newspapers in every county in which such newspapers are published. Such amendment shall then be submitted to the qualified electors of the Commonwealth in such manner, and at such time, at least one month after being agreed to by both Houses as the General Assembly prescribes.

(b) If an emergency amendment is approved by a majority of the qualified electors voting thereon, it shall become part of this Constitution. When two or more emergency amendments are submitted, they shall be voted on separately.

Id.

The adoption of an amendment procedure constitutes a diminution of popular sovereignty and a grant of power to the Legislature to amend our Constitution. GORMLEY, at 855 (“[A]s an alternative to a convention or an initiative process, the 1838 procedure clearly shifts power to the [L]egislature, which controls both the subject and the substance of amendments.”) Therefore, to protect popular sovereignty, this Court has demanded that the “specific and detailed process [outlined in Article XI, Section 1] ... must be followed in order for an amendment to become a binding part of our organic law.” *Degraffenreid*, 252 A.3d at 227 (“Our Court’s duty to censure scrupulous adherence to the provisions of Article XI, [Section 1] is ... of utmost importance as these provisions are indispensable for the stability of our peaceful, democratic system of government) (citation omitted); *see*

also Kremer 606 A.2d at 436. That process includes restrictions on the General Assembly to ensure the people's will is heard and the amendment process is not abused.

B. The General Assembly Violated Article XI, Section 1 When It Passed Multiple Proposed Amendments in one Omnibus Joint Resolution, Denying Pennsylvanians Their Right to Express Their Approval or Disapproval of These Changes to Our Foundational Document.

By passing an omnibus joint resolution to enact multiple amendments to the Pennsylvania Constitution with a single vote, the General Assembly denied Pennsylvania voters the right to express their pleasure or displeasure with their representatives in the upcoming election and thereby violated Article XI, Section 1. SB 106 contains various provisions on a wide range of issues: abortion, voter identification, election audits, rulemaking powers, and the selection and election of a Lieutenant Governor. Rather than allow the members of the Legislature to consider, debate, and vote on each of those amendments individually, the General Assembly were simply afforded the opportunity to vote "Yea" or "Nay" on all five amendments at once, and only recorded that one vote. Consequently, Pennsylvanians, who will go to the voting booth in just three months to choose candidates for the General Assembly, will have no idea which of the amendments their representatives support and which they oppose.

This Court has recognized that the ability of voters to express their approval or disapproval of their representatives' support or opposition to a proposed amendment in the next election following that amendment's passage or rejection is a significant aspect of the amendment process that ensures sovereignty still rests with the people. In *Degraffenreid*, this Court enumerated the multiple constraints placed on amending the Pennsylvania Constitution to protect popular sovereignty—one of which is the ability of Pennsylvanians to know how their representative voted on a proposed constitutional amendment and to register their approval or disapproval of that vote at the next election. *Degraffenreid*, 265 A.3d at 230. The Court noted that “[A]ll proposed amendments [must] be approved by two successive sessions of the General Assembly, which ensure[s] that the people had the opportunity to express their wishes on whether they desired the passage of the proposed amendments in an election for their representatives.” *Id.* Similarly, in *Kremer*, this Court declared: “[I]f an informed electorate disagrees with the proposed amendments, they will have an opportunity to indicate their pleasure at the ballot box and elect individuals to the next General Assembly with different attitudes.” *Kremer*, 606 A.2d at 438.

Here, the General Assembly denied voters the opportunity to know the position of their representatives on each of the proposed constitutional amendments and denied the electorate a fundamental mechanism by which our Constitution

protects their sovereignty. As Article XI, Section 1 commands strict compliance with its provisions, the General Assembly violated our Constitution through passage of SB 106.

C. The General Assembly Violated Article XI, Section 1 When It Engaged In Unconstitutional Logrolling, by Voting on Multiple Proposed Amendments in One Omnibus Joint Resolution.

Article XI, Section 1 contains the same requirement that the General Assembly must engage in separate votes for each proposed amendment found in the Pennsylvania Constitution of 1838 when the amendment provision first was adopted.

Degraffenreid, 265 A.3d at 230. Discussing this requirement, this Court has stated:

Consistent with these restrictions, and evidencing an intent on the part of the delegates to ensure that each person voting on a proposed constitutional amendment be given the opportunity to fully understand the nature of the change or changes to the constitution, it would produce, the delegates considered and adopted with no debate the separate vote requirement.

