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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

TRANSCRIPT OF PROCEEDINGS

Before: THE HONORABLE ELLEN CEISLER, Judge

Date: October 23, 2019, 8:54 a.m.

Place: Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Courtroom No. 3001
Harrisburg, Pennsylvania

APPEARANCES:

Steven E. Bizar, Esquire
Tiffany E. Engsell, Esquire
Andrew C. Christy, Esquire
For - Petitioners

Nicole J. Boland, Esquire
Caleb C. Enerson, Esquire
For - Respondent

Scot R. Withers, Esquire
For - Intervenors Kirstin Irwin, Shameekah
Moore, Martin Vickless, and Kelly Williams

Michael E. Gehring, Esquire
For - Intervenor Ronald L. Greenblatt, Esquire

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1 THE COURT CRIER: All rise. Commonwealth Court is
2 now in session. The Honorable Judge Ceisler presiding.

3 THE COURT: Everyone, take a seat.

4 Good morning, everyone.

5 ALL COUNSEL: Good morning, Your Honor.

6 THE COURT: And for those of you who are new to
7 this courtroom, welcome to the Pennsylvania Commonwealth
8 Court. We have a very, very interesting case today, and I'm
9 excited to hear arguments by counsel.

10 But for the record, why doesn't everybody --
11 counsel introduce themselves for the record first?

12 MR. BIZAR: Your Honor, Steven Edward Bizar from
13 Dechert LLP on behalf of the petitioners.

14 MS. ENGSELL: Tiffany Engsell from Dechert LLP,
15 also on behalf of the petitioners.

16 MR. CHRISTY: Andrew Christy from the ACLU of
17 Pennsylvania on behalf of the petitioners.

18 MR. GEHRING: Good morning, Your Honor. Michael
19 Gehring on behalf of int- -- of Steve Harvey Law,
20 representing intervenor Ronald Greenblatt.

21 THE COURT: Okay. Counsel for the respondents?

22 MS. BOLAND: Nicole Boland, Your Honor, from the
23 Office of Attorney General, representing the respondent, the
24 Acting Secretary of the Commonwealth.

25 MR. ENERSON: Good morning, Your Honor. Caleb

1 Enerson from the Pennsylvania Attorney General's Office, also
2 representing the respondent in this matter.

3 MR. WITHERS: Good morning, Your Honor. May it
4 please the Court, Scot Withers of Lamb McErlane on behalf of
5 the intervenors Shameekah Moore, Martin Vickless, Kirstin
6 June Irwin, and Kelly Williams. Thank you.

7 THE COURT: All right, folks. For anybody in the
8 -- in the gallery today, I'm just going to ask that if there
9 are -- I mean, this is a very sensitive subject, and there
10 might be some questions asked or -- by me or comments made by
11 some of the counsel. And I think that it is very important
12 to understand that nobody here is trying to offend anybody.
13 We are just in a truth-seeking process and to understand how
14 the law applies to this amendment.

15 So I would appreciate if there would be no comments
16 or -- or any kind of disruption if you don't like what's
17 being said at any given point. We're just -- really just
18 trying to understand the law and how it applies.

19 So we are here today because the petitioners in
20 this matter, they filed an application for special relief in
21 the form of a preliminary injunction. Essentially they are
22 trying to prevent the ballot question which was Joint
23 Resolution 2019, also called Marsy's Law or the Victim Rights
24 Amendment, to the Constitution which would add another
25 section, Section 9.1, to the Pennsylvania Constitution.

1 The petitioners are seeking to have the Secretary
2 and her agents from submitting this ballot question to the
3 voters on the November 2019 -- in the November 2019 election
4 and until the resolution of this case; or, alternatively, to
5 prevent the certification of election results until
6 resolution of the case.

7 We have several intervenors in this case.
8 Particularly, Mr. Withers is here for the victims: Moore,
9 Vickless, Ms. Irwin, and Kelly Williams. We have intervenor
10 Ronald Greenblatt. And we had an amicus brief filed by
11 Office of Chief Counsel, Republican Caucus. And I do
12 appreciate both parties agreeing to these parties intervening
13 so we don't have to get into that.

14 Also, prior to this hearing, there was a discussion
15 and it has been determined that there is no issue and the
16 parties agree to stipulate that nobody is challenging the
17 Secretary or the Commonwealth on the procedure by which this
18 ballot question came into being.

19 It's understood that the General Assembly and the
20 Office of the Attorney General, they all followed the
21 protocols of the Constitution to get this ballot question on
22 to the voting booth. So we're not -- you're going to be able
23 to just talk about that in your argument. We're not going to
24 need any witnesses. There's no challenge to the -- the costs
25 and the expenditures and other issues that the -- that the

1 General Assembly went through in terms of harms.

2 You're going to be able to just talk about that in
3 your argument, Ms. Boland.

4 There's no one challenging the Pennsylvania
5 Attorneys General -- Pennsylvania Attorney General's Plain
6 English Statement, so we're not going to need any witnesses
7 on that.

8 So we're really going to be dealing with the
9 criteria for the preliminary injunction. That's where we
10 need to focus: the six criteria. And we're going to do
11 this. We'll start with allowing argument by petitioners.
12 We'll start with the main petitioner, Mr. Bizar, for -- for
13 Ms. Haw.

14 And you'll also be speaking to a certain extent for
15 the League of Women Voters.

16 I will possibly interrupt with questions if -- if I
17 see fit. But it's going to be 30 minutes. And I ask the
18 intervenors only to -- you know, if you feel that something
19 that you really needed to be said wasn't said by one of the
20 lead attorneys in this case. You don't have to speak as long
21 as you felt your rights and your issues have been fairly and
22 fully represented. Okay.

23 So we'll start with Mr. Bizar from -- from -- who's
24 representing Ms. Haw.

25 MR. BIZAR: Your Honor, yes. Steve Bizar, again,

1 for the record. I'm from Dechert, and I represent both Ms.
2 Haw and the League of Women Voters.

3 THE COURT: Thirty minutes, right?

4 MR. BIZAR: Yeah. I'm going to do my best.

5 THE COURT: Okay.

6 MR. BIZAR: Your Honor, there are four -- really
7 four issues I want to address, if I may. And, of course, if
8 you have questions, I'll answer them as they come up.

9 The first is the laches point. The second is the
10 balance of the hardships or the balance of the harms. The
11 third is the likelihood of success on the merits, and the
12 fourth is irreparable injury.

13 And at some point during the discussion or argument
14 with respect to the balance of the hardships or balance of
15 the harms, I think that would be appropriate for
16 Mr. Greenblatt to then -- as we discussed prior to the -- to
17 this session, for Mr. Greenblatt to testify. And then I can
18 resume my argument if that's all right with the Court.

19 THE COURT: Counsel for respondents, intervenors,
20 you agree?

21 MS. BOLAND: Your Honor --

22 THE COURT: That's how we were going to proceed
23 today.

24 MS. BOLAND: Your Honor, that's fine.

25 THE COURT: Okay. Good.

1 MR. BIZAR: So, Your Honor, we don't need to spend
2 time discussing the legal standards. You're well aware of
3 them. We are here for equity. We are seeking equitable
4 relief. And laches is an equitable defense. It's raised by
5 both the respondent and the crime victim intervenors, so I
6 want to address that first.

7 They have pages of their brief that call our action
8 untimely, belated, a self-created emergency a hundred and
9 thirteen days after the General Assembly voted, other unkind
10 statements. It goes on and on. And, you know, it also
11 filters over into their argument with respect to the balance
12 of the hardships, the balance of the harms. It's the notion
13 that the ship has sailed and too much has been done, it can't
14 be undone.

15 All of it, Your Honor, is misplaced. I want to be
16 very clear about what the Court has determined, the
17 Pennsylvania Supreme Court, and what the law of this
18 Commonwealth is. There can be no laches; there is no laches
19 defense in matters involving constitutional challenges. That
20 has been the law since Tausig in 1937. It remains the law
21 today.

22 The Supreme Court said in Tausig: "Because of the
23 intense importance to the people of the Commonwealth of
24 matters affecting the amendment of their fundamental law,"
25 speaking of the Constitution, "the doctrine of laches cannot

1 be invoked to prevent the determination of the propriety of
2 the submission of an amendment."

3 Sprague versus Casey, which is a case that they
4 both -- both the intervenors and the respondent rely on --

5 THE COURT: Sprague versus Costa?

6 MR. BIZAR: Casey.

7 THE COURT: Casey?

8 MR. BIZAR: Yeah. The 1988 one. There are many
9 Sprague cases, Your Honor, as you're well aware.

10 But the 1988 Sprague versus Casey decision goes
11 through the traditional test for laches, finds out that
12 there's no laches on the situation -- on the circumstances
13 there. The plaintiffs cite it for the traditional test for
14 laches. But then Sprague versus Casey, the Supreme Court
15 goes on and says there is no laches. "Laches and prejudice
16 can never be permitted to amend the Constitution."

17 So that is the law. And constitutional rights, the
18 rights that we're here to protect today and we're trying to
19 protect by this action, the rights secured by Article XI,
20 Section 1 of the Constitution, they do not expire. They are
21 evergreen, Your Honor.

22 And there are many, many ballot challenges that
23 come up at the last minute. And we're very lucky that courts
24 like the Commonwealth Court are able to act very quickly with
25 respect to those challenges.

1 Even under the traditional standards -- and I just
2 want to get this on the record because they attack the ACLU
3 under this laches argument; even under the traditional
4 standards, laches would not work here. The ACLU is not a
5 party in this case. They're not a petitioner. They are
6 counsel for the League of Women Voters and counsel for Ms.
7 Haw, co-counsel with me.

8 Mr. Christy from the ACLU is sitting at the -- at
9 the table. And by the way, Jamie Mogil from the League of
10 Women Voters is in the -- in the gallery today, Your Honor,
11 as well.

12 The ACLU opposed this amendment, unquestionably.
13 They opposed it in 2018. They lobbied against it in 2019.
14 They issued white papers. Those are not white papers by Ms.
15 Haw, and they're not white papers by the League of Women
16 Voters. And the fact that the ACLU opposed the amendment
17 doesn't make the amendment any less unconstitutional than --
18 than anyone else opposing the amendment would make it. It is
19 still a challenge that is being mounted today by the League
20 of Women Voters and Ms. Haw.

21 And they didn't file their action until October.
22 And the Secretary did not certify the ballot question to the
23 county boards of election -- and you'll see this -- it's said
24 in their new matter, but it's also -- you'll see it in the
25 exhibits that we're going to hand up by agreement later today

1 in the proceedings. The Secretary did not certify the matter
2 to the county boards of election until September 11th.

3 The League of Women Voters didn't vote on this
4 action until October 3rd at their board meeting. We filed
5 October 10th. So we filed within a month of the
6 certification of the ballot question and a month before the
7 election. So even under traditional laches standards, there
8 would be no laches here. Laches is not measured in months,
9 in a -- in a month or in -- in days.

10 And by the way, the League of Women Voters is a
11 nonprofit with limited resources. Ms. Haw is an individual
12 citizen and elector with limited resources. They are not,
13 you know, active in Harrisburg in the way that the ACLU is
14 active. And they're not active in Harrisburg the way others,
15 the Marsy's Law people, have been active. So there is no
16 laches under the traditional test.

17 So let me turn to the balance of the hardships,
18 Your Honor. It's related to their laches argument in the
19 sense that they're taking -- basically arguing that it's too
20 late, too much has been done to advertise --

21 THE COURT: You're essentially getting into some of
22 the preliminary injunction issues --

23 MR. BIZAR: I am.

24 THE COURT: -- at the same time. It all -- it all
25 blends.

1 MR. BIZAR: I'm pivoting to the -- one of the --
2 one of the elements of the six-part test that is required to
3 meet a preliminary injunction, to obtain a preliminary
4 injunction. We're going to rely on our papers for most of
5 that, but I want to address the three big ones which you, I
6 think quite correctly, identified.

7 Balance of the hardships or balance of the harms.
8 The Secretary -- the respondent's position is it's too late;
9 too much has been done to advertise and distribute the
10 ballots; some absentee ballots have been collected; they're
11 out; they can't be pulled back.

12 And we acknowledge that when we filed the petition
13 -- and in our application and our petition, that was part of
14 the relief we sought -- we had a two-part request. One was
15 to enjoin the -- the ballots. The second part, however, is
16 the part that seeks an injunction to enjoin the Secretary
17 from tabulating and certifying the votes. Now --

18 THE COURT: Is there a difference between
19 tabulating and certifying? Can you tabulate but not certify?

20 MR. BIZAR: I think -- tabulate I think means
21 counting.

22 THE COURT: So can you count but not certify?

23 MR. BIZAR: I think you can.

24 THE COURT: And --

25 MR. BIZAR: But I think the -- the Secretary would

1 know this better. The point is certification is when they
2 become final.

3 THE COURT: Do you think that there's any law or
4 anything in the Election Code that would prevent me from
5 offering that remedy if necessary?

6 MR. BIZAR: From requiring that the --

7 THE COURT: That they not be certified --

8 MR. BIZAR: -- the Secretary not --

9 THE COURT: -- because the Election Code is very
10 clear that -- that actions by the Secretary have to be
11 immediate. And the word shall is in there, that they shall
12 immediately tabulate and shall immediately certify. So do
13 you think that I would be -- if that were a remedy granted,
14 that I -- that it would not be acceptable?

15 MR. BIZAR: I think, Your Honor, the Constitution
16 overrides that requirement. I think if the question is
17 whether we're preventing irreparable harm to the voters, to
18 the electorate of Pennsylvania, you have the power to order
19 the Secretary collect the votes but not to tabulate and
20 certify them. And I think there's --

21 THE COURT: And I would suppose that it would be
22 expected that whatever they're certifying was constitutional.
23 So if -- if -- so that question we're deciding at this point.

24 MR. BIZAR: Yeah. Well, this is a really important
25 question, Your Honor, and a really, I think, critical issue.

1 We're not talking today about disenfranchising anybody.

2 We're trying to prevent disenfranchisement.

3 If the Secretary were to collect the votes but not
4 tabulate and certify them and we go on with this challenge
5 and we lose, nobody would be disenfranchised because the
6 votes would be counted and -- and the certification would
7 happen after we lose. And this case, as you know, is going
8 to move very quickly.

9 If we win and this Court and the Supreme Court
10 ultimately hold that the process that we're challenging
11 through this action, that the -- the ballot question and the
12 amendment are unconstitutional, there was no vote that should
13 have been counted. So those votes are not being
14 disenfranchised by not being counted after the fact.

15 The only parties or citizens that are being
16 disenfranchised potentially here, Your Honor, are the
17 electors of Pennsylvania who don't get to vote on the
18 components of Marsy's Law, the components of the Crime
19 Victims Amendment that they are for and vote against the
20 components that they are against separately as the
21 Constitution requires.

22 So the risk is if there's an injunction entered and
23 -- if the injunction is denied, rather, and the -- and the
24 vote goes forward and then the law is later -- the amendment
25 is later found to be unconstitutional, they are being

1 deprived of their constitutional rights. And so Your Honor
2 has the power to freeze the status quo, not disenfranchise
3 anybody. And that's what we're really trying to accomplish
4 here through this action.

5 But the -- I want to come back to what we're
6 seeking. So the -- the original request to not -- to enjoin
7 the ballot was a mandatory injunction. We're not seeking
8 that now. We --

9 THE COURT: You're not seeking that?

10 MR. BIZAR: No, we're not seeking that now. We --
11 we heard loud and clear what the Secretary was saying about
12 that. We recognize that it's very difficult to obtain a
13 mandatory injunction in Pennsylvania. We -- we understand
14 the law.

15 We're seeking a prohibitory injunction. We are
16 simply seeking that the Secretary collect the votes from the
17 county boards of election, which it's obligated to do, but
18 not tabulate and certify those -- those votes until this
19 action has proceeded and the constitutional challenge has
20 been decided.

