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IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA and LORRAINE HAW	:	No. 4 MAP 2021
v.	:	
VERONICA DEGRAFFENREID, THE ACTING SECRETARY OF THE COMMONWEALTH	:	
APPEAL OF: SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN JUNE IRWIN AND KELLY WILLIAMS	:	

REPLY BRIEF OF APPELLANTS SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN JUNE IRWIN AND KELLY WILLIAMS

Direct Appeal from the Order of the Commonwealth Court,
entered January 7, 2021, at No. 578 M.D. 2019

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INTRODUCTION

In November 2019, the Pennsylvania electorate voted overwhelmingly in favor of the Proposed Amendment which was designed to enshrine 15 victims' rights in the Pennsylvania Constitution.[1] In their effort to eviscerate the will of the voters, Appellees pay lip service to the electorate's constitutional prerogative and this Court's pivotal precedential decisions in *Grimaud v. Commonwealth*, 865 A.2d 835 (Pa. 2005) and *Stander v. Kelley*, 250 A.2d 474 (Pa. 1969).

First, pursuant to Article I, § 2 of the Pennsylvania Constitution, it is the "people" – shorthand in this case for the "voters" – who "have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper." If the people want to enshrine a panoply of victims' rights in the Constitution to act as a counterbalance to the enshrined rights of the criminally accused, that is their "inalienable and indefeasible right" so long as it is accomplished in compliance with Article XI, § 1, *Grimaud* and *Stander*.

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[1] Although not officially certified, based on unofficial published reports, in the November 2019 General Election the electorate approved the Proposed Amendment by an overwhelming supermajority. *E.g., https://ballotpedia.org/ Pennsylvania Marsy's Law Crime Victims Rights Amendment (2019)* (last visited December 13, 2019) (reporting that the Proposed Amendment garnered 74.01% of votes with 100% of precincts reporting (citing Pennsylvania Department of State 2019 Municipal Election Unofficial Returns at *https://www.electionreturns.pa.gov/)).*

Second, Appellees seek to emasculate this Court's decision in *Grimaud*. Although the genesis for Justice Eakin's majority decision in *Grimaud* was Justice Saylor's concurring opinions in *Bergdoll v. Kane*, 731 A.2d 1261, 1271 (Pa. 1999) and *Pennsylvania Prison Society v. Commonwealth*, 776 A.2d 971, 984 (Pa. 2001), Justice Eakin's decision set forth a wider berth permitting constitutional amendments predicated on a single ballot question. Likewise, Appellees seek to sidestep this Court's decision in *Stander*. As set forth below, this Court's decisions in *Grimaud* and *Stander* require reversal of the Commonwealth Court's Order.

ARGUMENT

I. *Grimaud* Requires The Reversal Of The Commonwealth Court's Order

There are two parts to the *Grimaud* test for permitting multiple amendments to be placed in a single ballot: (1) whether the multiple amendments are "sufficiently interrelated"; and (2) whether the multiple amendments "facially" or "patently" affect other provisions in the Constitution. 865 A.2d at 841-842. If the multiple amendments satisfy both tests, they comply with the separate vote requirement in Article XI, § 1, and can be set forth in a single ballot. Here, as explicated in *Grimaud*, the Proposed Amendment satisfies both tests.

A. The Multiple Victims' Rights Amendments Are Sufficiently Interrelated

In *Grimaud*, the two separate bail amendments which were placed in a single ballot question "(1) expand[ed] the capital offenses bail exception to include life

imprisonment, and (2) add[ed] preventive detention to the purpose of bail." *Id.* at 841. Despite the fact that there were two separate bail amendments, the *Grimaud* Court held that, pursuant to the "subject matter test," they both "related to a single subject, bail" because they "were sufficiently interrelated (all concerned disallowance of bail to reinforce public safety) to justify inclusion in a single question." *Id.* The justification for a single ballot was not just that they related to bail but, rather, the broader berth that they both "concerned disallowance of bail to reinforce public safety." *Id*. This conclusion was partially the result of this Court finding alternative formulations of the subject matter test from other jurisdictions "persuasive" such as a "common-purpose formulation" and "germane to the accomplishment of a single objective." *Id*.