Id. (citing 12 PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA, TO PROPOSED AMENDMENTS TO THE CONSTITUTION, COMMENCED AT HARRISBURG ON MAY 2, 1837) (hereinafter “PROCEEDINGS AND DEBATES”).

Quoting John J. M’Cahen, a delegate to the 1837 Convention and the author of the amendment provision, this Court explained that its purpose “was to ‘prevent the legislature from connecting two dissimilar amendments, one of which might be

good and the other evil, and in consequence of which connexion [sic] the good which was wanted might be rejected by the people rather than be taken with the evil which accompanied it.” *Id.* at 230-31 (citing PROCEEDINGS AND DEBATES, at 101). “No delegate offered opposition to this stated purpose, nor to its form or intended effect, and this proposed language was adopted by majority vote of the assembled delegates.” *Id.* at 231. Based on its review of the 1837 Convention, this Court concluded: “Thus, it is evident that the approval of M’Cahen’s proposal by the delegates at the 1837-38 Constitutional Convention reflected their intent to prohibit the practice of ‘logrolling’ by the legislature in the crafting of a proposed amendment to be submitted to the voters.” *Id.* (citing *Cambria v. Soaries*, 776 A.2d 754, 764 (N.J. 2001) and *Kerby v. Luhrs*, 36 P.2d 549, 552 (Ariz. 1934)).

Here, the General Assembly clearly engaged in unconstitutional logrolling when it passed SB 106. It placed five proposed amendments in one joint resolution and forced the members of the Legislature to vote up or down on all of them, regardless of the fact that they concerned different subjects and affected various existing provisions of the Pennsylvania Constitution. It is quite possible, and likely, that members in voting in favor of or in opposition to the joint resolution did not approve or disapprove of all five amendments, but they were only permitted to cast one vote on all of them. By operating in this fashion, the voters have no idea whether their elected representative supports all, none, or some of the proposed amendments,

and their ability to consider and decide the merits of each of them is diminished. That is a classic case of logrolling and violates Article XI, Section 1.

This conclusion is further supported by the fact that our Constitution expressly prohibits the passage of bills which contain more than one subject. Article III, Section 3 prohibits the General Assembly from enacting a bill “containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.” PA. CONST. art. III, § 3. It would be absurd for the Pennsylvania Constitution to prohibit the General Assembly to enact a statute containing more than one subject but permit it to effectuate numerous changes to the fundamental law of our Commonwealth through a joint resolution containing multiple and diverse amendments.

As Article XI, Section 1 prohibits the practice of logrolling, and SB 106 did just that, the joint resolution violates our Constitution.

D. The General Assembly’s Passage of SB 106 Violated the Single Subject Test, in Derogation of Article XI, Section 1.

The General Assembly violated the single subject test in passing one proposed amendment that included two separate issues, and four amendments that effectuate changes to multiple existing constitutional provisions. In *Degraffenreid*, considering a proposed crime victims amendment and relying upon its earlier decision in *Grimaud v. Commonwealth*, 865 A.2d 835 (Pa. 2005), this Court articulated the

appropriate standard for considering if a proposed amendment violates the single subject test:

In sum, our decision in *Grimaud* stands for the proposition that, under its single subject test, a determination of whether a proposed amendment making multiple changes to the Pennsylvania Constitution violates Article XI, § 1 requires a reviewing court to examine whether the changes are "sufficiently interrelated to justify their presentation to the electorate in a single question." *Grimaud*, 865 A.2d at 841-842. We view this as the core holding of *Grimaud*. In addition, however, *Grimaud* also allows that a proposed amendment triggers the separate vote requirement of Article XI, § 1 if it substantively effectuates more than one change to the Constitution. *Grimaud*, 865 A.2d at 842.

265 A.3d at 219.

Ultimately, this Court found that the proposed crime victims amendment violated the separate vote requirement because it created multiple independent new rights that were not "sufficiently interrelated" to allow presentment to the public as one amendment, and it "substantively effectuate[d]" changes to multiple other provisions of the Pennsylvania Constitution, including bail, discovery of information in preparation of a criminal trial, and the production and cross-examination of witnesses at such a trial. *Id.* at 241-42.