21 And we had filed yesterday evening an application
22 for leave to file a reply brief that addresses this, and
23 we've also included a second proposed order on that score
24 which we had omitted from our initial application and
25 petition by -- by oversight. So that's all before the Court.

1 THE COURT: I didn't have a chance to read that.

2 MR. BIZAR: Of course. I understand. But -- we're
3 asking a lot. The Court is doing a lot of work, and we
4 really appreciate it.

5 The point is that the Secretary, if the prohibitory
6 injunction is permitted, need not recall anything. It need
7 not direct the county of election -- boards of election to do
8 anything. It can collect the votes. It just doesn't
9 tabulate and certify the votes. If we win, the votes will
10 not count. If we lose, they'll be available to be counted.
11 This is something that is well within the Secretary's
12 capacity, ability.

13 THE COURT: Has that ever happened before in
14 Pennsylvania?

15 MR. BIZAR: I think -- I don't know if there's a
16 case that directly addresses this particular issue. I think
17 Costa versus Cortes might be close, but I -- I don't think
18 this particular issue has happened. Let me look at that at
19 the -- at the break when Mr. Greenblatt is testifying.

20 THE COURT: Okay.

21 MR. BIZAR: And I'll come back to you on that, Your
22 Honor.

23 But the point is the Secretary would be out some
24 money. There's no question taxpayer dollars were spent, you
25 know, to advertise and to do the things that the Secretary is

1 required to do under the Election Code. But constitutional
2 rights are paramount. And if those rights are sacrificed, we
3 -- we submit, Your Honor, that the consequences are much more
4 substantial. We can all be for victims' rights, Your Honor.
5 But if we sacrifice constitutional requirements, every voter,
6 every citizen, every elector suffers.

7 Now I'd like to give an opportunity for
8 Mr. Greenblatt to testify about some of the other hardships
9 that would occur, Your Honor, if -- because we're talking
10 about the balance of the hardships right now. And then I'll
11 come back and pick up my argument if that's all right with
12 you.

13 THE COURT: It sounds like good timing. Thank you.

14 MR. BIZAR: Thank you.

15 MR. GEHRING: Your Honor, would you prefer I
16 question -- question Mr. Greenblatt from counsel table or
17 from the lectern?

18 THE COURT: From there, if you don't mind.
19 (Indicating.) It's easier for me to hear.

20 MR. GEHRING: Not at all, Your Honor.

21 THE COURT: You'll -- you can sit at the witness
22 stand.

23 (Whereupon, Ronald Greenblatt, Esquire, was sworn.)

24 **DIRECT EXAMINATION**

25 BY MR. GEHRING:

1 Q Good morning, Mr. Greenblatt. Could you state your
2 full name please?

3 A Yes. Ronald Greenblatt.

4 THE COURT: And if you could keep your voice close
5 to the microphone.

6 MR. GEHRING: Yes, Your Honor.

7 THE COURT: That sounds good. Thank you.

8 BY MR. GEHRING:

9 Q What do you do for a living?

10 A I'm an attorney here in the Commonwealth of
11 Pennsylvania.

12 Q Do you specialize in any particular area?

13 A Yes; criminal law.

14 Q And what side are you on, defense side or
15 prosecution side?

16 A I'm -- I'm a criminal lawyer. I represent
17 individuals.

18 Q Thank you. And how long have you been doing this?

19 A Thirty-two years.

20 Q When -- where did you go to law school?

21 A I went to Rutgers Law School in Camden.

22 Q And when did you graduate?

23 A 1987.

24 Q What did you do after law school?

25 A I was hired as an assistant defender at the

1 Defender Association of Philadelphia in 1987. I worked there
2 till the end of 1996.

3 Q Could you just briefly describe your
4 responsibilities while you were with the Defender
5 Association?

6 A Yes. I was a trial attorney. I did -- I had some
7 supervisory roles when I was there, on a three-month rotating
8 basis. So the job -- the way the Defender Association of
9 Philadelphia works is they work what's called a horizontal
10 system of representation. In other words, a vertical system
11 would be when you get the case from the beginning and you
12 work it through to the end. The end could be the trial. The
13 end could be the appellate process. That's not the way the
14 Defender Association works because of the high volume of
15 cases.

16 So the way that it would work is after you pass the
17 bar and you're allowed to go to court, you do what are called
18 preliminary hearings. And the way that that works is you're
19 assigned approximately 30 cases a day, three days a week.

20 On the off days, you do prison interviewing or
21 office interviewing where you interview another ten people.
22 So your job is to, we call it, advance the file: write it up
23 as best you can, do the best job you could, and then write a
24 memo about what to do on the case.

25 After a certain period of time, usually three or

1 four months, you're moved into what's called the municipal
2 court rotation. Municipal court is exclusive to
3 Philadelphia, and it handles misdemeanor crimes, crimes with
4 a maximum sentence of five years or less. Again, you rotate
5 then: three days in court one week, two days the next;
6 handling anywhere from 25 to 50 cases a day when you're in
7 court. Not all of them go to trial, but you have 25 to 50.
8 And you stay in that rotation for approximately three to six
9 months.

10 Then when I did it -- it's different now -- you
11 went over to what's called the juvenile court, handling
12 delinquency matters. When you're handling delinquency
13 matters there, you're given everything -- and this is even as
14 a young attorney a year and a half in -- from arson cases,
15 rape cases, every kind of case. And you try those for about
16 six months.

17 After that, you rotate through to what we call the
18 felony waiver program which is nonmajor felonies. And for --
19 then literally you were given eight felony cases a day, five
20 days a week. Again, not all of them go to trial, but you're
21 expected to prepare all those cases. You're given a one week
22 prep time. So you do that for a couple of years.

23 And I think for me around the beginning of 1990 is
24 when I first went into the major trial rotation. And then
25 you're given major jury trials to try. Everything except for

1 murder is called a major jury trial in -- in Philadelphia.

2 So, you know, I did that. And you rotate back
3 sometime. I had some supervisory responsibilities, being --

4 THE COURT: I think you're not in the --

5 THE WITNESS: (Adjusting microphone.)

6 THE COURT: There you go. You just went --

7 THE WITNESS: -- being -- you know, whether it was
8 supervising people at the prison, supervising people in the
9 office, being a supervisor in court as new attorneys came up.

10 And then I think it was in 1993 I went into what's
11 called their special defense unit. Special defense unit
12 picks two lawyers and were given specialized forensic
13 training, media training on how to handle some of the most
14 complex cases in the office.

15 THE COURT: Do you think the office is still run
16 pretty similar at this --

17 THE WITNESS: Oh, I know -- Judge, I know it is. I
18 mean, I'm in contact with the Defender Association daily.

19 THE COURT: Okay.

20 THE WITNESS: So it's still run -- there might be
21 differences because they did what's called zoning the court
22 system about five or six years ago. But other than that, the
23 training is the same; some of the -- a lot of the same people
24 are there. So it's still run the same way.

25 THE COURT: Okay.

1 THE WITNESS: And I'm also familiar with the
2 investigative process that they use at the public defender's
3 office.

4 So when I was in special defense, one of the things
5 you do is we are assigned -- the two attorneys that do SDU
6 are in charge of all what are called the rape prelim- -- or
7 sexual assault preliminary hearings. So any adult that's
8 charged with that kind of crime, two of us are given -- are
9 given the assignments. And we are -- make sure that either
10 we do the preliminary hearings or we have to get someone to
11 cover them if we're on trial. So we're literally looking at,
12 you know, hundreds of cases through the year on those.

13 THE COURT: And this is all going to lead to how
14 this will be impacted by the Victim Rights Amendment?

15 THE WITNESS: Yes, Your Honor, because what I think
16 is important to know is that I then went into private
17 practice in -- in 1996 where I did a lot of court-appointed
18 work for a lot of years -- I still do some pro bono work; I
19 don't do court-appointed work anymore -- along with handling
20 it from the private.

21 And I also handle cases throughout southeastern
22 Pennsylvania, the surrounding -- surrounding counties. I've
23 done cases in Indiana County too. I've done cases here in
24 Dauphin County. But most of my work is in southeastern
25 Pennsylvania.

1 And over that period of time, I understand the
2 investigative process from both the court-appointed level,
3 whether it's a public defender or someone who's
4 court-appointed, or from the private. And that's what I
5 think that this law impacts; how you do the investigation,
6 your pretrial rights. There's some other rights we can talk
7 about later. But that's when I -- when I read the law and
8 saw --

9 THE COURT: Can you be specific then?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: How the -- how these new rights for
12 victims would cause irreparable harm to the work that you do
13 and the rights of the accused --

14 THE WITNESS: Yes. Specifically, Your Honor, if I
15 could turn to the comments and the law so I can have that in
16 front of me.

17 Judge, first I'd like to --

18 THE COURT: Immediate and irreparable harm.

19 THE WITNESS: Immediate and irreparable harm. Yes,
20 Your Honor.

21 MR. WITHERS: Your Honor, may I request that we be
22 directed to the document that the witness is reviewing on the
23 stand?

24 THE COURT: Yes. I don't think I have it either.

25 THE WITNESS: Yes. Judge, I'm reading the Plain

1 English Statement of the Office of the Attorney General --

2 THE COURT: Okay. Thank you.

3 THE WITNESS: -- along with Section 9.1, the rights
4 of victims of crime.

5 MR. WITHERS: Thank you.

6 THE WITNESS: Judge, I'd like to first talk about
7 the one comment dealing -- which I think deals with pretrial
8 rights.

9 THE COURT: This is the pretrial -- this is the
10 Plain English Statement?

11 THE WITNESS: The Plain English Statement, which is
12 -- which is also in the law, where it says -- and I'm on page
13 2 of --

14 THE COURT: The Plain English Statement, though, is
15 not the amendment. I found some big differences between the
16 Plain English Statement as opposed to the amendment.

17 THE WITNESS: Well, I'll look at the amendment
18 then, Judge, because what I'm talking about is the same.
19 There might be differences. I was just looking at what I
20 thought, you know, had a practical effect.

21 To refuse an interview, deposition, or other
22 discovery request made by the accused or any person acting on
23 behalf of the accused.

24 Judge, when I read that statement, to me, any
25 person acting on behalf of the accused is the lawyer. And

1 that's the -- the prism that I look at this for.

2 Well, the first parts, to refuse an interview,
3 well, that exists now. I mean, I can go out and talk to a
4 witness, and they don't have to talk to me as long as -- I
5 have to identify who I am. They don't want to talk to me,
6 they don't want to talk to me.

7 Depositions. There's no depositions in criminal
8 court in the Commonwealth of Pennsylvania. There can be
9 concurrent civil suits filed, and I've seen that done by --
10 you know, by someone -- the alleged victim, file it at the
11 same time for that.

12 But more what I want to talk about is the third
13 part, the discovery requests made by the accused. And I
14 think it's important to talk about that in terms of the
15 investigation that is done immediately and as affects
16 pretrial motions in cases.

17 I'd like to start, Judge, with text messages, okay,
18 and our ability to get text messages. What we do ordinarily
19 is, because if the police don't take the cell phone into
20 custody, which in Philadelphia and some of the surrounding
21 counties, they just don't do, when there's an allegation of
22 assault that might lead to -- or some kind of fraud that
23 might lead to the necessity of what was going on, in this day
24 and age, everybody -- not everybody, but most people are
25 texting everything in real time as it has -- so it has vital,

1 valuable evidence in there.

2 What we do is we then go to court and we ask for
3 the cell phone to be taken into custody and the cell phone to
4 be mirrored, that is, imaged, so we can get the rights to do
5 it. Well, I've had the DAs fight me on that now, but it's
6 been ruled that we -- we're entitled to it.

7 If you read this law, they can refuse a discovery
8 request. In other words, they're trying to say -- I read
9 this law as saying they can say, No, look, I'm a crime
10 victim; I'm not giving you my cell phone. Right. The damage
11 that that causes is irreparable. Let me explain. There's --

12 THE COURT: I don't know if you even have to limit
13 it to text. I mean, social media, any -- anything --

14 THE WITNESS: I was going to get to all of them.

15 THE COURT: So they wouldn't be able to use it in
16 the trial, though, the prosecution, if they won't give to
17 you. They have to turn everything over. But I guess it's
18 preventing your investigation. Is that what you're trying to
19 say?

20 THE WITNESS: Yes. That's what I'm saying; my
21 investigation, Judge. And -- and that's when I talked about
22 investigatory technique. One of the things we're taught from
23 the first day I was a public defender, first week when you go
24 through the training is the importance of doing investigation
25 immediately and preserving evidence immediately.

1 Under this, you can't do it. And I can tell you,
2 Judge, that when it comes to e-mails, text messages, and
3 social media, they can be immediately deleted. Even if
4 they're not deleted -- that's spoliation, but how do you
5 prove it? You can't prove it on things like text messages.

6 I can tell you I've just worked on a case where
7 Apple makes their encryption program so that you can't tell
8 what was deleted. So you have to get and take immediately or
9 valuable, vital evidence is lost. That goes for social
10 media, text messages, e-mails.

11 So if you don't do it right away, it is gone. And
12 it is not retrievable later on. It is gone permanently. So
13 that, to me, is irreparable harm. And it can't be cured
14 because the Commonwealth, they can -- you know, even --
15 assuming the Commonwealth acts in good faith and sometime
16 later on they say, You know what, we should get the text
17 messages to be fair, well, they don't have a duty to get them
18 right away. They don't have to do it. That is the criminal
19 defense attorney's role to do that investigation immediately,
20 not down the road, to gather whatever evidence they can.

21 The police have the right and the DA or the
22 Attorney General has the right -- if someone walks into a
23 police station and says, Ron Greenblatt robbed me, they have
24 probable cause, and I can be arrested. And in Philadelphia,
25 that goes on all the time, and it does in the surrounding

1 counties. There doesn't have to be any investigation similar
2 to what people think. And a lot of times there isn't because
3 of the volume and they just want to make an arrest.

4 Well, then the criminal defense attorney has to go
5 and meet with the client and say, Look, what evidence do you
6 have? What can we do? And -- and -- and using your own
7 experience and what your client tells you, what investigation
8 can be done.

9 There might be security camera footage. Right.
10 Suppose it's a bar. And the bar owner or the person who owns
11 the grocery store, they're certainly a victim of crime if
12 somebody robbed them. Right. And someone might be accused
13 of that crime, or someone is in the situation that I'm
14 talking about --

15 THE COURT: So what I'm hearing you say then is
16 that if this ballot question and the amendment was enacted --
17 and it would be enacted immediately upon the vote of the
18 electorate if they went for it -- that all of accused rights
19 as it relates to investigations would be immediately
20 hindered.

21 THE WITNESS: Yes. And that also goes to pretrial
22 motions.

23 THE COURT: Okay.

24 THE WITNESS: Okay. Let me explain, Your Honor.

25 A lot of times with text messages -- and -- and I'm

1 not talking hypothetically, Judge. I was supposed to be on
2 trial this week with a case, this week, October 21st, with a
3 very serious rape case where if I didn't get the text
4 messages, the case might have gone to trial. But because we
5 got the text messages and we were able to show many
6 inconsistencies in the trial, pretrial motions were granted
7 and the Commonwealth withdrew the charges. So this isn't
8 some hypothetical I'm talking about. This is an actual case.

9 So you get those --

10 THE COURT: Are you talking about suppression and
11 in limine motions and that sort of thing?

12 THE WITNESS: Exactly, Your Honor. So -- so if you
13 get those -- in this case, we got the text messages. There
14 were severe inconsistencies on what was claimed versus what
15 was actually in the text messages. The Commonwealth made
16 decisions based on that not to call people.

17 If this -- this law is enacted, we can't do that.
18 We wouldn't have that evidence. And that's irreparable when
19 it comes to in limine motions, when it comes to motions to
20 suppress.