It is certainly true, as Appellees state, that the victims' rights amendments in the Proposed Amendment "span the entire range of the criminal process" (App. Br. at 12), but that is clearly their shared intent. Their "common purpose" is to embed victims' rights in the Constitution so they have a comparable and counterbalancing place vis-à-vis the rights of the criminally accused. Contrary to Appellees' hyperbole, finding that the 15 victims' rights in the Proposed Amendment are "sufficiently interrelated to justify their presentation to the electorate in a single question" (865 A.2d at 841) does not nullify Article XI, § 1, but, instead, apply it in a manner consistent with the subject matter test adopted and enunciated in *Grimaud*.

Moreover, Appellees' argument that each of the 15 victims' rights amendments should have been voted on separately so as "to ensure that voters were not forced to approve disfavored amendments alongside favored ones, or to reject favored amendments that are attached to disfavored ones" (Appellees' Brief ("App. Br.") at 17) was the **losing** argument made by Justice Cappy's **dissent** in *Grimaud*:

> In adopting this [subject matter] test, the majority dispossesses the voters who may wish to amend certain facets of our fundamental law, but not others, of the right to do so, and instead, encumbers them with a Hobson's choice between accepting all proposed amendments or none of them.

865 A.2d at 847. As acknowledged by the *Grimaud* dissent, the goal of the subject matter test is to permit the aggregation of multiple amendments in a single ballot so long as they are "sufficiently interrelated" or, alternatively, "germane to the accomplishment of a single objective," *id*. at 841, such as the reinforcement of public safety in *Grimaud* and the reinforcement of victims' rights here.

Finally, Appellees' reliance on Justice Saylor's concurrence in *Bergdoll* (App. Br. at 16-17) is misplaced for two reasons. First and foremost, the controlling decision is *Grimaud* and Justice Eakin's broad application of the subject matter test to the two bail amendments there. Second, the two amendments in *Bergdoll* – the elimination of the face-to-face requirement of the confrontation clause and the authorization to the General Assembly to enact laws regarding how children could testify in criminal proceedings – in Justice Saylor's words "lacked the

interdependence necessary to justify their presentation to voters within the framework of a single question." 731 A.2d at 1271 (emphasis added). Here, as in *Grimaud*, all of the victims' rights amendments have a shared interdependent purpose that is germane to the goal of the Proposed Amendment – to place victims' rights on an equal constitutional footing with those of the criminally accused. As such, they are "sufficiently interrelated" to justify placing them in a single ballot.

B. The Multiple Amendments Did Not Facially Or Patently Affect Other Constitutional Provisions

In their effort to have this Court invalidate the Proposed Amendment because of its affect on other constitutional provisions, Appellees have ignored four critical aspects of the *Grimaud* decision. First, in order to underscore its bright line approach, *Grimaud* underlined the word "facially" as follows:

> 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.

865 A.2d at 842 (underlining in original). Appellees have ignored the emphasis on the word "facially" because none of the victims' rights amendments "facially" – on their face – affect other constitutional provisions.

Second, the *Grimaud* Court explained its emphasis on the word "facially" in the very next sentence of its opinion:

> Indeed, it is hard to imagine an amendment that would not have some arguable effect on another provision; clearly

> the framers knew amendments would occur and provided a means for that to happen.

Id. If this Court adopted Appellees' approach, no proposed amendment containing two or more interrelated amendments could ever be placed in a single ballot. One could always find at least one existing constitutional provision implicitly affected by a proposed amendment, as Judge McCullough (the deciding vote below) did here, even when the subject matter test was satisfied.

Third, *Grimaud* underscored that arguments premised on the "implicit" effects of a proposed amendment – as Appellees rely on here – to invalidate a proposed amendment are devoid of merit:

> The question is whether the single ballot question patently affects other constitutional provisions, not whether it **implicitly** has such an effect, as appellants suggest.

Id. (emphasis added).

Fourth, in deciding that the two bail amendments in *Grimaud* did not facially or patently affect other constitutional provisions, this Court explained the applicable test:

> The argument concerning the amendment of Article I, § 9's presumption of innocence lacks merit because the "presumption" language is the same now as it was prior to the amendments.

Id. Any other approach runs afoul of this Court's *Grimaud* edict to avoid invalidating all proposed multiple amendments placed in a single ballot since they will all "have some arguable effect on another [constitutional] provision." *Id*.