Here, one of the proposed amendments, the provision against abortion funding and denying any right "related to abortion," violates the single subject test. It contains two issues in one amendment: a constitutional prohibition against abortion funding and a denial of any right "related to abortion." One can easily imagine a

voter considering this amendment may support one portion of it but oppose the other. But the General Assembly denied such a voter the opportunity to consider each separately, as required by Article XI, Section 1, and thereby denied voters the means to demonstrate their support or opposition to both issues. For those reasons, the General Assembly violated our Constitution by placing it within SB 106 as written.

Additionally, the abortion, voter identification, election audit, and rule-making provisions all violate Article XI, Section 1, as each “substantively effectuates more than one change to the Constitution.” *Degraffenreid*, 265 A.3d at 219. First, the abortion provision constitutes a substantive change to the following provisions of the Pennsylvania Constitution: Article 1, Section 1 (Inherent Rights of Mankind); Article 1, Section 25 (Reservation of Powers in People); Article 1, Section 26 (No Discrimination by Commonwealth and Its Political Subdivisions); and Article I, Section 28 (Prohibition Against the Denial or Abridgment of Equality of Rights Because of Sex). *See* PA. CONST., art. I, § 1; PA. CONST., art. I, § 25; PA. CONST., art. I, § 26; PA. CONST., art. I, § 28. Second, the voter identification provision, adding as a requirement to vote the possession of a valid government identification, significantly alters Article 1, Section 1 (Inherent Rights of Mankind), Article I, Section 5, (Elections), and Article I, Section 26 (Reservations of Powers in People) of the Pennsylvania Constitution. *See* PA. CONST., art. I, § 1; PA. CONST., art. I, § 5; PA. CONST., art. I, § 26. Third, the election audit provision, granting the

General Assembly the statutory power to have the Auditor General audit elections, substantially effectuates a change to Article VII, Section 13 (Contested Elections) which affords Pennsylvania courts the right to hear and decide contested elections. *See* PA. CONST., art. VII, § 13. It arguably also effectuates change to Article 1, Section 1 (Inherent Rights of Mankind), Article I, Section 5, (Elections), Article I, Section 26 (Reservations of Powers in People) to the extent it undermines a voter's right to cast a ballot and have that ballot counted. *See* PA. CONST., art. I, § 1; PA. CONST., art. I, § 5; PA. CONST., art. I, § 26. Fourth, and finally, the rulemaking provision, stripping any veto power of the Governor over a resolution of the General Assembly vacating an executive branch regulation, implicates substantive changes to the Article IV, Section 2 (Duties of Governor; Election Procedures; Tie or Contest) and Article IV, Section 15 (Approval of Bills; Vetoes). *See* PA. CONST., art. IV, § 2; PA. CONST., art. VI, § 15.

By passing a sweeping set of amendments significantly impacting existing constitutional provisions, the General Assembly is forcing the electorate to approve or disapprove of these changes without even knowing what they are. It is far from clear that a voter who casts a vote in favor of or in opposition to the election audit provision is aware that our Constitution affords the courts the rights to hear and decide election disputes. Nor would a voter necessarily understand that the voter identification provision effectively alters the meaning of the “free and equal”

elections provision. Ultimately, by implicating so many changes without the voters understanding or recognizing them, the General Assembly is thwarting the sovereignty of the people who serve a critical role in approving or disapproving constitutional amendments. By passing an omnibus joint resolution with multiple amendments effectuating change to several existing provisions, the General Assembly violated Article XI, Section 1.

V. CONCLUSION

For the reasons set forth above, Amici Curiae have demonstrated that the issues in this litigation are of such public importance, and in need of timely intervention by this Court, such that invocation of King's Bench jurisdiction is warranted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 5,124 words within the meaning of P.A.R.A.P. 531(b)(3). In making this certification, I have relied upon the word count function of the word-processing system used to prepare this Brief.

I further certify that this brief 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.

/s/ Irwin Aronson
IRWIN ARONSON, ESQUIRE

Dated: August 15, 2022

IN THE SUPREME COURT OF PENNSYLVANIA

TOM WOLF, et al.,

Petitioners,

v.

**GENERAL ASSEMBLY OF THE
COMMONWEALTH OF
PENNSYLVANIA,**

Respondent.

No. 73 MM 2022

ORDER

AND NOW, this ____ day of _____, 2022, upon consideration of the Application for Leave to File Brief of Amici Curiae in Support of Application for Invocation of King’s Bench Power, and any opposition thereto, it is here by ORDERED that the Application is GRANTED. Amici Curiae shall file and serve the brief attached as Exhibit “A” to the Application forthwith.

BY THE COURT:

J.