21 I've talked about e-mails and social media, but
22 there's also documents; bank statements even. You know, I
23 could see an instance in white collar cases where, you know,
24 a business claims an employee stole from them and there's
25 some kind of fraud. You need those bank statements. And you

1 can't get them till when. You want to do your investigation
2 immediately. People could be held in jail. They have their
3 liberty deprived in so many different ways. And you're --
4 you're told you can't do investigation in the case, because
5 that's the way that I read that.

6 That's the irreparable harm that I see to -- to my
7 profession, to us trying to free people who are accused who
8 are innocent of crimes. And -- and I think that that harm is
9 irreparable because that's what's going to happen under that
10 provision.

11 There's -- there's probably other ways. Let me
12 talk about a case, an assault case where the -- the -- the
13 alleged victim is a police officer. We have the right to go
14 into -- we being the defense has the right -- and I think the
15 lead case is Mejia-Arias, Your Honor, on that -- to go into
16 the files and see if there's been any similar complaints
17 against police officers. Have there been internal affairs,
18 other complaints that we can go into?

19 THE COURT: You mean the vic- -- the police officer
20 is assaulted by a citizen?

21 THE WITNESS: Exactly. And -- and -- and I can see
22 the police coming in and saying, Look, we're crime victims
23 here. You know, this is harassing; we don't want him looking
24 into -- him being myself, the attorney, looking into prior
25 instances of bad conduct.

1 Under this, they have the right to refuse that
2 discovery request, a constitutional right to refuse a
3 discovery request. That harm is irreparable. You can't cure
4 that down the road because it doesn't say at trial it has to
5 be turned over. They have the right to refuse it at any
6 time.

7 Going back to the cell phone, they have the right
8 to refuse it at any time to turn that over.

9 I -- I can't think of all of it. You know, and
10 there are some other harms that I see down the road that are
11 not curable harms. You know, this cannot stand in a society
12 that values the presumption of innocence because what you're
13 going to end up with is innocent people being convicted.
14 There is no doubt.

15 You know, I have handled and been involved in well
16 over 10,000 cases. That's why I was giving the number, that
17 when I was a young public defender and a public defender of
18 -- of what I did. So when you do that and you talk about the
19 volume of cases and you're talking about how you don't have
20 the right to present a defense because --

21 THE COURT: Counsel, I -- I read this amendment
22 when they also define victim, they also define victim as
23 anyone who is directly harmed by the commission. So would
24 that prevent you then from going to eyewitnesses and getting
25 -- well, people who are directly harmed can -- can be more

1 than just the victim itself.

2 THE WITNESS: It could be their family. It could
3 be --

4 THE COURT: It could be communities --

5 THE WITNESS: It could be communities. I mean, how
6 far do you want to take this? I imagine the --

7 THE COURT: So does this amendment prevent you from
8 doing investigations with those who are directly impacted by
9 the crime also?

10 THE WITNESS: Yes. Under this, even if I say,
11 well, look -- say -- let's take a white collar case. And I
12 think that someone is protecting someone else, and I want to
13 go get their bank records. Whoa. Whoa. Whoa. You know,
14 that's my friend. I'm harmed by this too. I'm refusing to
15 give you bank records. I'm refusing to give you video
16 surveillance footage. I'm refusing to turn over cell phones.
17 I'm refusing to give you social media. So all of that under
18 this is done, and it's irreparable.

19 BY MR. GEHRING:

20 Q Mr. Greenblatt, in -- could you estimate in what
21 percentage of cases do you seek and obtain discovery?

22 A Well, every single case that I've ever handled has
23 discovery in it. A lot of it is mandatory under the -- well,
24 it's all mandatory there. But that's what I get from the
25 Commonwealth. Okay. But I'm talking about the investigation

1 and the discovery that we want to do that needs to be done
2 immediately. And this is all under the rubric of discovery.
3 And that's the way that the trial court judge looks at it.
4 You know, is it discoverable? Maybe is it Brady? What kind
5 of information is it that you get? So in every case there's
6 discovery.

7 Q Do you get --

8 THE COURT: So you suggest that this will happen to
9 defense attorneys representing the accused throughout the
10 Commonwealth.

11 THE WITNESS: Absolutely, Judge. As I said, while
12 I started as a Philadelphia public defender, I've done cases
13 mostly in southeastern Pennsylvania. But I've done cases
14 here in Dauphin County. I've done a case in Indiana County.

15 And also, Judge, my background is that I'm a member
16 of the Pennsylvania Association of Criminal Defense Lawyers.
17 I'm the former vice president of the eastern region. I've
18 served on several committees there. I actually was the
19 chairperson of the Philadelphia chapter of the Pennsylvania
20 Association of Criminal Defense Lawyers.

21 And I was -- until last year, I spent nine years on
22 the board of trustees for the Pennsylvania Association of
23 Criminal Defense Lawyers. So we discuss statewide issues all
24 the time. And the rules are the same no matter what county
25 you're in. So I can't think of a county that this wouldn't

1 apply to.

2 BY MR. GEHRING:

3 Q Mr. Greenblatt, does -- does -- does getting
4 discovery from -- from the victims and the -- the accusers in
5 cases -- is that done in any particular type of case or -- or
6 what's the range of cases in which you seek that type of
7 discovery?

8 A Well, any case where I think it could be relevant,
9 anything from assault cases to theft cases. You know, I
10 can't think of the case -- you know, it could be -- you know,
11 arson cases, we've done it. You know, I can't think of the
12 case that it wouldn't happen. Obviously homicide cases.

13 So -- so it's in every case. If you're -- if
14 you're practicing your profession the right way, on day one,
15 your first -- when you do your initial meeting with your
16 client, you're formulating your investigative plan. And
17 especially today as opposed to 32 years ago when there
18 weren't cell phones, there weren't text messages, there
19 weren't e-mails that you could so easily get, you know, you
20 have to be at the top of your game --

21 THE COURT: I've seen cases won or lost on
22 Facebook.

23 THE WITNESS: I have had several cases won or lost
24 on Facebook, Judge. I've had several cases -- I've had a
25 case on Instagram turn. But I've had -- and I can speak for

1 my firm. We've had a lot of cases turn on text messages
2 because people nowadays, a lot -- especially younger people,
3 they don't pick up the phone and call; everything is by text.

4 Even the most incriminating statements are on
5 texts. And you get them. And sometimes you can go to the
6 prosecutor and the case ends there. Or sometimes you can get
7 them and you might come up with a, you know, look, this isn't
8 the whole thing that happened; can we negotiate on this case
9 to resolve it? But you get to the truth.

10 And that's what I'm talking about, getting to the
11 truth. And I see the irreparable harm that this causes as
12 people not wanting to get to the truth. As ever -- as ever
13 unpleasant that might be for one side or another, you have to
14 fairly investigate these cases. And this irreparably harms
15 the right to investigate cases.

16 BY MR. GEHRING:

17 Q Mr. Greenblatt, how often does obtaining discovery
18 from crime victims lead to evidence that is significant to
19 the defense of your clients?

20 A Very often. As I said, I'm supposed to be on trial
21 on a case right now where that made the biggest difference.
22 But getting evidence in the case -- it doesn't occur in every
23 case. I mean, a lot of cases are narcotics cases or things
24 like that. It doesn't -- you know, doesn't affect it as
25 much. But -- but when you're talking about that kind of

1 evidence, we try and get it every time we can.

2 In fact, Judge, last year, because the technology
3 is changing so much, we actually gave a seminar from the
4 Philadelphia chapter where I spoke on the importance of
5 getting cell phone evidence, because in some jurisdictions --
6 I know in England, it's mandatory that the cell phone be --
7 cell phones be turned over. That's a mandatory part of what
8 an investigation is. That's not that way in the United
9 States right now.

10 But certainly the way it's going, you could easily
11 see the -- the -- that trend going. And maybe at some point
12 the prosecution will gather that right away. But they don't
13 now. And -- they just don't do it. And it really is for the
14 practitioner to make sure that they go out -- the defense
15 practitioner to go make sure that they get the information
16 and the investigation.

17 Q Mr. Greenblatt, is -- is there any other aspect of
18 Marsy's Law that will negatively impact your ability to
19 defend your clients?

20 A Yes.

21 THE COURT: That would cause immediate and
22 irreparable harm.

23 MR. GEHRING: That would cause immediate and
24 irreparable harm.

25 THE WITNESS: Yes.

1 MR. GEHRING: Thank you, Your Honor.

2 THE WITNESS: Judge, again, I'm looking at 9.1,
3 rights of victims in crimes; not the comments.

4 Right at -- right up at the top when it talks about
5 the rights of victims -- and -- and I say, Judge, that these
6 are allegations at this time because nobody has been
7 convicted of anything -- to be treated with fairness and
8 respect for the victim's safety, dignity, and privacy.

9 I could easily see a prosecutor or -- and some
10 judges, not all judges, limiting the right to
11 cross-examination on that. You know, part of being -- and
12 the fundamental right that the accused has is the --

13 MR. WITHERS: Your Honor, I have to object to this
14 line of testimony. He's speculating as to what might happen
15 in a future case. This is --

16 THE COURT: Counsel --

17 MR. WITHERS: -- pure speculation --

18 THE COURT: -- there's an absolute right to
19 cross-examine. It's part of our fundamental adversarial
20 system. He's talking about a cons- -- a fundamental
21 constitutional right, so I think it's absolutely relevant.

22 THE WITNESS: So I could easily see a prosecutor
23 saying, you know, Look, the defense attorney is questioning
24 too harshly. I mean, we hear that all the time, that the
25 defense attorney questioned too harshly, the defense attorney

1 is being too aggressive in his or her questions. The --

2 THE COURT: The defense attorney delving into
3 private matters if it relates to domestic violence --

4 THE WITNESS: Right.

5 THE COURT: -- or child abuse or rape or any kind
6 of --

7 THE WITNESS: Right.

8 THE COURT: -- sensitive crimes.

9 THE WITNESS: Yes. I mean --

10 THE COURT: You hear a lot that victims feel
11 victimized by the system.

12 THE WITNESS: And -- and, Judge, I am not here to
13 say that -- as someone who's practiced criminal law for 32
14 years, that victims don't need to be respected, don't need to
15 be heard, don't need to come into court and state their
16 opinion on a sentence or -- or -- or be informed of what's
17 going on in the case, in the case. I agree with all that.
18 I've seen it thousands of times.

19 But I'm talking about at a trial what could be used
20 to limit cross-examination. I mean, I can imagine easily
21 scenarios in -- where there's children witnesses. Judge,
22 it's a child witness. They're a victim of crime; you know,
23 really, Judge? And -- I mean, I can see a prosecutor saying
24 any questioning, any questioning gets into their right to
25 privacy and -- and insults their dignity as -- as a child;

1 Judge, you can't allow cross-examination in this case.

2 And I'm not saying every judge would accept that,
3 but there will be judges that will accept that argument.
4 There is no doubt in my mind.

5 THE COURT: Well, if this was a -- a constitutional
6 amendment, they'd have no choice, the judges.

7 THE WITNESS: Right. So now you have
8 cross-examination extremely limited or eliminated. Right.
9 No due process. Eliminated. The person gets on the stand.
10 What they said has to be taken. Has to be taken. There's no
11 right to cross-examination. You've got competing rights.
12 There's a crime victim bill.

13 So I could see that argument being made. And even
14 if it's not accepted, at the appellate level. In other
15 words, a judge makes a ruling. You go through the -- the
16 farce of a trial that that would be, and the person is then
17 convicted. And it later reversed, because that's what we're
18 talking about, the immediacy. Well, now it takes years,
19 because I can imagine -- I'll leave it to the -- Your Honor
20 and the lawyers to argue this, but going through the federal
21 courts, this kind of test. How long is that going to take?

22 THE COURT: These -- these cases won't go federal
23 -- through federal courts. This is Pennsylvania.

24 THE WITNESS: Well, if it's a right to -- well,
25 I'll leave that to the lawyer -- you, the lawyers to decide.

1 But -- but -- but I see it abridging rights to
2 cross-examination. And -- and obviously that's irreparable
3 harm.

4 BY MR. GEHRING:

5 Q Mr. Greenblatt, do you see any problem with speedy
6 trial rights of criminal defendants?

7 A Yes. Your Honor, as you are well aware,
8 Pennsylvania has speedy trial rules that some jurisdictions
9 don't have.

10 THE COURT: Is that 600, Rule 600?

11 THE WITNESS: Yes, Your Honor.

12 Because of the notification rules, I can see that
13 there would be times that this would bump up against speedy
14 trial rules. It could cause delays in cases. That would be
15 unfortunate. That would be unfortunate.

16 It -- you can almost see it being a reverse effect
17 for the crime victims because of the delay in cases. A case
18 gets thrown out, and there's not even a chance for fairness
19 because of the delays caused by having to have -- notify
20 people. The Commonwealth says, I can't notify the witness,
21 so we need a continuance, Judge.

22 THE COURT: So did I -- so you believe victim --
23 victims could be hurt by this?

24 THE WITNESS: I think so.

25 THE COURT: If the case is thrown out.

1 THE WITNESS: Sure.

2 THE COURT: If the victim and/or anyone directly
3 impacted by the crime isn't notified.

4 THE WITNESS: Right. And who's directly -- who's
5 directly impacted? I mean, I would say if my child was
6 robbed, I'm directly impacted by it. I don't care how old
7 they are. Somebody does it; I'm directly impacted by it. Am
8 I -- you know, I should be notified. Or I'd want to be --
9 that's for sure -- if something like that happened.

10 So -- and, you know, I've been with family -- I
11 have family members that have been crime victims. And, you
12 know, I want to be there for them, especially because of what
13 I do. So -- so I can see -- I can see that happening.

14 BY MR. GEHRING:

15 Q Mr. Greenblatt, do you see any immediate and
16 irreparable harm flowing from enactment of -- of this
17 amendment with regard to plea negotiations?

18 A Well, yes. I mean, Judge, as we talked about the
19 pretrial investigation that can't be done, now you're in the
20 situation where you --

21 THE COURT: Where -- where is there something about
22 plea negotiations in this amendment?

23 THE WITNESS: It's not directly in the amendment,
24 but we're talking about harm that could be caused to the
25 practitioner or to the judicial system, to the criminal

1 justice system by this, because, Judge, what I think is that
2 -- is if you don't have the right to do investigation in the
3 cases and you don't really know your case, you're really
4 hamstrung in negotiating with the Commonwealth because you
5 can't say what the text messages say, what e-mail says, what
6 the social media, what the bank records, what the internal
7 e-mails of a company -- we don't know any of that.

8 THE COURT: Medical records.

9 THE WITNESS: Medical records. Right. I don't
10 know any of those because, right, the -- the -- the victim
11 can say, Look, you can't look at my medical records. And I
12 don't know if they were drunk, they were high, anything about
13 that. If the injuries that they claim are inconsistent with
14 what we have, I have no way of knowing that. So now I have
15 to negotiate in that case.

16 You know, in a practical effect, there's going to
17 be people sitting in jail who are innocent, who are going to
18 take pleas to get out of jail without having the right to
19 have their case fairly investigated in a way or be properly
20 represented.

21 And that's irreparable, because as you can imagine,
22 what are you supposed to say when -- say the law gets
23 overturned later on, right, and the person has already pled
24 guilty. They've already served their sentence. They've lost
25 jobs. The economic -- the economic opportunities a person

1 loses because of a criminal conviction are very significant.
2 And you can't make up for that. So -- so you can't change
3 that. You can't put that back in the box.

4 BY MR. GEHRING:

5 Q Mr. Greenblatt, you had mentioned -- you just
6 mentioned a moment ago about the possibility of the law being
7 enacted and then being overturned. Is -- will the
8 uncertainty in the status of this law cause problems in and
9 of itself?