Appellees' brief simply elides this Court's decision in *Grimaud*. Although they purport to examine "the content, purpose and effect" of the victims' rights amendments, they disregard what was actually contended unsuccessfully by the appellants in *Grimaud*. Thus, just like Appellees here (*see* App. Br. at 24-30), appellants in *Grimaud* argued that the two bail amendments implicitly affected and amended: (1) Article I, § 1's right to defend one's self; (2) Article I, § 9's presumption of innocence; (3) Article I, § 13's right to be free from excessive bail; and (4) Article I, § 25's reservation of rights. 865 A.2d at 842.

The *Grimaud* Court rejected appellants' contention because the two bail amendments did not facially or patently affect other constitutional provisions since they did not alter any of their language. *Id*. Indeed, immediately following this Court's focus on the absence of any change in the language of any other constitutional provision because "the 'presumption' language is the same now as it was prior to the [bail] amendments" (*id.*), the *Grimaud* Court held:

> Because the proposed amendments only patently affected Article I, § 14 [the subject of the bail amendments], regarding when bail is disallowed in criminal cases, and no other part of the Constitution, the Commonwealth Court did not err in concluding the single bail ballot question was properly submitted to the electorate.

Id. Appellees' attempt to negate this aspect of *Grimaud* simply has no merit.

Moreover, in *Grimaud*, this Court held that the Attorney General's "plain English statement" was a sufficient explanation of the content, purpose and effect of the two bail amendments. *Id*. at 842-844. As the *Grimaud* Court held:

> A comprehensive recitation of all ramifications of a constitutional amendment is not the goal of this summary – such a comprehensive consideration lies in the legislative history. The Attorney General is to present a "statement," not a treatise. The Attorney General here provided a sufficient explanation of the purpose, limitations and effects of the bail amendment and thus, complied with the statutory requirements.

Id. at 843-844. The same applies with equal force here to the Attorney General's extensive "plain English statement" for the Proposed Amendment. *See* Appendix C at 1-3 to Appellants' opening brief.

C. Appellees' and Amici's Contention That Literal Compliance With Article XI, § 1 Is Required Has No Merit

Appellees and amici place great reliance on the statement from *Kremer v. Grant*, 606 A.2d 433, 438 (Pa. 1992), quoting *Tausig v. Lawrence*, 197 A. 235, 238 (Pa. 1938), that "nothing short of literal compliance with the mandate [of Article XI, § 1] will suffice." App. Br. at 34; PACDL Br. at 20. However, this statement in both *Kremer* and *Tausig* was made with respect to the **advertising provisions** in Article XI, § 1 and not the separate vote requirement therein.

Moreover, with reference to the separate vote requirement, "literal compliance" was squarely rejected in *Grimaud*. There, as discussed earlier, this

Court adopted Justice Saylor's "sufficiently interrelated" subject matter test for determining whether a ballot question required separate votes. 865 A.2d at 841. The proof of this obvious fact is found in Justice Cappy's concurring and dissenting opinion in *Grimaud* (joined in by Justices Nigro and Baer) where he dissented from the majority's adoption of the "subject matter test." 865 A.2d at 847-848. In support of his opinion, Justice Cappy expressly quoted the "nothing short of literal compliance with the mandate will suffice" language from *Kremer* and *Tausig*. *Id*. at 848. Thus, as conceded by Justice Cappy, the "literal compliance" standard had been discarded in favor of the "subject matter test" so far as Article XI, § 1's separate vote requirement was concerned.

D. Instead Of Invalidating The Proposed Amendment, The Proper Constitutional Role For This Court Is To Harmonize It With The Existing Constitutional Provisions On A Post-Hoc Basis

Appellees contend that, because of the implicit effects of the Proposed Amendment, this Court should prevent it from being enshrined in the Constitution. Appellees have miscast the role of this Court. Appellants respectfully submit that instead of invalidating the Proposed Amendment contrary to *Grimaud*, the proper constitutional role for this Court is to harmonize and reconcile the Proposed Amendment with the existing constitutional provisions on a post-hoc basis **after** the victims' rights amendments have been enshrined in the Constitution.