10 A Yes. Judge, I don't think -- while I've spent my
11 life as a criminal defense attorney, obviously I've worked
12 with hundreds if not over a thousand prosecutors in my
13 career, and I've appeared in front of several hundred judges
14 in criminal court. Whenever there's uncertainty, it makes
15 things difficult.

16 What are you going to have to worry about down the
17 road, that is, the practitioner? What rights are you going
18 to do? What motions are you going to have to litigate that
19 really wouldn't be necessary to litigate if you had a full
20 chance to investigate or you knew the law was the law?

21 Like, at some point if -- if this passes and it
22 goes through -- through the courts, the courts will say yea
23 or nay to different provisions. I don't know, something like
24 that. And then you know. Then you have certainty, and you
25 can work under that certainty because the law is certain.

1 You have something like this and you enact this and
2 say, Go forth and we'll figure it out later, which is
3 basically what would happen if this was enacted, everybody is
4 in a state of flux; and I think for years. But -- and when
5 you talk about years, how many tens of thousands of cases are
6 you talking about that could easily come back and have to be
7 relitigated, pleas undone, trials redone until we get the
8 certainty that the law is?

9 And I can see that affecting defendants. And I can
10 see that affecting victims because if a victim has to go
11 through a trial and the person accused is then convicted and
12 then a new trial is granted and they have to go through that
13 trial all over again, I mean, that, to me, is a harm to be --
14 to be considered.

15 And it's irreparable when these things happen.
16 Irreparable harm is not just -- is -- is several things.
17 Right. It's an innocent person being convicted or it's
18 somebody who's a victim of crime having to go through it
19 twice. And I can -- I can't envision where that would not
20 happen. I just can't under this.

21 Q Mr. Greenblatt, do you believe that enactment of
22 this law will lead to more motion practice for your clients?

23 A Oh, absolutely --

24 THE COURT: More what?

25 MR. GEHRING: Motion practice. And I'll let

1 Mr. Greenblatt explain.

2 THE WITNESS: Yeah, Judge. There's -- there's --
3 because -- if this law is enacted before it goes through and
4 passes constitutional muster, I can imagine myself, I would
5 be in front of -- in every case that I had that I thought was
6 going to trial, that again I'd put provisions on any plea I
7 did because what if it comes back to reopen it.

8 But I would do motions. Judge, in this case, I
9 wasn't able to get the cell phone records because the -- the
10 victim refused. I wasn't able to get the medical records
11 because the victim refused. I wasn't able to get the e-mails
12 that I sought.

13 And I would advise any attorney that I was training
14 on this issue and anyone in my office: You've got to lay
15 that all out on the record in every single case, what you
16 couldn't get because of this law so that it would be clear
17 down the road to a court looking when you sought to get a new
18 trial. So you have to do that in all your cases. And not to
19 do it, to me, would be malpractice.

20 BY MR. GEHRING:

21 Q Mr. Greenblatt, do you believe that what you were
22 talking about will lead to more interlocutory appeals as
23 well?

24 A Oh, definitely. You know, I could see provisions
25 where a judge said -- I went for the cell phone and the judge

1 said, Yeah, you know, we're giving the defense the cell
2 phone; interlocutory appeal by the Commonwealth.

3 Or I could see the judge not giving the defense the
4 cell phone and the judge -- and saying to a judge: Judge,
5 Look, this is a new law that you're not giving me the cell
6 phone, that you're not giving the defense access to the cell
7 phone; I'd like to take an interlocutory. You know, we don't
8 have it as of right from the defense, but a judge could
9 certainly grant an interlocutory appeal.

10 And I could see a lot of the judges who I practice
11 in front of seeing a new law and seeing the importance of
12 this saying, Yes, Defense, I'm going to grant your right to
13 interlocutory appeal on these issues. And then the issues go
14 up to the Superior Court, maybe then to the Supreme Court.

15 THE COURT: And the victims aren't getting
16 resolution and neither are the accused --

17 THE WITNESS: Absolutely.

18 THE COURT: -- while this is all happening.

19 THE WITNESS: Right. And -- and I -- I can clearly
20 see that happening with -- the majority of judges that I
21 practice in front of would understand the importance of this
22 issue. And I believe many if not most would grant the
23 interlocutory appeal. The Commonwealth has it as of right.
24 The defense has it -- has the ability to ask for it. But I
25 -- I can see it on these cases on the issues that we're

1 talking about.

2 BY MR. GEHRING:

3 Q Mr. Greenblatt, do you believe that passage of this
4 law will create confusion and problems for persons other than
5 criminal defense attorneys and -- and -- and their clients?

6 A Well, I think when I talked about judges and -- and
7 prosecutors because of the uncertainty, but I also think in
8 the public, Your Honor, you know, when there's uncertainty
9 about what the police officers -- you know, what they have
10 the right to get.

11 I mean, some police jurisdictions that I've dealt
12 with do go to seize cell phones right away. It's not in
13 Philadelphia, but -- but some do. And the person that --
14 that's the victim or the alleged victim in the case says, You
15 can't have my cell phone. And they have the right to refuse
16 under this. So what do the police do with their
17 investigation? I don't want to speak for the police
18 completely, but I can see that coming up and being an issue.

19 Q Do you foresee any problems that could be caused if
20 the law is enacted and then later found unconstitutional?

21 A Yes, Judge. If I wasn't clear from -- from what I
22 had said earlier --

23 THE COURT: I thought you were clear.

24 THE WITNESS: Okay.

25 THE COURT: Unless you have something else you

1 wanted to add.

2 THE WITNESS: No. That's the problem with the
3 reversals that can come from that, you know, trying to
4 withdraw guilty pleas; PCRA's; you know, all the way through
5 the process; guilty pleas trying to be withdrawn based on --
6 if the law is overturned; trials, depending on what stage of
7 the appellate process; direct appeals --

8 THE COURT: So you're saying there's uncertainty to
9 victims as well through all of this.

10 THE WITNESS: Yes.

11 BY MR. GEHRING:

12 Q Mr. Greenblatt, even if a conviction is overturned
13 on appeal because Marsy's Law is found unconstitutional, will
14 that necessarily give them back the rights that they lost?

15 A No. I mean, people have spent years in -- could
16 have spent years in jail. You can't get that back.

17 And importantly for when you talk about irreparable
18 harm, Judge, going back to the cell phones, the e-mails, and
19 the social media, you can't get that back again. If you
20 don't get that right away, you've lost it. I've lost it when
21 I've waited too long. Sometimes you only have 30 days to get
22 this material.

23 So if you get hired in a case down the road, in
24 other words, someone hires you six months later, and you go,
25 Wow, I've got to get the cell phone records. I've got to get

1 the e-mail. I've got to get the social media from the case.
2 And you send the subpoena, and it's gone. You waited too
3 late.

4 I think Comcast is a hundred and eighty days.
5 Directly I know because I've -- I've had that. And they just
6 don't have it after that. They just don't have the records
7 that you need.

8 I could go through others, but -- but same thing;
9 it's lost.

10 MR. GEHRING: That's all I have, Your Honor.

11 MR. BIZAR: Your Honor, may I simply ask two
12 questions before cross?

13 THE COURT: Sure.

14 MR. BIZAR: Thank you, Your Honor.

15 And just to assist the Court, I think you asked
16 where plea negotiations come up. 9.1, subsection (a), which
17 is the long list of the additional rights that are afforded
18 to victims, in the middle of that paragraph gives victims the
19 right to be heard in the plea process. And I just wanted to
20 call that to the Court's attention first, you know, for your
21 convenience.

22 THE COURT: He was more concerned about going into
23 a plea negotiation without enough evidence --

24 MR. BIZAR: Right. I --

25 THE COURT: -- or a good investigation, but --

1 MR. BIZAR: I think that's right.

2 THE COURT: This is the opportunity to be heard for
3 that.

4 MR. BIZAR: Right, for the victim.

5 THE COURT: Yeah.

6 **CROSS-EXAMINATION**

7 BY MR. BIZAR:

8 Q So, Mr. Greenblatt, I just want to follow up on
9 something that you testified to. If you were to advise a
10 client, criminal defendant, to plead guilty during the
11 pendency of a -- of a suit, of a criminal matter because of
12 the effect the amendment has on the ability of your client to
13 defend himself or herself, what guarantee would your client
14 have to be able to take back that plea if the petitioners
15 were ultimately to prevail absent provisions or some other
16 reservations?

17 A There's no guarantee. In fact, if time lapses --
18 because PCRA, Post Conviction Relief Act, has certain time
19 restrictions to it; if it's past that time restriction, you
20 know, and then there's newly -- newly acquired evidence,
21 provisions, you know, there's ways around it, that -- that's
22 lost forever.

23 Q You mentioned using a process, compulsory process
24 to obtain investigative materials as part of your
25 investigation process?

1 A Yes, sir.

2 Q And does that apply to testimony as well, helpful
3 testimony other than from the victim?

4 A Could you clarify that?

5 Q Third parties, witnesses?

6 A Sure.

7 Q What guarantee do you have that courts would extend
8 trial dates so that you could have the ability to use
9 compulsory process if this petition is denied?

10 A None. I mean, that's up to the trial judge,
11 whether the trial judge determines that the case can be held
12 in abeyance. There can be an interlocutory appeal. So, I
13 mean, it's up to the trial judge.

14 MR. BIZAR: Okay. Thank you very much, Your Honor.
15 Thank you.

16 MS. BOLAND: May I cross, Your Honor?

17 THE COURT: Yes, ma'am.

18 **CROSS-EXAMINATION**

19 BY MS. BOLAND:

20 Q Good morning, Mr. Greenblatt.

21 A Good morning.

22 Q Is it Greenblott or Green- -- Greenblatt?

23 A -B-L-A-T-T; -blatt.

24 Q -blatt. Okay. So you've been doing this for a
25 long time?

1 A Yes.

2 Q You've been doing this since the 1990s, you said?

3 A 1980s.

4 Q 1980s. Okay. I apologize.

5 A No problem.

6 Q It's been since the 1990s that you've been doing
7 major jury trials. Do I have that right?

8 A Well, actually the ones conducting, yeah. My first
9 -- the first major jury trial I did -- I did nonjury trials
10 in major cases before 1990, but my first jury trial was
11 nineteen -- January of 1990.

12 Q Okay. And then as of 1996, you started doing
13 court-appointed work. Is that correct? Did I get your
14 testimony right?

15 A No.

16 Q Okay.

17 A A public defender is a court-appointed lawyer.

18 Q Okay.

19 A Okay. So we consider ourselves -- there's two
20 types of court-appointed lawyers. The first would be public
21 defenders. People -- and every county in Pennsylvania has
22 public defenders. The second is court-appointed work that's
23 also the same thing; you're working for people without funds
24 and -- to pay --

25 THE COURT: And then if there's conflicts and that

1 sort of thing.

2 THE WITNESS: Right. Two or three people get
3 arrested on the case. Suppose the -- the complainant has a
4 prior record that the public defender represented. That case
5 has to be conflicted out.

6 BY MS. BOLAND:

7 Q Okay. So --

8 A So I started doing that in 1997.

9 Q Okay. So you've been practicing since the '80s.
10 You've been handling jury trials since the early '90s, and
11 you've been handling various court-appointed work since the
12 late '90s?

13 A Since nine- -- yes; 1997.

14 Q So you're aware, since you've been practicing so
15 long, that the Crime Victims' Rights Act has been in place
16 since 1998, correct?

17 A Well, I didn't know the year, but I know that
18 there's been a crime victims' rights bill out there and that
19 crime victims absolutely have the right to test- -- you know,
20 be notified about plea negotiations, to have input, and to
21 appear at sentencing if they want.

22 Q Right. And -- and that has been in place in the
23 Commonwealth since 1998. You don't dispute that, do you?

24 A If that's what the law -- when the law went into
25 effect, I don't dispute that.

1 Q And you're aware that the Crime Victims' Right Act
2 -- Victims' Rights Act -- excuse me -- requires that victims
3 be notified of certain significant actions and proceedings
4 within the criminal and juvenile justice system -- systems
5 pertaining to their case?

6 A Oh, if -- if that's what the -- are you talking
7 about the proposed amendment or the prior bill?

8 Q I'm sorry. The -- the act. The Crime Victims'
9 Rights Act from the 1990s.

10 THE COURT: They usually call that the Bill of
11 Rights for Victims.

12 MS. BOLAND: Oh, okay.

13 THE COURT: The Victims' Bill of Rights.

14 MS. BOLAND: Okay.

15 THE COURT: It's another --

16 MS. BOLAND: Way of calling it?

17 THE COURT: Yes.

18 MS. BOLAND: Okay.

19 BY MS. BOLAND:

20 Q So the -- the Victims' Bill of Rights?

21 A Yes.

22 Q Are you aware that it has that provision?

23 A Yes.

24 Q Are you aware that it has a provision to not be
25 excluded from any criminal proceeding?

1 A Absolutely.

2 Q Are you aware that it has a provision that provides
3 victims with the opportunity to submit prior comment before
4 pretrial disposition in cases involving certain bodily
5 injury?

6 A Yes.

7 Q Are you aware that the victims -- the Bill of
8 Rights allows victims to submit a victim impact statement
9 that shall be considered by the Court in fashioning a
10 sentence?

11 A Yes. And, in fact, it's done.

12 Q Are you aware that there are victims' advocates in
13 courthouses throughout the Commonwealth --

14 THE COURT REPORTER: I'm sorry. Can you restate
15 that?

16 MS. BOLAND: Sorry.

17 THE COURT REPORTER: Slow down a little bit please.

18 BY MS. BOLAND:

19 Q Are you aware that there are victims' advocates in
20 courthouses around the Commonwealth as a result of the Crime
21 Victims' Rights Act?

22 A Yes. I think in Philadelphia they were there
23 before the crimes victim -- you know, the Bill of Rights.
24 But, yes, I'm aware of the victims' advocates. They're --
25 they work directly with the prosecution. And most of them I

1 know, so --

2 Q So there is already a framework in place to notify
3 victims of proceedings having to do with a criminal case?

4 A Yes.

5 Q And there is a framework in place allowing them to
6 be heard?

7 A Yes.

8 Q Earlier you talked about some of the difficulties
9 you will face potentially with discovery requests if the
10 amendment goes through, correct?

11 A I want to take issue with one word, the word
12 potentially. We will face that under this law. There is no
13 doubt in my mind.

14 Q You have the ability to get cell phone records from
15 the cell phone provider. Isn't that right?

16 A If this is enacted, the way that I see it is no.
17 No --

18 Q I didn't ask a hypothetical. I'm just asking
19 generally --

20 A Today?

21 Q -- right now you can subpoena records from a cell
22 phone provider. Isn't that right?

23 A If I know who the cell phone provider is.

24 Q If a prosecutor has cell phone records, medical
25 records, social media posts, anything that constitutes

1 exculpatory evidence, that has to be turned over to you,
2 doesn't it?

3 A Yes. Key word is if they have it. Often in my
4 experience, they do not have it.

5 Q And you at that point have the ability to subpoena
6 a cell phone provider. Isn't that right?

7 A If I know who the cell phone provider is, I can
8 subpoena it. Ordinarily in discovery you do not know that.
9 They don't list who -- the cell phone number of the person or
10 the provider. That is why the way that you get that
11 information is by bringing a motion in court because the
12 prosecutor doesn't have that information.

13 Q Does -- there's nothing in the proposed amendment
14 that prohibits you from filing a motion with the Court to
15 obtain a court order to obtain that information, is there?

16 A To file the motion? No. But this -- what this law
17 does is it gives the Commonwealth or the victim -- even if
18 the DA says, I want to give this information over to the
19 defense, this gives a constitutional right for the crime
20 victim to say, I don't want my cell phone given out; I don't
21 want my medical records. So I have the right to file a
22 motion. Now that motion will be granted. Under this law, it
23 won't be.

24 Q That's your interpretation of the law. Isn't that
25 right, Mr. Greenblatt?

1 A I don't see in reading this law if there's any
2 other interpretation of this that could be accepted.

3 Q Are you here today to offer an expert opinion as to
4 whether or not this law is self-executing on its face?

5 A I'm -- I'm here to tell you looking at the law what
6 the practical effects I think of the law -- law will be.

7 Q Do you know the standard governing whether or not a
8 proposed amendment is self-executing or not?

9 A Do I know the standards? No. I'm here to tell you
10 the practical --

11 MR. GEHRING: Objection, Your Honor.

12 THE WITNESS: -- effects of this law.

13 MR. GEHRING: He didn't testify about that.

14 THE COURT: I thought that once an amendment was
15 accepted by the electorate, it -- it just becomes law.

16 MS. BOLAND: Your Honor, there's actually case law
17 to the contrary. There's the Tharp case. There can be
18 language contained in an amendment indicating that it's not
19 self-executing. And in this case --

20 THE COURT: So that -- that --

21 MS. BOLAND: -- it's not --

22 THE COURT: That issue, though, would become a
23 whole part of more litigation to the courts.

24 MS. BOLAND: Perhaps, Your Honor. But it goes to
25 the harm because Mr. Greenblatt is claiming that this will

1 happen immediately. And that's not clear on the face of the
2 amendment. In fact, the amendment provides --

3 THE COURT: The amendment will be -- if it's passed
4 will be immediately part of our Constitution.

5 MS. BOLAND: That's not necessarily true under the
6 Tharp case law, Your Honor, because there's language in --

7 THE COURT: I don't think -- I don't think he's an
8 expert on whether or not a -- after the vote, whether it's
9 self-executing or not.

10 THE WITNESS: I'm not.

11 THE COURT: My understanding is if the --

12 THE WITNESS: I'm definitely not, Your Honor.

13 THE COURT: -- electorate goes for it, it's part of
14 our Constitution and you just work on it. Now people might
15 start litigating the constitutionality of it, the am- --
16 ambiguity of it, that sort of thing. But that would just
17 start to happen.

18 MS. BOLAND: Okay. There is case law, Your Honor,
19 indicating that an amendment may not be self-executing
20 depending on whether further action has to be taken. In this
21 case, the proposed amendment says that it shall be further
22 provided and as defined by the General Assembly. So in this
23 case, it's not clear that the amendment would immediately go
24 into effect.

25 BY MS. BOLAND:

1 Q So, Mr. Greenblatt, are you aware that the
2 amendment provides that the General Assembly is to pass
3 additional legislation further providing and further defining
4 rights under the amendment?

5 MR. GEHRING: Objection, Your Honor.

6 BY MS. BOLAND:

7 Q Are you aware of that?

8 THE COURT: Basis?

9 MR. GEHRING: Your Honor, he didn't testify about
10 this.

11 THE COURT: He didn't.

12 MR. GEHRING: He's not offering himself as an
13 expert on this.

14 THE COURT: Do you know?

15 THE WITNESS: Well, I read the bill that it says
16 that in there, that there's going to -- that there's -- so I
17 did read the bill.

18 THE COURT: I mean, to what extent then will the
19 General Assembly -- because this has to do with the -- the
20 manner in which courts are run, and that's the sole authority
21 and jurisdiction of the Supreme Court.

22 So by saying that, it seems to me that you're
23 yielding the entire criminal court system and how it's run to
24 the General Assembly which would be a violation of the
25 Constitution. So that's what I'm hearing you say when you

1 say that.

2 MS. BOLAND: Your Honor, that's -- it's not
3 necessarily stepping on the toes of -- of the judiciary.
4 It's not facially --

5 THE COURT: Anything -- anything of this you said
6 could be ex- -- you know, it's not self-executing. We don't
7 know, but the General Assembly will tell us whether it's
8 self-executing and to what extent. And this is all how the
9 courts are run. So how is this not stepping on the toes and
10 the authority of the Supreme Court and all rulemaking for the
11 courts?

12 MS. BOLAND: Your Honor, when it comes to
13 definitions, there are areas, there are lines that can be
14 drawn where the General Assembly can further provide
15 definitions as to what's occurring, for instance, like how
16 the law includes the definition of a victim, without
17 necessarily encroaching on the territory of the judiciary.
18 So I think a line can be drawn there. But the amendment does
19 provide that the General Assembly is to take additional --
20 additional action --

21 THE COURT: Can you tell us which parts of this
22 amendment would be self- -- would immediately go into effect
23 after election? Can -- are you able to tell us that now?

24 MS. BOLAND: I don't think it's clear, Your Honor,
25 right now. I think that's part of what needs to be explored

1 in this matter because there is further action that does have
2 to be taken under the amendment. It does say, As further
3 provided and defined by the General Assembly.

4 So today as we're here at this proceeding, I don't
5 think it's clear one way or the other. But I think that it's
6 important to emphasize for this Court that it may not be
7 immediate as the witness and as the petitioners are trying to
8 make it seem. That was the only point I wanted to make with
9 that, Your Honor.

10 THE COURT: The victims certainly won't know that,
11 will they? They'll think that this amendment passed and now
12 all these rights apply to them. Are you going to create
13 confusion if it's not self-executing, all of this, to the
14 victims?

15 MS. BOLAND: I -- I don't think that it would cause
16 any great confusion. I think it's clear on its face that it
17 says, As further provided and defined by the General
18 Assembly. So I think it would be fair; I think both victims
19 -- parties on both sides of the V would understand just by
20 the plain language that further action needs to be taken.

21 So I think everyone has access to that language;
22 it's plain on its face. And I don't think it's very -- it's
23 very confusing. I think a layperson could understand that
24 perhaps more needs to be done to lay groundwork to fully
25 implement the amendment.

1 THE COURT: Okay. Thank you, Ms. Boland. You can
2 continue your cross.

3 MS. BOLAND: Thank you, Your Honor.

4 BY MS. BOLAND:

5 Q Mr. Greenblatt, the -- the amendment does not
6 delete any language from the current Constitution, does it?

7 A I don't know one way or another.

8 THE COURT: By the way, I've given up on time
9 limits. I think we just need to go through what we need to
10 go through here. Okay.

11 MR. BIZAR: Thank you, Your Honor.

12 MS. BOLAND: Thank you, Your Honor.

13 BY MS. BOLAND:

14 Q So the right to confront your accuser still appears
15 in the Constitution even if this amendment is passed?

16 A Except that now there's another constitutional
17 right; the right to refuse to give over evidence is there.
18 There's a right to con- -- you're right, the right to
19 confrontation is still there. But under this, it can be
20 limited for the first time. And -- and that is severe. That
21 is immediate. That is irreparable.

22 Q Do you doubt the ability of the Court to apply
23 these provisions consistently?

24 A Absolutely. I've practiced law for 32 years. And
25 I can tell you in trial courts you get a variety of opinions

1 based on the variety of judges, based on the variety of
2 places and jurisdictions that you try cases. That's why we
3 have appellate courts. That's why we have the Supreme Court
4 to apply clarity.

5 So I absolutely know from my experience of
6 32 years -- I've tried over a thousand cases. I have
7 prepared over 10,000 cases. And I can tell you from one
8 courtroom to the next, a lot of times in good faith judges
9 have different opinions of what the law is; they apply it
10 differently. And sometimes it gets overturned. Sometimes it
11 doesn't. But that's why you have the appellate process.

12 In fact, any -- any case you have in criminal law
13 where a verdict was overturned, where a motion to suppress
14 was either granted or overturned means that there was a judge
15 with a different opinion. Every single time. And throughout
16 our juris- -- jurisprudence, I don't know how many cases last
17 year that was, but tens of thousands.

18 Q And throughout jurisprudence, additional case law
19 is developed to help explain how these laws can be applied
20 consistently and coextensively. Isn't that right? Isn't
21 that the nature of the beast in terms of the law?

22 A Yes. But what we're talking about here is
23 irreparable harm that would be done.

24 Q And, again, at all times you have the right to
25 subpoena Instagram, to subpoena Google, to subpoena Facebook,

1 to subpoena medical records, to subpoena cell phone records;
2 you have that ability, supposing you know the source. Isn't
3 that right?

4 A I -- I can't do it without the information that I
5 obtain through --

6 Q I said supposing you know the source --

7 MR. GEHRING: Objection, Your Honor. He hadn't
8 finished his answer.

9 THE WITNESS: I can't just put a general subpoena
10 out to Facebook to get information. They'll never give it to
11 me. I have to get the passcodes to unlock and get it. The
12 only way to do that is to go to court and ask the judge to
13 order that the passcodes be -- be turned over. That's also
14 true of Instagram.

15 We talked about cell phone records. I don't know
16 who the cell phone provider, the cell phone number is until I
17 go into court and get it --

18 BY MS. BOLAND:

19 Q And there's --

20 A -- so I can't --

21 Q -- nothing stopping you under this amendment from
22 going --

23 THE COURT: Let him -- let him finish his answer.

24 MS. BOLAND: I apologize, Your Honor.

25 THE COURT: Okay. It's all right.

1 THE WITNESS: Okay.

2 THE COURT: Continue, Mr. Greenblatt.

3 THE WITNESS: So -- so that goes for e-mails. I
4 can't get prior e-mails unless I know who the e-mail address
5 is and --

6 THE COURT: But, counsel, are you saying that every
7 time you want this kind of information, you have to get a
8 court order?

9 THE WITNESS: Every time I want the specifics, in
10 other words, if I want somebody's Facebook posts, yes, Judge,
11 I need to get it by court order. We have no way to get that
12 information, because, sure, if somebody has public Facebook
13 postings, we can get that information.

14 THE COURT: So then the victim would be required to
15 be notified of that pretrial motion and then would say, I
16 don't want to give it?

17 THE WITNESS: Yes. I mean, as currently
18 constituted, that's the way that it works. I have to file a
19 motion, and then the -- the alleged victim is notified.
20 They're brought into court. And if a judge finds it
21 relevant, because it's -- still a judge makes that
22 determination, then the judge says, I'm ordering the
23 passcodes turned over. I mean, I just had this in a case;
24 turned over.

25 THE COURT: How will this amendment impact your

1 ability to continue doing that?

2 That's your question, right?

3 MS. BOLAND: Sure, Your Honor.

4 THE WITNESS: I won't be able to because under
5 this, it says they can refuse that -- refuse an interview,
6 which I said is no problem; deposition, which really doesn't
7 happen in criminal case law; or other discovery requests.
8 That's a discovery request. I can't get it. I can't get
9 cell phones, social media, medical records; can't get any of
10 those things if this is passed and up- -- and upheld or
11 reversed. You know, we just don't know. There's no clarity
12 on it.

13 But the harm -- what I'm here to say, Your Honor,
14 is the harm is irreparable. With cell -- medical records,
15 they might keep.

16 THE COURT: I'm going to let her continue her
17 cross.

18 BY MS. BOLAND:

19 Q Mr. Greenblatt, you just defined for the Court what
20 your understanding of the word or the phrase discovery
21 request means. Isn't that right?

22 A Yes.

23 Q But, in fact, the law provides that it's up to the
24 General Assembly to further -- further provide and define
25 terms like that. Isn't that true? It says that in the

1 amendment?

2 A It might say that in the amendment, but I'm just
3 telling you the way discovery requests are seen and the
4 ambiguities in the law.

5 Q And you just said that there are no interviews,
6 typically you have no right to an interview in the criminal
7 justice process, right, of the victim?

8 A There's two things you said. There's absolutely
9 the ability of a criminal defense attorney to go talk to
10 anyone in the case. There's --

11 Q I'm sorry. And I apologize for cutting you off,
12 but I just want to sort of --

13 MR. GEHRING: Objection, Your Honor.

14 BY MS. BOLAND:

15 Q -- abbreviate so I can ask my question.

16 A Well, I'm trying to answer your question as stated.
17 But there's no absolute right if -- if a person doesn't want
18 to talk to an attorney or a police officer, they don't have
19 to talk to them.

20 Q Exactly.

21 THE COURT: Or a witness.

22 THE WITNESS: Or witness.

23 BY MS. BOLAND:

24 Q Or the police. And there are no depositions in the
25 criminal process was your testimony, correct?

1 A Right. Sometimes there's -- it's done
2 concurrently. There might be a concurrent civil lawsuit. I
3 don't know how this would affect that. I'm here to talk
4 about the third part.

5 Q You don't know how that would affect it, and you
6 don't know if the term discovery request solely pertains
7 to --

8 THE COURT REPORTER: I'm sorry, Ms. Boland. Would
9 you please slow down and repeat your question?

10 MS. BOLAND: I'm sorry.

11 BY MS. BOLAND:

12 Q And you don't know if the term discovery request
13 solely pertains to the civil process, do you? Perhaps that's
14 what -- the meaning behind that phrase.

15 A I can't imagine they would have a crime victims
16 bill that only went to the civil process. It would have to
17 be to the criminal process. I'm not a constitutional
18 scholar, but when they're talking about the discovery
19 process, it would have to be to the criminal. If there's
20 something that's in there that I didn't read, point me to it,
21 but -- but I see this as affecting the criminal process.
22 That's what I'm here to talk about.

23 Q Sure. But there are no depositions in the criminal
24 process, right?

25 A No.

1 Q And so with discovery requests, the -- the
2 amendment doesn't say that victims have the right to refuse
3 court orders, does it?

4 A I think it does.

5 Q Can you point to that language?

6 A Sure.

7 THE COURT: I think that's what he's been
8 testifying about all along.

9 BY MS. BOLAND:

10 Q It says that it has the right to -- victims have
11 the right to refuse interviews, depositions, and discovery
12 requests. There's not an additional comma to that sentence
13 that says court orders or search warrants, is there?

14 A But they -- well, I'm not talking about search
15 warrants. I'm talking about court orders. It does say that
16 in there, discovery requests. It's a discovery request.
17 They can refuse.

18 Q A discovery request is different from a court
19 order. So if you as a defense attorney issue a discovery
20 request to a victim and they say no, that's one thing. But
21 on the other hand, if a court issues an order directing a
22 victim to turn over certain information, that's different,
23 isn't it?

24 A It's different, but a judge can say they don't want
25 to do it based on this law. And right now the judge won't;

1 they'll order --

2 Q And that's your speculation about what you think
3 might occur --

4 A I'm trying to --

5 Q -- if the amendment is passed?

6 A -- say that is the irreparable harm of this law,
7 so, of course, there's some speculation in it.

8 Q And it's based upon your unilateral interpretations
9 of the law without guidance from the General Assembly --
10 isn't that right -- or from the courts?

11 A The General Assembly and the courts. And that's
12 what's I'm saying; there's irreparable harm in this bill that
13 -- that -- if you -- this injunction is granted --

14 THE COURT: Use the microphone, sir.

15 THE WITNESS: If this injunction is granted, the
16 courts will straighten it all out. They'll give us guidance.
17 The Legislature will give us guidance. And then we can act
18 accordingly on to what we're told the rules are. But not
19 before then. There's irreparable harm here.

20 BY MS. BOLAND:

21 Q Well, you're not aware of whether or not this is
22 self-executing, so you don't know if this will immediately go
23 into effect or if we will have guidance before it becomes
24 effective. Sitting here today, you don't know that, do you?

25 A I -- I don't know what the Legislature will do in

1 the future. No, I don't know what the Legislature will do in
2 the future. I'm looking at what I have in front of me right
3 now.

4 Q And just a few final questions, sir. Did you
5 conduct any sort of studies or investigative reports in
6 preparation of your testimony today?

7 A Any studies? No.

8 Q Did you write -- collect any data or perform any
9 investigations in advance of your testimony today?

10 A No. I'm giving you a practitioner's point of view.

11 Q Have you conducted any studies on the impact of the
12 Crime Victims' Rights Act from 1998? Have you done any
13 studies or any research, or have you collected any data about
14 the impact that that act has had on the Commonwealth since
15 its enactment in 1998?