This Court is no stranger to constitutional litigation. In *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), this Court adopted a four-factor analysis in determining "whether Article I, § 8 of the Pennsylvania Constitution incorporated a 'good faith' exception to the exclusionary rule, as the U. S. Supreme Court had held with respect to the Fourth Amendment." *See Jubelirer v. Rendell*, 953 A.2d 514, 521-522 (Pa. 2008). Although *Edmunds* "involved the possible tension between federal and Pennsylvania constitutional law," *id*. at 523-524, presumably the same four-factor analysis would apply to possible tensions between two Pennsylvania constitutional provisions. Simply stated, the answer to possible implicit conflicts between the victims' rights amendments and existing constitutional provisions is not to eviscerate *Grimaud* and prevent their constitutional enshrinement but, rather, to post-hoc harmonize and reconcile them with existing constitutional provisions as cases come to this Court. Indeed, our Bill of Rights has been subject to litigation as to its meaning and scope for more than 230 years. Litigation over the meaning and scope of the victims' rights amendments would not be an exceptional process, but, rather, a customary and routine appellate process for a set of new constitutional rights.

II. There Is No Requirement That A Ballot Question Contain A Verbatim Rendition Of The Proposed Amendment

Appellees contend that the entire text of the Proposed Amendment must be set forth in the ballot question. App. Br. at 33-38. In support of their contention,

Appellees assert this is "an issue of first impression in Pennsylvania." *Id*. at 34. Appellees are wrong as this Court's decision in *Stander v. Kelley*, 250 A.2d 474 (Pa. 1969) conclusively demonstrates.

In *Stander*, as a result of a Constitutional Convention, a constitutional amendment containing "a complete revision of Article V relating to the Judiciary" was presented to the electorate. *Id*. at 475. Despite the enormous nature of the new Article V, the ballot question simply recited:

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

Id. at 480. In short, **none** of the new provisions in the new Article V were even described in the ballot question. For this reason, the *Stander* Court concluded: "It is obvious that this question as printed on the ballots is but a tiny and minuscular statement of the very lengthy provisions of the proposed Judiciary Article V." *Id*.

If it were a requirement to place the entire constitutional amendment in the ballot question, the *Stander* Court would have ended its opinion at this juncture. However, instead, it held:

> It is equally clear and realistic beyond the peradventure of a doubt that a lengthy summary of the proposed Judiciary Article could not have been printed on an election ballot. The first and most important question *on this point* is:

> Does the question as stated on the ballot fairly, accurately and clearly apprize the voter of the question or issue to be voted on? Our answer to this question is "Yes."

Id. (italics in original). Thus, the only question – despite the "tiny and minuscular" and, in fact, entirely non-informative ballot question – was whether the ballot question "fairly, accurately and clearly apprize[d] the voter of the question or issue to be voted on?" *Id*.

That *Stander* remains the touchstone for determining whether a proposed amendment must be placed in *haec verba* in a ballot question was reaffirmed in *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016). There, recognizing the 75-word limit on ballot questions, Justice Baer (joined by Justices Donohue and Mundy) stated that *Stander* provided the applicable standard for determining the propriety of the wording of a ballot question:

> In this regard, we have indicated that a ballot question must fairly, accurately, and clearly apprise the voter of the question or issue on which the electorate must vote. Stander, 250 A.2d at 480.

Id. at 1141 (footnote omitted).

In her *Sprague* opinion, Justice Todd (joined by Justice Dougherty) agreed with Justice Baer that "Stander is the governing test to assess whether the content and meaning of the wording of a ballot question is adequate to enable the voter to understand the true nature of the changes to the constitution which a proposed amendment will effectuate." *Id*. at 1149 n. 8. Pursuant to her agreement with Justice

Baer, Justice Todd stated that the issue in *Sprague* was whether "the question as stated on the ballot fairly, accurately and clearly apprize[d] the voter of the question or issue to be voted on," citing *Stander*. *Id.*[2]

In sum, given *Stander* and *Sprague*, there is no requirement to set forth the entirety of a proposed amendment verbatim in the ballot question. The only requirement is that the ballot question fairly, accurately and clearly apprise the voter of the question to be voted on.[3]

III. The Ballot Question Containing The Proposed Amendment Fairly, Accurately And Clearly Apprised The Voters Of The Question To Be Voted On

Here, given the statutory 75-word limit, the ballot question was able to contain 9 of the 15 victims' rights amendments. In contrast, the "tiny and minuscular" ballot question in *Stander* contained no relevant information. Yet, in *Stander*, this Court held the non-informative ballot question fairly, accurately and clearly apprised the voters of the question to be voted on, namely, the approval of the new Judiciary Article V. 250 A.2d at 480.