16 A No, I haven't.

17 MS. BOLAND: I have no further questions. Thank
18 you, Your Honor.

19 THE COURT: All right. As long as you touch on
20 different areas at this point, counsel.

21 MR. WITHERS: I'll be very brief, Your Honor.

22 THE COURT: Okay.

23 **CROSS-EXAMINATION**

24 BY MR. WITHERS:

25 Q Good morning, Mr. Greenblatt.

1 A Good morning.

2 Q I'm Scot Withers. I represent the intervenors in
3 this matter on behalf of the respondents.

4 You're familiar with the Rules of Criminal
5 Procedure, are you not?

6 A Yes.

7 Q And Rule 573 of criminal procedural rules controls
8 pretrial discovery and inspection, correct?

9 A Correct.

10 Q And under those rules, you have no right as a
11 criminal defendant to interview any victim, do you?

12 A No right? No.

13 Q And you have no right to interview any witness, do
14 you?

15 A No right? No.

16 Q And you have no right to compulsory process, do
17 you?

18 A Can you explain what you mean by --

19 Q You have a right to compel deposition.

20 A Correct.

21 Q You have no --

22 THE COURT: Just depositions, right?

23 BY MR. WITHERS:

24 Q -- no right to compel interrogatories?

25 THE COURT: Isn't there -- isn't there a part of

1 our Constitution that has compulsory process which gives them
2 the right to compulsory process --

3 MR. WITHERS: They -- they can compel witness --
4 they can compel the witness to appear at trial, but this is
5 pretrial, Your Honor.

6 THE COURT: At this point you are just repeating
7 what Ms. Boland said, so let's try to hit some new areas.
8 Okay?

9 MR. WITHERS: Thank you, Your Honor.

10 THE COURT: All right.

11 BY MR. WITHERS:

12 Q You referenced -- you testified that when -- if --
13 if you're not allowed to obtain evidence directly from a
14 victim in terms of cell phone records, et cetera, that you
15 have to go -- at presently you have to request a -- you have
16 to file a motion with the Court, correct?

17 A Yes, sir.

18 Q Okay. And when you file that motion with the Court
19 -- let's say you're requesting a bank statement -- the Court
20 is required to undertake an analysis to determine whether the
21 rights of the victim, the privacy rights of the victim and
22 privacy in their financial records guaranteed under the
23 Pennsylvania and United States Constitution -- they have to
24 balance that versus the criminal defendant's rights, correct?

25 A They have to see if it's -- they have to do a

1 relevancy test.

2 Q They have to do a --

3 THE COURT: If you wouldn't mind talking into the
4 microphone.

5 THE WITNESS: Oh, yeah. There has to be a
6 relevancy test.

7 BY MR. WITHERS:

8 Q And if -- and if it's relevant and you want that
9 evidence to be disclosed and procured through a subpoena,
10 they also have to do a balancing test regarding the privacy
11 rights of the records that you're seeking versus the rights
12 of the criminal defendant, correct?

13 A It's not really -- that's not the balancing test
14 they do. We have a right -- the criminal defendant has a
15 right to present a defense and a right to investigate a case.
16 So if they can show that it may be relevant, then it's up to
17 the judge on whether or not the judge will grant that.

18 Q And the judge has to determine whether that right
19 would violate any rights of the victim, correct?

20 A Yes.

21 Q Okay. And the victim, just like any other citizen
22 in the United -- in the United States and in Pennsylv- --
23 Pennsylvania, has a constitutional right to privacy, correct?

24 A Yes. Every person has --

25 Q Yes. So the courts are already balancing

1 constitutional rights of victims versus constitutional rights
2 of defendants in determining whether you get the information
3 that you're seeking to get. Is that correct?

4 A Sir, this changes that dramatically.

5 Q I'm not asking you if it changes that.

6 A I'm --

7 Q I'm asking currently --

8 MR. GEHRING: Objection, Your Honor.

9 THE COURT: Sustained. Yes. Your objection is
10 sustained.

11 He's trying to answer your question.

12 THE WITNESS: Sir, this changes that dramatically.
13 For the first time, this says that someone who's a victim or
14 an alleged victim can refuse that request. That's never been
15 done before.

16 MR. WITHERS: Your Honor, I move to strike as
17 nonresponsive. I didn't ask him what the prospective effect
18 would be.

19 THE COURT: That motion is denied.

20 MR. WITHERS: I asked him the current --

21 THE COURT: It's absolutely in response to your
22 question.

23 BY MR. WITHERS:

24 Q But currently the courts balance the constitutional
25 right to privacy against your request for discovery?

1 A Yes.

2 Q That's already going on?

3 I have no further questions, Your Honor.

4 THE COURT: Counsel, did you have any cross?

5 MS. BOLAND: Nothing further, Your Honor.

6 MR. ENERSON: No, Your Honor.

7 THE COURT: Okay.

8 MR. GEHRING: Your Honor, may I ask a few questions
9 on redirect?

10 THE COURT: Do you have to?

11 (Laughter.)

12 THE COURT: Are they essential, absolutely?

13 Go ahead. Go ahead. You can do it.

14 (Laughter.)

15 MR. GEHRING: I'll be very brief, Your Honor.

16 THE COURT: It has to be anything related to the
17 cross. All right.

18 MR. GEHRING: Yes, Your Honor.

19 THE COURT: Not a new line of questioning.

20 MR. GEHRING: Absolutely, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MR. GEHRING:

23 Q Mr. Greenblatt, you were asked about whether you
24 were aware of what's been called the Victims' Bill of Rights?

25 A Yes.

1 Q The Victims' Bill of Rights, are those
2 constitutional rights?

3 A No. It's a -- it's a law that passed -- I'm sorry.
4 It's a law that passed giving crime victims, people -- you
5 know, mostly the right to be -- to be involved in the plea
6 negotiation process, to come to sentencing, to be aware of
7 any parole hearings.

8 Q Does Marsy's Law make these rights constitutional
9 rights?

10 A Well, they're con- -- yeah. This is an amendment
11 to the Constitution.

12 Q And does the Victim Bill of Rights have any
13 provision regarding being able to refuse discovery?

14 A Absolutely not.

15 Q Does it have any provision that would limit
16 cross-examination?

17 A No.

18 Q Does it have any provision that would affect your
19 -- your ability to negotiate effectively and knowingly a plea
20 with a prosecutor?

21 A Absolutely not.

22 Q You were asked about whether you can get cell phone
23 records, for -- for instance, from a -- from a provider. Is
24 getting cell phone records -- how often have you been able to
25 get cell phone records from a provider?

1 A From the provider? If I have the proper
2 information, that is, who the provider is, the cell phone
3 phone number, and who the provider is, because the cell phone
4 number doesn't say who the provider is, you go to court and
5 you get the records. I mean, but I can tell you this: I
6 rarely get that turned over from the prosecution. It is
7 incumbent on the defense to do the investigation.

8 Q Are -- do you get discovery of -- of documents --
9 I'm talking about non-data, nonelectronic records. You get
10 discovery of documents that are relevant to cases, don't you?

11 A Yes.

12 Q Can you get documents in possession of a victim?
13 Can you get those from an outside provider?

14 A No. I mean, if they're e-mails, you need to know
15 the e-mail addresses. And then you need to, you know,
16 request that the computer be mirrored. And -- and then
17 there's -- the documents get extracted. And a lot of times
18 there's -- obvious- -- not a lot of times. All the time
19 there's a relevancy test.

20 Q Okay. Can you get videos; for instance, security
21 camera videos? Would you be able to get those from an
22 outside provider?

23 A No. As I told you, in the example I gave, if a
24 store owner was robbed, you know, and you have somebody who
25 says, Look, it's not me and there's video, they could say,

1 I'm not turning over the video. The -- the only way I can
2 get it is by subpoena.

3 THE COURT: Because they're directly impacted?

4 THE WITNESS: Yes.

5 THE COURT: And they might refuse?

6 THE WITNESS: Yes, Your Honor.

7 BY MR. GEHRING:

8 Q Mr. Greenblatt, you were asked about some language
9 in the amendment about implementing legislation. And so --
10 and it was posited whether this was going to go into effect
11 immediately. Do you remember that?

12 A Yes.

13 Q Will -- assuming that is correct, that -- that --
14 that there will be a question about whether it goes into
15 effect immediately, will the uncertainty of whether the law
16 is in effect -- will that create its own set of problems?

17 A Yes. Any -- any uncertainty is bad. And there
18 would be uncertainty.

19 Q Would you think judges will -- will interpret that
20 -- those -- that language uniformly from judge to judge?

21 A No. No. As I said, in all good faith, judges
22 reach different decisions based on the same set of facts and
23 circumstances.

24 Q You were asked about, you know, whether court
25 orders are covered by the language of Marsy's Law. Do you

1 remember that?

2 A Yes.

3 Q With the -- with the gist, I think, being that the
4 -- the Marsy's Law doesn't necessarily prevent a judge from
5 issuing a court order to obtain discovery. Was that your
6 interpretation of that questioning?

7 A I think that's what it was about.

8 Q Can -- in your -- in your experience, can a judge
9 issue an order that violates the constitutional rights of
10 someone?

11 A Absolutely not.

12 Q So if a person -- if a victim has the right to
13 refuse a discovery request, in your experience, could a judge
14 issue an order that would overrule that?

15 A I don't -- I don't believe so. No. They can't --
16 you can't -- a judge doesn't have the right to go outside the
17 Constitution.

18 Q And you -- do you get discovery through subpoenas
19 as well?

20 A Yes.

21 Q Is a subpoena a court order?

22 A Yes.

23 MR. GEHRING: That's all I have, Your Honor.

24 THE COURT: Thank you.

25 So is there any recross based on this, counsel?

1 MR. WITHERS: No, Your Honor. Thank you.

2 THE COURT: All right. You can step down, sir.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: So we'll continue now with oral
5 argument. Stick to the salient points at this point.

6 MR. BIZAR: Sure.

7 THE COURT: And then you'll have your full
8 opportunity to respond and make any additional arguments that
9 you -- you have too.

10 MS. BOLAND: Thank you.

11 MR. BIZAR: I just want to follow up, Your Honor,
12 on a couple points that you raised. You asked I think
13 specifically whether there was any case for the proposition
14 that serving -- that the Secretary cannot certify election
15 results; has -- has that happened before in Pennsylvania?
16 And we -- we don't have a case for the -- for that specific
17 proposition. But the case Costa versus Cortes, which is a
18 Judge Brobson decision, in a different posture because in
19 that case, the General Assembly had pulled the ballot
20 question, but it provides guidance.

21 THE COURT: Can I have the --

22 MR. BIZAR: Yes. 143 A.3rd 430. And in that case,
23 Jonathan Marks had testified on behalf of the Secretary. And
24 Judge Brobson was addressing that issue and said that -- that
25 the Secretary had no duty -- no authority and, thus, no duty

1 to canvass and compute votes cast on a question that's not
2 before the electorate. And he's citing to the specific part
3 of the Election Code that you had pointed to which is this --
4 the mandatory language in -- in that code.

5 So it's not exactly the same, but it's close. I
6 think it provides guidance, and we wanted to call it to your
7 attention.

8 The second issue I wanted to address just before I
9 turn back to the balance of the harms, balance of hardships
10 is the issue that came up during Mr. Greenblatt's testimony
11 which is the issue of whether the amendment becomes
12 self-executing.

13 The Supreme Court has addressed this. And we put
14 it in our petitioners' opening brief at page 11, the CW
15 versus Tharp case, which I think Ms. Boland mentioned; 754
16 A.2d 1251. And the pinpoint cite, Your Honor, is 1254. And
17 the net -- the gist of that is that a constitutional
18 amendment becomes effective upon approval by the electorate
19 unless it contains a specific date that defers its
20 effectiveness.

21 THE COURT: That's what I had read. That's why I
22 was a little confused.

23 MR. BIZAR: Right.

24 THE COURT: All right.

25 MR. BIZAR: And so that -- those constitutional

1 rights are self-executing, and they're im- -- applied and
2 interpreted by the case law.

3 And it's important to note -- and I think this is
4 what -- what the last bit of questioning of Mr. Greenblatt
5 was getting to as well -- the rights in the Constitution will
6 always trump any executing legislation that the General
7 Assembly puts in place. So these -- the -- the amendment
8 would have the effect of putting these rights in -- in place
9 regardless of what the General Assembly may later do.

10 But I do think that Your Honor's point about this
11 stepping on the toes of the Court, of the Supreme Court
12 because the General Assembly is essentially taking judicial
13 rulemaking to itself is exactly correct. And that's what
14 happened in the Bergdoll I case where it was found to be
15 unconstitutional, a violation of the Constitution. So I
16 wanted to add those points to -- to the discussion because
17 they're timely right now.

18 So we're going to get to the likelihood of success
19 on the merits and the irreparable harm issue imminently. But
20 I want to -- I may not have rebuttal, and I want to just
21 address the arguments that the Secretary is going to raise.
22 I know Your Honor can follow along. And I want to just
23 address them now because it's appropriate to do that.

24 I'm quite confident that the Secretary is going to
25 -- to say that voters will not show up if an injunction is

1 issued. I want to say, Your Honor, that that is entirely
2 speculative. The Secretary has conducted no study to
3 determine what makes voters choose to vote or not choose to
4 vote. And Judge Brobson actually grappled with that question
5 in that Costa versus Cortes case as well, in a different part
6 of case.

7 The Secretary would need expert testimony, just not
8 -- it wouldn't be enough to rely on Mr. Marks's say-so on
9 that score. And it hasn't been studied. It's entirely
10 speculative.

11 Second, elections go on with court challenges all
12 the time. There's a long history of that in this Court and
13 in the Supreme Court. And we still have elections. And
14 there's no evidence that court challenges to whatever it may
15 be, ballot questions or otherwise, impact voter turnout. The
16 least disruptive thing we argue to do here is to maintain the
17 status quo which is to enter the prohibitory injunction.

18 In addition, there have been a significant number
19 of ads urging voters to vote for Marsy's Law. We all see
20 them. They're all over the -- the various social media and
21 -- and the mainline media. There's no ads about an
22 injunction, nothing saying that the Court will decide whether
23 to count the votes or not count the votes. So I think that
24 the chances are very high that voter turnout will be
25 unaffected.

1 No one is going to tell voters -- and on our -- our
2 side as well and -- and from the rest of the interested
3 parties in this case, no one is going to tell voters not to
4 show up, not to cast their votes. And there are a lot of
5 other issues that are on the ballot: retention of judges,
6 municipal elections, school board elections. If you looked
7 at the ballot questions, there -- there are many, many
8 questions that will attract voters to the polls, we believe.
9 So I just wanted to -- to make that -- those points.

10 Let me turn to the likelihood of prevailing on the
11 merits which is one of the -- another one of the critical
12 elements that's in play here.

13 And the key -- the key thing to bear in mind -- and
14 I know this is very familiar to you, Your Honor -- is that we
15 don't have to show that we are going to establish our claims
16 entirely, that we're going to win. It's different than the
17 federal court standard. We have to show that there are
18 substantial questions at issue here. And constitutional
19 questions, substantial legal questions involving
20 constitutional challenges to determine parties' rights are
21 almost always considered to be substantial legal questions.

22 It's settled law in Pennsylvania that
23 constitutional challenges to legislative enactments raise --
24 and I'm quoting; raise important issues that are deserving of
25 serious consideration. They're the type of challenges that

1 often get injunctions granted.

2 So let's turn to the merits. The question we raise
3 in this lawsuit is whether this amendment should have been
4 presented to voters for separate votes, right, whether
5 Article XI, Section 1 requires that the amendment be
6 presented to voters so that they can vote separately for
7 those changes they like and reject the changes they don't
8 like. So it's not a combo meal, to be -- to inject a little
9 bit of levity in this very serious matter.