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[2] Given the undeniable fact that five of the six Justices in *Sprague* agreed that *Stander* was the governing test, the fact that *Sprague* involved an otherwise evenly divided split decision is not relevant here, contrary to Appellees' contention. App. Br. at 37 n. 14.

[3] Given the *Stander* governing test, Appellees' extensive reliance on a Kentucky Supreme Court decision has no relevance here. App. Br. at 33-35, 37-38.

In *Stander*, this Court acknowledged that additional information had been provided to the voters by virtue of (1) the right of each elector to request (as unlikely as that may have been) and then receive a copy of the constitutional changes and (2) mailing ten copies of the changes to each polling place. *Id.* Here, in comparison, as Judge Ceisler found below, "the parties agree[d] that the Proposed Amendment, the Plain English Statement, and the Ballot Question were all properly published and accessible to the electorate in advance of the November 2019 election, as required by Section 201.1 of the Election Code." Slip Op. at 3 (Appendix B to Appellants' opening brief). This means that the Plain English Statement prepared by the Attorney General containing the entire Proposed Amendment and an explanation of the purpose, limitations and effects of the ballot question (*see* Appendix C at 1-5 to Appellants' opening brief) was published throughout the Commonwealth in local newspapers in advance of the election and three copies of the Plain English Statement were published in each polling place at the time of the election. Thus, contrary to Appellees' assertion, the voters had a reasonable opportunity to read all of the 15 victims' rights amendments in the Proposed Amendment and not just the nine in the ballot question.

It must be remembered that:

> [T]he question before us is not whether we believe one version of the ballot question is superior to another, nor is it relevant how we would phrase the ballot question if left to our own devices. Instead, our role in the constitutional

> amendment process is limited to a review of whether the ballot question fairly, accurately and clearly apprises the voter of the question on which the electorate must vote.

Sprague, 145 A.3d at 1142. Here, the Plain English Statement did not have to go into the **possible** impacts of the Proposed Amendment on constitutional provisions. It was sufficient for the Attorney General to state that, "[o]nce added to the Pennsylvania Constitution, these specific rights of victims cannot be eliminated, except by a judicial decision finding all or part of the amendment unconstitutional or the approval of a subsequent constitutional amendment." *See* Appendix C at 2 to Appellants' opening brief.

IV. The Briefs Filed By The Amici Are Utterly Without Merit

A. Contrary To The Governor's Amicus Brief, There Is No Basis – Constitutional Or Otherwise – For Requiring A Constitutional Convention To Promulgate A So-Called "Complex" Or "Sweeping" Amendment To The Pennsylvania Constitution

Although the Governor gave the victims' rights in the Proposed Amendment a full-throated endorsement in April 2018 supporting their passage by the General Assembly,[4] the Governor's amicus brief now contends that only a Constitutional Convention can promulgate a so-called "complex" or "sweeping" amendment to the

[4] *See https://www.governor.pa.gov/newsroom/governor-wolf-supports-marsys-law-crime-victims-constitutional-amendment/*. As the Governor then stated: "Marsy's Law will amend the state constitution to provide crime victims with equal protections and participation in the process. Victims and their families deserve equity. I thank the Senate for approving this bill unanimously and I urge the General Assembly to continue advancing Marsy's Law." *Id*.

Pennsylvania Constitution. Gov. Brief at 5. Simply put, there is no basis – constitutional or otherwise – for his contention.[5]

For starters, the Pennsylvania Constitution contains only one provision addressing the constitutional amendment process, namely, Article XI, § 1. And there is nothing in Article XI, § 1 either expressly or even implicitly requiring a Constitutional Convention for any amendment to the Pennsylvania Constitution if the amendment is complex or sweeping. This silence is not inconsequential.