10 Now the respondent and the intervenor here claim
11 that there's no separate vote required because the amendment
12 in question only relates to the rights of crime victims. It
13 has a single common denominator because all of the changes
14 are jammed into that one new proposed section, 9.1, and
15 packaged as a single amendment, the Crime Victims' Rights
16 Amendment. They're only a single subject. They have the
17 common denominator.

18 And under the subject matter test set forth in the
19 Supreme Court's case, the Grimaud case, which we all agree is
20 an important case that sets the framework for looking at this
21 issue, they -- they've satisfied the single subject test.

22 THE COURT: That was bail, wasn't it?

23 MR. BIZAR: Yes, it was.

24 THE COURT: One word --

25 MR. BIZAR: Yes.

1 THE COURT: -- bail. Even though it contained a
2 number, they were able to keep it to bail.

3 MR. BIZAR: Bail. That's right. Not the case
4 here.

5 So their argument, Your Honor, I submit to you,
6 elevates form over substance. And it -- they also take -- go
7 to great pains to take Grimaud and misread it or
8 mischaracterize it. Grimaud talks about the fact -- or talks
9 about whether the amendment in question facially affects
10 other constitutional provisions. But it also talks about
11 whether it patently affects other constitutional provisions.

12 Grimaud directs the Court to analyze -- and I'm
13 quoting -- the substantive effect on the Constitution. It
14 directs the Court -- and I'm quoting again -- examining the
15 content, purpose, and effect of the proposed amendment. You
16 look at the substantive effect, not the superficialities, not
17 just at -- at face.

18 It's not limited to literal instances where the
19 amendment says it's intended to only apply to two articles.
20 If that -- if that were the case, then the entire provision
21 of the Constitution would be toothless.

22 And we have to remember why this provision exists.
23 This provision exists because we did not want the Legislature
24 to logroll. We did not want the Legislature to pass huge
25 stat- -- huge amendments to the people's document, to the

1 people's organic charter. We wanted the electors to be able
2 to vote on amendments and to have those amendments presented
3 to them so they can exercise --

4 THE COURT: I never really understood the analogy
5 of logrolling.

6 MR. BIZAR: I don't either.

7 THE COURT: Okay.

8 MR. BIZAR: But it's in the cases.

9 THE COURT: I'm not the only one then?

10 MR. BIZAR: It's in the cases.

11 THE COURT: I was thinking of a snowball -- but a
12 log?

13 MR. BIZAR: I don't -- I don't -- I don't know
14 where they get it, you know.

15 THE COURT: All right. So I thought maybe you
16 understood --

17 MR. BIZAR: No. No. I --

18 THE COURT: -- the term.

19 MR. BIZAR: I have no light to shed on that. I'm
20 sorry.

21 THE COURT: Okay. I'm glad I'm not the only one.

22 MR. BIZAR: You're -- but it's -- it's in the
23 cases --

24 THE COURT: I know.

25 MR. BIZAR: -- and we all know what it means, I

1 think. It means something like what's happening here.

2 (Laughter.)

3 MR. BIZAR: So the question -- the question is --
4 you know, you have to look at what is happening in this
5 amendment. And the amendment affects three articles, eight
6 sections, one schedule to the Pennsylvania Constitution. It
7 -- it recognizes this by touching on and referring to
8 multiple rights.

9 Now, some of those rights may have a common
10 objective, which is the test that the respondent proposes, or
11 they may be sufficiently interrelated. The right to notice
12 and the opportunity to be heard, you know, that could even
13 relate to the definition of a victim; the opportunity to
14 consult with law enforcement. Those are rights that the
15 provision -- that the amendment gives.

16 But those rights have nothing to do with the prompt
17 restitution of property or the return of property -- prompt
18 restitution or the return -- prompt return of property. They
19 have nothing to do with the General Assembly effectively
20 making rules to define victim or to do other things down the
21 road, to define how due process is going to be -- to be
22 given.

23 They -- they have taken different topics, and they
24 are trying to connect those topics simply because they relate
25 in the broadest sense to crime victims. But they don't

1 relate to each other. They establish distinct and separate
2 rights in many respects. Maybe some may be related, but
3 overall, the 15 new rights and the other processes that are
4 set forth are distinct.

5 So while we don't dispute that the subject matter
6 test applies and while we don't dispute that in a case like
7 Grimaud where they all did relate tightly to bail, that
8 subject matter test would be met, in this case, there are
9 more than one subject, more than one right that are being
10 affected by this amendment.

11 And so that has to be a situation where the patent
12 effect, where the substantive effect, where looking at the
13 content and purpose and effect on the Constitution satisfies
14 the test that Grimaud establishes, which comes ultimately
15 from the Bergdoll case because Grimaud cites the Prison
16 Society case and Prison Society cites Bergdoll. The
17 respondents suggest that Bergdoll is not good law. It's
18 still good law. It's still part of this overall
19 framework for looking at these -- at these --

20 THE COURT: It's interesting how --

21 MR. BIZAR: -- issues.

22 THE COURT: -- divided the Supreme Court is on this
23 issue --

24 MR. BIZAR: It is.

25 THE COURT: -- over the years.

1 MR. BIZAR: There's been a lot of opportunity for
2 them to speak about it. And I suspect we'll probably get
3 there at some point in this case as well.

4 But the -- the key thing is that while there are
5 some rights here that have common objectives, there are quite
6 a few that really don't. You know, the right to -- to have
7 safety considered in setting bail, what does that have to do
8 with the right to refuse discovery? What does it have to do
9 with the right to restitution? What does that have to do to
10 the right to the return of property?

11 And you can go through it line by line and just mix
12 and match. There's so many different rights in this omnibus
13 amendment which is exactly the opposite of what the framers
14 envisioned with Section -- Article XI, Section 1.

15 The new rights that are being given are not so
16 sufficiently interrelated as to constitute a single subject.
17 They're separate, and they have to be viewed as separate.
18 And they have to -- the electorate has to be given the
19 opportunity to vote on them.

20 Okay. We've -- we've addressed a lot of these
21 points in the briefs, Your Honor. We know that this Court --

22 THE COURT: And I have read them very carefully.
23 All --

24 MR. BIZAR: And we --

25 THE COURT: All of the filings I've read very

1 carefully.

2 MR. BIZAR: And we appreciate that.

3 Let me turn to irreparable harm. What's the
4 irreparable harm here? It's one -- another one of the six
5 elements. And Mr. Greenblatt testified about some of that.
6 His testimony on the balance of the harms or balance of the
7 hardships and his testimony on irreparable harm bled
8 together. And I'm not going to repeat that. I think Your
9 Honor got that and the questions were on point.

10 I want to focus on another aspect of irreparable
11 harm here, and that is the irreparable harm to the
12 electorate's rights as voters to vote separately on
13 amendments to their document, to the -- the Constitution.

14 The right to vote is the basic bedrock of our
15 political system. The cases say that. And neither the
16 General Assembly nor the courts are entitled to erode or
17 distort or disregard any provision of the Constitution. And
18 they can't be -- can't sacrifice those provisions for
19 political purposes. I'm not suggesting the Court is, but I'm
20 -- I'm suggesting the importance of that document, of the
21 Constitution, and that it's enshrining of the right to vote.

22 So any action by the General Assembly that
23 threatens fundamental rights like the right to vote
24 constitutes under the case law of the Commonwealth immediate
25 and irreparable harm automatically.

1 And here, this proposed November 5, 2019 ballot
2 question that requires voters in Pennsylvania to vote yes or
3 no on a multifaceted question, an amendment that amends many
4 existing provisions: three articles, eight sections, and the
5 schedule of the Constitution, thereby impacting many
6 different rights and establishing new rights with a single
7 yes or no vote, that affects immediately and irreparably the
8 electors' rights.

9 Now I think you recognized at the start this
10 morning how sensitive these issues are. And I -- I could not
11 agree more. We -- we can all understand the importance of
12 victims' rights. We can all get behind that as a concept.
13 But when we sacrifice the electors' voting rights, when we
14 sacrifice the citizens' rights in the Constitution which are
15 not entitled to be ignored -- literal compliance with the
16 Constitution is required under our law -- when we sacrifice
17 those rights, every voter, every citizen suffers.

18 And so we're here asking the Court to maintain the
19 status quo, to enter a prohibitory injunction that would
20 allow us to proceed with this case very quickly. And we're
21 committed to do that.

22 I think the intervenors -- crime victim intervenors
23 said we filed this at the eleventh hour, it deprived them of
24 their right to respond. We did no such thing. We'll respond
25 quickly. They'll respond quickly. We're not trying to avoid

1 getting to this on the merits. We agreed everybody could
2 intervene. The more, the merrier, subject to your approval.
3 But we will move --

4 THE COURT: As many voices that can be heard on an
5 issue like this is important.

6 MR. BIZAR: Agreed. And -- and we feel that way.
7 So we -- and I think there are more amicus briefs coming, I
8 suspect, as well.

9 But on this issue, Your Honor, we think that the
10 key is to preserve the status quo. And what we're seeking is
11 an injunction that would do that. Not disenfranchise anybody
12 because the votes will be kept. And not, you know, change
13 anything or require the Secretary to do anything that they
14 can't do, because the Secretary can do these things. They're
15 talented people. They're more than capable of doing it. We
16 recognize money has been spent here, but we don't think that
17 when you balance it out, constitutional rights and money are
18 the same. The constitutional rights trump the money every
19 time.

20 Thank you very much for your courtesy. And I'll --

21 THE COURT: You're welcome.

22 MR. BIZAR: If I have a need for rebuttal, I'll
23 ask, Your Honor.

24 THE COURT: Is there any additional argument that
25 would -- counsel, that you want to make because -- do you

1 think it was covered enough?

2 MR. CHRISTY: Yes, Your Honor.

3 THE COURT: Okay. All right.

4 So now it's your turn to make your case, and you
5 have the time you need.

6 MS. BOLAND: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MS. BOLAND: Your Honor, neither this Court --

9 THE COURT: Can I ask just one question?

10 MS. BOLAND: Oh, sure.

11 THE COURT: So what about the fact that you would
12 consider making a constitutional amendment that's impossible
13 to fulfill? Like the restitution, for example -- you're
14 going to force individuals to pay restitution; they shall --
15 when you can't get blood from a -- from a stone. So what --
16 what would the General Assembly say about a section in an
17 amendment that would be impossible to execute?

18 MS. BOLAND: Your Honor, I can't read the mind of
19 the General Assembly. I'm not sure if -- how they would
20 interpret that particular provision. And I'm not sure that I
21 agree that it would be necessarily impossible.

22 THE COURT: For every -- every restitution. I have
23 been a judge for -- for 12 years, and I have ordered
24 restitution many a time. And these folks don't have any
25 money.

1 MS. BOLAND: I see.

2 THE COURT: But --

3 MS. BOLAND: I see your -- your point, Your Honor.
4 I think I misunderstood.

5 THE COURT: Yeah. So it's like an impossibility
6 that this constitution- -- is there any law on -- you know,
7 doing a Constitution that's impossible to execute -- a
8 constitutional amendment?

9 MS. BOLAND: I --

10 THE COURT: Restitution really got my goat, you
11 know.

12 MS. BOLAND: I think -- I think that's, you know, a
13 valid question to ask. But I don't think that the amendment
14 is to be construed to absurdity. So I think that the courts
15 and the General Assembly would have to interpret it
16 reasonably. And, of course, if there was no, you know, blood
17 to get from the stone, I think that would be the end of it.
18 I'm not -- I'm not sure that anyone would try to take it to
19 some other type of absurd degree.

20 THE COURT: But it's going to be in the
21 Constitution as an inviolate right, that you shall get
22 restitution. And these people are not going to get
23 restitution in most of these cases.

24 MS. BOLAND: Off the top of my head, Your Honor,
25 one creative resolution could be some sort of property lien.

1 But, again, that's in -- within the purview --

2 THE COURT: These are people in jail. They have
3 substance abuse problems, mental health problems. You know,
4 they're not educated. They don't have jobs. They have
5 felony convictions. There's just -- they're not going to
6 get -- you're not going to get anything from them.

7 MS. BOLAND: I do understand your concern, Your
8 Honor. And I think that concern applies when it comes to
9 judgments in civil cases. And, you know, judgments are
10 provided for in the Constitution. And so I think that --

11 THE COURT: I just have a -- I just have a --

12 MS. BOLAND: -- same concern --

13 THE COURT: I have a -- I have a concern about
14 setting up hopes of victims around the state with this
15 amendment that won't be able to be fulfilled. That's -- you
16 know, I feel concerned about.

17 MS. BOLAND: I understand, Your Honor. I think in
18 -- in a lot of cases, there would be a possibility for
19 restitution and the victims wouldn't be let down. Sure. I'm
20 -- in some cases, there may not be.

21 But I think the point is that the amendment isn't
22 to be construed to absurdity and that the courts would be
23 able to implement this and interpret it in a way that it
24 would respect all -- all the interests involved. So that --
25 that's my -- my thought to that. And the General Assembly

1 does have a duty to further define things under the act, so
2 maybe we would get --

3 THE COURT: This is not an act. This is an --

4 MS. BOLAND: I'm sorry, Your Honor; the proposed
5 amendment -- we would get more definitive guidance on that
6 point.

7 But the main point I would like to start off with,
8 Your Honor, is that neither this Court nor the Supreme Court
9 has ever held that a preliminary injunction is necessary in
10 this context of a ballot question proposing a constitutional
11 amendment. There is no precedent supporting the petitioners'
12 request at all.

13 In fact, oppositely, even in Bergdoll, even in
14 Pennsylvania Prison Society where the Court ultimately ruled
15 that those amendments were unconstitutional, preliminary
16 injunctions were denied. And it's because of the
17 availability of a remedy after the fact.

18 The Pennsylvania Supreme Court affirmed this
19 principle in Bergdoll. The Court reiterated principles that
20 it stated in Stander that the question of constitutionality
21 is justiciable after the voters have adopted a provision
22 because the people can't constitutionalize --

23 THE COURT: Counsel, wouldn't you --

24 MS. BOLAND: -- something that's unconstitution- --

25 THE COURT: -- suggest that the scope and sweep of

1 this amendment is completely different than any precedent we
2 have from the Supreme Court and the Commonwealth Court on
3 ballot questions and that it's hard to compare those cases to
4 this particular matter? I have found that it's very
5 fact-sensitive, these -- and there's nothing like this that
6 we can find in the law.

7 MS. BOLAND: I -- I respectfully disagree, Your
8 Honor. In Mellow, this Court, in an opinion authored by, I
9 believe, Judges Leadbetter and Simpson, recognized that in
10 the 1960s, there were bulk amendments made to the
11 Constitution. Those bulk amendments are still on the books.

12 THE COURT: Can I have that cite?

13 MS. BOLAND: At -- it's Mellow. And Mellow is --
14 it's Mellow v. Pizzingrilli. And the cite is 800 A.2d --
15 A.2d 350. And it --

16 THE COURT: Thank you.

17 MS. BOLAND: No problem, Your Honor. And in that
18 case, the Court recounted the history of the separate vote
19 requirement in the Constitution and noted that in the 1960s,
20 there were bulk amendments to our organic charter and these
21 bulk amendments contain many substantive changes. And this
22 Court --

23 THE COURT: Do you remember what the one was in
24 Mellow? Do you remember what the bulk amendment was in
25 Mellow?

1 MS. BOLAND: In Mellow, it had to do with vacancies
2 after reapportionment. So that was the issue before the bar
3 in Mellow. But the Court did go through the history and
4 recognize that in the 1960s, these bulk amendments existed
5 and these bulk amendments made numerous substantive changes
6 to the law. And the Court recognized that an amendment can
7 have many different parts.

8 And in Grimaud, which is the case in which the
9 Supreme Court finally adopted a standard to apply in this
10 case -- there was no standard before Grimaud. The
11 Pennsylvania Supreme Court expressly said that they are
12 adopting this standard in Grimaud.