In the statutory interpretation context, this Court has repeatedly held that requirements cannot be added to statutes:

> This Court has cautioned, however although one is admonished to listen attentively to what a statute says[,] one must also listen attentively to what it does not say. Accordingly, we have stressed courts should not add, by interpretation, a requirement not included by the General Assembly.

Commonwealth v. Giulian, 141 A.3d 1262, 1268 (Pa. 2016) (citations omitted). This principle applies with equal force to the Governor's effort to superimpose on Article XI, § 1 a requirement **prohibiting** the General Assembly and, just as importantly, the voters from using Article XI, § 1 to promulgate so-called "complex" or "sweeping" constitutional amendments thereunder.

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[5] It is noteworthy that even Appellees do not endorse the Governor's unfounded contention. App. Br. at 19-20 n. 6.

Moreover, although a **statutory** process exists for calling a Constitutional Convention and promulgating constitutional amendments, there is no basis – and the Governor cites none – supporting the Governor's argument that this process limits Article XI, § 1. The statutory process is nothing more than a supplement to the unlimited scope of Article XI, § 1.

Because of the foregoing, the Governor is compelled to rely on a tortured construction of an invented holding by the Commonwealth Court in *Pennsylvania Prison Society v. Commonwealth*, 727 A.2d 632 (Pa. Cmwlth. 1999). Gov. Brief at 5 and 5-6 n. 1. There, disregarding the unlimited scope of Article XI, § 1, the Commonwealth Court declared:

> The process described in Article XI, Section 1 is reserved for simple, straightforward changes to the Constitution, easily described in a ballot question and easily understood by the voters. This process should not be used to circumvent a constitutional convention, the process for making complex changes to the Constitution, as we believe was done in this case.
>
> * * *
>
> The voters must be able to express their will as to each substantive constitutional change separately, especially if these changes are not so interrelated that they must be made together. If multiple changes are so interrelated that they must be made together, as a unit, then they are too complex to be made by the process described in Article XI, Section 1. Those changes should be made by constitutional convention, where they can be more adequately debated and understood.

727 A.2d at 634-635. Thus, the Commonwealth Court tied its Constitutional Convention holding to the separate vote requirement in Article XI, § 1, stating "[i]f multiple changes are so interrelated that they must be made together, as a unit, then they are too complex to be made by the process described in Article XI, Section 1." *Id.* at 635.

However, this proposition was expressly rejected by Justice Saylor's concurring opinion (joined in by Justices Castille and Newman) upon appeal in *Pennsylvania Prison Society v. Commonwealth*, 776 A.2d 971 (Pa. 2001):

> I join the majority in holding that the amendments at issue do not violate the proscriptions of Article XI, Section 1, but disassociate myself from the majority's apparent rejection (made most explicit in its footnote 4) of a subject-matter focus to determine whether alterations are sufficiently interrelated to justify their presentation to the electorate in a single question. *See generally Bergdoll v. Kane*, 557 Pa. 72, 89, 731 A.2d 1261, 1263 (1999) (Saylor, J., concurring).

776 A.2d at 984 (footnote omitted). Significantly, Justice Saylor's three Justice concurrence was then **adopted as the holding** of this Court in *Grimaud*:

> We are persuaded by Justice Saylor's concurrence suggesting "a subject-matter focus to determine whether alterations are sufficiently interrelated to justify their presentation to the electorate in a single question." *Id.* at 984 (Saylor, J. concurring, joined by Castille and Newman, JJ.).

865 A.2d at 841. Leaving no doubt in *Grimaud*, this Court expressly "adopt[ed] the 'subject matter test' for determining whether a ballot question violates Article XI, § 1." *Id.*

Thus, this Court in *Grimaud* expressly rejected the linchpin for the Commonwealth Court's holding in *Pennsylvania Prison Society* that multiple interrelated changes could not be "made together, as a unit," and therefore required a Constitutional Convention. 727 A.2d at 635. But, in any event, there is no valid basis for placing Article XI, § 1 in a straitjacket limiting its scope and the voters' rights thereunder to promulgate constitutional amendments.

B. The Pennsylvanians For Modern Courts Amicus Brief

The Pennsylvanians for Modern Courts (the "PMC") amicus brief makes two erroneous arguments. First, it erroneously contends that "[a]ction by the General Assembly is a **prerequisite** to the recognition of any of the rights set forth in the Proposed Amendment." PMC Br. at 6 (emphasis added and footnote omitted). However, this is just plain wrong. As evidenced by the unambiguous terms of the Proposed Amendment set forth in Sections 9.1(a) and (b), the victims' rights amendments are self-enforcing and not subject to any prior action by the General Assembly. *See* Appendix C at 3-4 to Appellants' opening brief. After enumerating the victims' rights amendments in Section 9.1(a), Section 9.1(b) states that "[t]he 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 [9.1(a)] and any other right afforded to the victim by law." *Id*. Thus, Section 9.1(b) independently endows "the victim or the attorney for the government upon request of the victim" with the authority and power to enforce the victims' rights set forth in Section 9.1(a).

The General Assembly has no role in this enforcement process. The General Assembly's role is limited to two potential future actions, neither of which is related to enforcement of the victims' rights "in any trial or appellate court, or before any other authority." *Id*. First, pursuant to Section 9.1(a), "as further provided and as defined by the General Assembly," the General Assembly is empowered to legislate further on the victims' rights contained in Section 9.1(a). Second, pursuant to Section 9.1(c), "as further defined by the General Assembly," the General Assembly is empowered to legislate further on the meaning of the term "victim." *Id*.

There is nothing exceptional or inappropriate about these provisions. *See*, *e.g.*, Article I, § 6: General Assembly can provide for a five-sixths, instead of unanimous, verdict in civil jury trials; Article V, § 10(c): General Assembly "may by statute provide for the manner of testimony of child victims or child material witnesses in criminal proceedings"; Article VII, § 2: General Assembly can schedule general election on a different date in November; and, of course, Article XI, § 1: General Assembly can prescribe constitutional amendments.

Second, building upon its erroneous interpretation of the role of the General Assembly, the PMC then doubles down and erroneously contends that its miscast role of the General Assembly unconstitutionally interferes with this Court's rulemaking authority. PMC Br. at 3-8. However, as discussed above, there is absolutely no power bestowed upon the General Assembly to engage in any rulemaking, much less rulemaking contrary to this Court's rulemaking authority. This Court's rulemaking authority is left intact.

C. The Criminal Defense Bars Amici Briefs

Both the Pennsylvania Association of Criminal Defense Lawyers (the "PACDL") and the National Association of Criminal Defense Lawyers (the "NACDL") have filed amicus briefs. The premise of the PACDL Brief is that the PACDL represents "the fundamental rights of all Pennsylvanians." PACDL Br. at 2. But, in truth, the PACDL only seeks to "protect the rights of individuals accused of [criminal] wrongdoing." *Id*.

The PACDL makes two principal arguments that were expressly rejected by this Court's decision in *Grimaud*. First, they contend that the victims' rights amendments contradict and amend the presumption of innocence contained in Article I, § 9. PACDL Br. at 7-12. However, this is the same argument appellants made and this Court rejected in *Grimaud*:

> The argument concerning the amendment of Article I, § 9's presumption of innocence lacks merit because the

> "presumption" language is the same now as it was prior to the amendments.

865 A.2d at 842. The same *ratio decidendi* applies here because none of the victims' rights amendments alters the "presumption" language in Article I, § 9.

Second, the PACDL contends that the victims' rights amendments "implicitly amend" Pennsylvania's post-conviction relief proceedings. PACDL Br. at 13 and 12-18. However, the *Grimaud* Court expressly rejected arguments predicated on "implicit" effects:

> The question is whether the single ballot question patently affects other constitutional provisions, not whether it **implicitly** has such an effect, as appellants suggest.

865 A.2d at 842 (emphasis added).

The NACDL's principal complaint concerning the victims' rights amendments is that their implementation will cause docket congestion and cost millions of dollars to implement them. When the U. S. Supreme Court made its 1966 *Miranda* ruling, there was no outcry from the NACDL, even though the implementation of Miranda caused a plethora of new pretrial litigation in criminal proceedings. The same has been true in each and every U. S. Supreme Court decision enlarging the rights of the criminally accused. Yet, any docket congestion and costs of administration have been accepted as the price of insuring the accused's constitutional rights.

The same applies here: what is good for the goose is good for the gander. Any docket congestion and costs resulting from the enforcement of the victims' rights amendments is simply the price a society pays for giving meaning to new constitutional rights.

D. The Two Additional Amici Briefs

Surprisingly, the Juvenile Law Center (the "JLC") amicus brief has taken a myopic view of the victims' rights amendments. Instead of seeking to protect the rights of juveniles when they are frequently the **victims** of crimes perpetrated against them, the JLC only looks at the other side of the coin when juveniles are accused of crimes.

The JLC's Brief starts with a mischaracterization of the Commonwealth Court's decision, stating:

> The Commonwealth Court properly declared Marsy's Law an unconstitutional ballot amendment for its effects on multiple existing constitutional provisions and its impact on multiple, insufficiently interrelated subject matters in violation of Article XI, § 1 of the Pennsylvania Constitution.

JLC Br. at 3. On the contrary, only two of the five Commonwealth Court Judges came to this conclusion. The deciding opinion by Judge McCullough focused on

only one constitutional provision, namely, Article I, § 9. *See* Appellants opening brief at 22-24.[6]

The JLC's brief contends that the victims' rights amendments will adversely affect the juvenile justice system. But, the JLC's contentions run afoul of the *Grimaud* Court's dismissal of implicit effects like those portrayed by the JLC. To the extent any of the JLC's concerns actually materialize, the lower courts and this Court will, in post-hoc proceedings, reconcile and harmonize them with the victims' rights amendments.

Finally, the Pennsylvania Newsmedia Association (the "PNA") amicus brief is predicated upon their concern for maintaining open courts in Pennsylvania. Significantly, the PNA "does not take a position on the potential interplay of the competing constitutional rights under Article I, § 11 and Marsy's Law or a standard to address their apparent conflict." PNA Br. at 5. Given this concession, the PNA brief is irrelevant to this appeal.

However, the PNA brief then contends that the victims' rights amendments affect the public's and press' right to access judicial records and proceedings guaranteed by Article I, § 11 of the Pennsylvania Constitution and the First

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[6] The Governor's amicus brief contains an extensive exegesis explaining that only Judge McCullough's opinion constitutes the opinion of the Commonwealth Court. Gov. Br. at 19-20 n. 9.

Amendment. PNA Br. at 5-19. There are two answers to the PNA's concern. First, as *Grimaud* makes clear, the implicit effects of the victims' rights amendments on open courts are not sufficient to prevent their enshrinement in the Pennsylvania Constitution because the language in Article I, § 11, has not been altered. 865 A.2d at 842. Second, in the event of any post-hoc conflict between any of the victims' rights amendments and Article I, § 11, or the First Amendment, this Court can ably address and reconcile them using its *Edmunds* four-part analysis. The answer is not to dismiss and disregard the "inalienable and indefeasible" will of the voters who overwhelmingly approved the Proposed Amendment.

V. It Would Be Patently Unfair To The Voters For This Court To Refrain From Deciding All Of The Fully Briefed Issues And Remand This Matter To The Commonwealth Court For Any Reason

The Governor has requested that this Court remand this matter to the Commonwealth Court to, *inter alia*, determine "whether [Appellees] are entitled to relief under either Count II or Court III of their Petition for Review." Gov. Br. at 21. Appellees have fairly not joined in the Governor's request and have fully briefed with Appellants all of the issues encompassed by their Counts II and III for this Court's decision. App. Br. at 19-20 n. 6. Remanding this matter for any reason would further delay by at least an additional year (after this Court's decision) the voters' overwhelming decision 17 months ago (and counting) in favor of enshrining

the victims' rights amendments in the Pennsylvania Constitution. In this case, justice delayed is certainly justice denied.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Appellants' opening brief, Appellants respectfully request that this Court reverse the Commonwealth Court's Order so that the victims' rights amendments can be enshrined in the Pennsylvania Constitution.

Respectfully submitted,

Date: April 19, 2021

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CERTIFICATION

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

Date: April 19, 2021

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the 7,000 word limit set forth in Pa. R.A.P. 2135. According to the Word Count feature in Microsoft Office Word 2016, Appellants' Brief contains 5,929 words, excluding the parts exempted by Pa. R.A.P. 2135(b).

Date: April 19, 2021

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