13 In -- in Grimaud, it had to do with bail. The
14 issue had to do with bail. And a very similar was --
15 argument was made as the petitioners are making, that it
16 implicitly amends all of these different sorts of rights.
17 But the Court adopted a new standard and said it has to
18 facially affect those rights. And it also said that the
19 parts have to be interrelated.

20 And by adopting that standard, saying the parts
21 have to be interrelated, the Court is acknowledging that an
22 amendment can contain more than one change, that it can
23 contain parts. And that's exactly what we have here.

24 In the PA Prison Society case, which there was no
25 plurality, there -- the amendment was ruled unconstitutional.

1 It had to do with pardons. On one hand, it reconstituted the
2 board. And on the other, it said that there has to be
3 unanimous vote for someone to get a pardon. It wasn't
4 towards a single purpose. It was a single topic, you know,
5 the Board of Probation and Parole, but it wasn't working
6 towards a single purpose. On one hand, it's reconstituting.
7 On the other hand, it's changing the circumstances in which
8 someone can get a pardon.

9 In this case, every single part relates to the same
10 purpose; it's advancing victims' rights. It's not -- it's
11 the same goal. And in Grimaud, the Court adopted a
12 common-purpose standard. Specifically, the -- the Court said
13 it has to be interrelated and then it used a -- uses -- used
14 phrases -- excuse me, Your Honor -- such as common-purpose
15 formulation, consistent and workable whole, rationally
16 related to a single purpose and plan.

17 And in this case, all of those parts, every single
18 part of the amendment really does work towards the same
19 purpose and plan, and that's advancing victims' rights.

20 Now the petitioners can pick at whether or not
21 those -- those rights policy-wise are good or not, but that's
22 not the question that -- or that's not the standard that was
23 adopted by Grimaud. It wasn't if the parts are workable. It
24 wasn't if they're realistic. The -- the -- the standard is
25 simply whether or not it works towards a single purpose, a

1 single goal. And here it does. And just because it has
2 different parts doesn't render it per se unconstitutional.

3 If it was per se unconstitutional because it
4 contained many parts, well, then all of those bulk amendments
5 from the '60s -- then they must be per se unconstitutional.
6 Then -- then the amendments that this Court has upheld in
7 Mellow and Grimaud, they would have been held to be per se
8 unconstitutional because they contain different parts that
9 the Court had to consider.

10 So the point I'm trying to make, Your Honor, is
11 just because there are parts, just because there are
12 semicolons, just because there's one -- more than one new
13 right created by this proposed amendment doesn't mean that
14 it's unconstitutional. The question is whether all of those
15 things relate to a single purpose. And all of those things
16 in this case, they do relate to a single purpose.

17 And back to the remedy, Your Honor, that's why, you
18 know, there is no precedent for an injunction in -- in a case
19 like this. In Bergdoll and Prison Society, the -- the PIs
20 were denied. Then the late -- the amendments were later --
21 later held to be unconstitutional. And this makes really
22 good sense. And it's because greater harm will result to the
23 Commonwealth if an injunction is issued but if at the end of
24 the day we win the case.

25 There -- petitioners said that there is no

1 publicity surrounding this PI hearing, that there's no notice
2 about it. This morning when I was getting ready, I saw this
3 hearing advertised two times on the one hour news block that
4 -- that was playing. So the public is aware of this
5 proceeding.

6 If an injunction is issued, even as to certifying
7 the ballot -- and we do have a witness here. And you can
8 take notice of what he was going to testify to as to all of
9 the harm that would befall the Commonwealth should this --
10 the certification be withheld.

11 THE COURT: The petitioners agreed to stipulate to
12 all the harms in terms of costs and whatnot. So I know what
13 they are --

14 MS. BOLAND: Okay.

15 THE COURT: -- in terms of the -- the dollars and
16 the money spent and the efforts made for the polling places
17 and that sort of thing. So they did stipulate to that.

18 MS. BOLAND: And we do have exhibits in the record
19 for your consideration, Your Honor, reflecting all of the
20 bills and all the rosters, having to do with the
21 advertisements. But --

22 THE COURT: We all believe you.

23 MS. BOLAND: Okay. But in addition, our witness
24 was going to testify to the harms that would happen if -- if
25 the certification was withheld. So if the certification --

1 THE COURT: Well, tell me, what harms would result
2 if the certification is withheld?

3 MS. BOLAND: So if the certification is withheld
4 and the public learns about this, this could drive their --
5 this is one of many harms, but this could drive their
6 behavior. This is an equitable proceeding. We have to
7 consider all -- all of these potential harms to the --

8 THE COURT: Counsel, I'm a Commonwealth Court
9 Judge, and I didn't know about this amendment until I was
10 assigned this case last week. So, really? Do you really
11 think the public is really paying that close attention to
12 this particular ballot question?

13 MS. BOLAND: Honestly, Your Honor, I do.

14 THE COURT: And if they go to the polling place and
15 it's there, then what will -- they'll know.

16 MS. BOLAND: Honestly, Your Honor, I do --

17 THE COURT: The public is not going to read my
18 opinion.

19 (Laughter.)

20 MS. BOLAND: Well, I do -- I can't testify, Your
21 Honor. But I will say that I'm active on social media and I
22 did see posts this week from people I know from high school
23 actually debating this amendment.

24 This morning on the news and last night on the news
25 this preliminary injunction hearing was -- was advertised.

1 So, I mean, people are aware. And there are certain people
2 that really do care and are debating -- are actually
3 debating --

4 THE COURT: And they will get to vote, right, no
5 matter what. That's what the petitioner was saying, they
6 will get to vote.

7 MS. BOLAND: They --

8 THE COURT: They're just -- they're just asking for
9 some of these things to be ironed out before it's
10 implemented. That's all I think that they're asking for.

11 Is that right?

12 MR. BIZAR: We -- we think that the -- the
13 electorate should have their votes tallied -- tallied in --
14 in the proper way so that Article XI, Section 1 requirements
15 should be met.

16 THE COURT: So your --

17 MR. BIZAR: And obviously the other things that
18 have to be addressed as part of the amendment.

19 THE COURT: But your concern is that if people
20 think that it might not be actually enacted, they might not
21 vote or show up to the polling place?

22 MS. BOLAND: Oh, they may not vote. They may not
23 show up. They may come to the polling place and just skip
24 that question. They could fill in a random bubble because
25 they know it's not going to be counted.

1 And then say at the end of the day we win this --
2 we win this injunction. We can't depend on the reliability
3 of -- of those votes. We'd have to go back, potentially
4 spend all of that money again, and redo it.

5 And that's probably why, Your Honor, no injunction
6 has ever been issued in this context; because if you
7 organically let it go through, you still have a remedy at the
8 end of the day. But if a preliminary injunction is issued
9 now, three weeks ahead of the election, and notices --

10 THE COURT: What if -- what if 99 percent of the
11 voters voted yes; would you feel that there was harm? What
12 if 96 percent voted yes to this amendment? It's kind of a
13 no-brainer for a voter, isn't it?

14 MS. BOLAND: That actually isn't true. There is a
15 lot of debate out there over -- over whether or not the --
16 the electorate wants this. And we take no position on that,
17 Your Honor. We are here to defend, you know, the technical
18 requirements of the ballot question.

19 THE COURT: But the fact is if it passes, if -- if
20 the majority of the voters say yes, then -- then you don't
21 have harm because you -- that's -- and people voted for it.
22 Then we just have to sort through the issues --

23 MS. BOLAND: But --

24 THE COURT: -- before it's actually implemented.

25 MS. BOLAND: But our harm isn't necessarily --

1 isn't necessarily measured by if the ballot question passes
2 or not. Our harm is whether or not the electorate truly had
3 a chance to vote. So maybe the PI kept all those people that
4 were going to vote no at home. So even though we have a yes
5 answer, that's not our goal necessarily, getting a yes
6 answer. Our goal is getting the electorate to vote and
7 getting the organic vote of -- of the electorate. So that's
8 one potential harm.

9 And, secondly, twenty- -- over 20,000 people -- our
10 witness was -- is -- you can take notice of the fact that he
11 was going to testify that over 22,000 people have already
12 voted with absolutely no notice that their vote could be
13 called into question or that a preliminary injunction could
14 possibly be issued where their vote wouldn't be counted.

15 They waited until the last minute. And, again,
16 this isn't necessarily an anomaly on -- on -- on their part
17 because in all of these cases when a preliminary injunction
18 is denied for whatever reason, petitioners seem to always
19 wait until the ballots are printed.

20 Here, the ballot question was posted on the
21 Department of State website in July. They've known about the
22 actual amendment for two years, since 2018. But the ballot
23 question was posted in July. They didn't file -- and it was
24 advertised in two newspapers in 67 counties --

25 THE COURT: I thought I heard that the ballot

1 question was made public on September 11th. That's what I
2 thought I heard earlier.

3 MS. BOLAND: That's -- that's incorrect, Your
4 Honor. What happened on September 11th was -- was the
5 certification of the ballot. So that's -- that's something
6 that's -- that's different.

7 The ballot question itself had been first posted on
8 the Department of State website in July. And then it was
9 advertised in August, September, and in October in all of the
10 67 counties, in two newspapers in all of the 67 counties
11 three months in a row. So the ballot question was on the
12 website in July; advertised in August, September, and
13 October.

14 The petitioners didn't file for this injunction in
15 July. The petitioners did not file for this injunction in
16 August. The petitioners did not --

17 THE COURT: Can they not file an injunction before
18 it's certified?

19 MS. BOLAND: I don't -- there's no -- there's no --

20 THE COURT: I couldn't find any --

21 MS. BOLAND: -- prohibition --

22 THE COURT: I couldn't find any law on whether
23 there's time limits to file an injunction on these ballot
24 questions, so --

25 MS. BOLAND: I -- I don't -- I'm unaware of any --

1 THE COURT: Do you know if there's any law that
2 says they have to wait till it's certified?

3 MS. BOLAND: Absolutely not, Your Honor. There's
4 no law indicating that they have to wait. And, in fact, all
5 of the case law out there, including the Bergdoll decision,
6 which we got from the clerk's office because it's from back
7 before it was electronic, back -- back then, they said, you
8 know, the courts shouldn't have to be weeks and days before
9 the election doing fire drills.

10 So there -- these cases were on note -- you know,
11 put -- put the petitioners on notice that it's not a good
12 idea to wait until the last minute; that, in fact, the courts
13 do hold that against you because of all the problems that
14 befall waiting until the last minute.

15 And seemingly, it's perplexing that petitioners in
16 all these cases seem to do that despite the fact that the
17 question was available and this could have been taken care of
18 before 22,000 people, including military -- military
19 personnel overseas, cast their vote. But they didn't do
20 that.

21 So now they want to -- and -- and during -- and the
22 eleventh hour is actually putting it nicely because we're
23 past midnight at this point. Twenty-two thousand people have
24 voted. So now they've waited, and they want us to post
25 notices. They're coming up with some creative resolution --

1 THE COURT: They're not asking for that anymore.

2 MS. BOLAND: Okay.

3 THE COURT: They're not asking for that anymore.

4 MS. BOLAND: So they just don't want us to certify
5 when -- when --

6 THE COURT: Right. That's all -- that's all --

7 MS. BOLAND: -- they could have been before --

8 THE COURT: -- they're asking for, right? That's
9 all I've heard.

10 MR. BIZAR: That's right.

11 THE COURT: Okay.

12 MS. BOLAND: But we do believe that greater harm
13 could -- would be caused by an injunction certifying it when
14 they have a remedy later, when all of the cases from this
15 Court have indicated that it is justiciable, there is a
16 remedy later. And that has actually occurred in Bergdoll and
17 in PA Prison Society where the Court later -- later found the
18 amendments unconstitutional.

19 In those cases, the Court did not think it was
20 appropriate to right before the election basically throw --
21 throw some kind of wrench in it. So they waited until after
22 the fact and had time to consider the merits, time to
23 consider, like, some of the issues that were raised today,
24 like whether or not the -- it's self-executing or not.

25 So, you know, that's one of our -- our strongest

1 points, Your Honor, that there has never been a PI issued in
2 this -- in this situation. And the issuance of a PI,
3 including a certification, would -- or withholding the
4 certification would cause greater harm to the Commonwealth,
5 could potentially require us to redo the vote later if we win
6 on the merits when there's a remedy later.

7 And the status quo is that 22,000 people have
8 already voted and the petitioners are asking you, Judge, to
9 not count their votes, literally. So --

10 THE COURT: They're not asking us for that.
11 They're asking us to allow the votes to be considered but
12 just wait until some of the constitutional issues are
13 resolved. That's what they're asking. We're balancing harms
14 here.

15 So is the harm 22,000 people who have cast their
16 vote or is it the criminal justice system and the rights that
17 are provided to accused and whatnot now suddenly up in the
18 air, and folks that will be in jail for who knows how long or
19 be submitting guilty pleas, or victims who will not know, you
20 know, exactly what's going to happen to them and what they
21 need to show up -- and I don't see anything where there's
22 going to be resources to -- to add to the already completely
23 overburdened criminal justice system.

24 So what are we going to weigh here? Are we going
25 to weigh 22,000 votes, or are we going to look at the entire

1 criminal justice system in our state?

2 MS. BOLAND: A couple of points, Your Honor. We do
3 have to look at the 22,000 votes, but really we're looking at
4 this point in time to the harm to -- to the election
5 generally.

6 At this moment in time, if -- if anything,
7 withholding the certification could cast a pall over the
8 integrity of the election and can -- could drive voter
9 behavior. So that's an immediate harm. And -- and as far
10 as --

11 THE COURT: That's speculative. You're -- that's a
12 speculative argument you're making. You have no idea.

13 MS. BOLAND: Well, we could also put our witness
14 up, Your Honor, and he could testify as to his experience in
15 terms of confusion at the polls --

16 THE COURT: But we're not going to be --

17 MS. BOLAND: -- when some last-minute change is --

18 THE COURT: We're not going to be asking for --
19 they're not asking for last-minute changes.

20 MS. BOLAND: I understand that, Your Honor. But
21 the issuance of a PI at all, and -- the issuance of PI at all
22 will cause confusion.

23 But as to the other -- the burdens on the criminal
24 justice system, in Grimaud, there were similar concerns.
25 That had to do with bail. That -- in Grimaud, they -- the

1 proposed amendment did two different things. On one hand, it
2 expanded the capital offenses. But on the other hand, it
3 said basically, We can withhold bail if we think that no
4 reasonable safeguard will prevent you from harming the
5 community.

6 And in that case, the defense bar was up in arms
7 because before, it was just certain limited offenses that,
8 you know, you could be denied bail for but now it was this
9 wishy-washy standard about whether or not you were considered
10 a threat; could be withhold -- you know, in that case, you
11 could withhold bail.

12 And in Grimaud, the defense bar was totally up in
13 arms about that and made similar arguments that they're
14 making today: Well, that takes away the presumption of
15 innocence. That means that people now might be sitting in --
16 in a jail cell. And they can't defend themselves. They
17 can't consult with counsel. They're presumed to be bad
18 people because if -- if -- you know, if the judge decides
19 that they're going to hurt someone, well, there goes our
20 presumption of innocence.

21 These are almost the same harms that are coming up
22 in this case. The preliminary injunction was denied there,
23 and there was no evidence that this change at all created
24 some really heavy burden on the criminal justice system.

25 And in this case, we have the Crime Victims' Rights

1 Amendment. In every county, you are going to have a victims'
2 advocate. It already provides that victims be notified. It
3 already provides that they be heard. It already provides
4 that they be considered in pretrial disposition.

5 THE COURT: Well, why are you putting this into the
6 Constitution then?

7 MS. BOLAND: I am not the General Assembly, Your
8 Honor. I can't speak to -- speak to their motive, but my --
9 my thought is that they want to enshrine these very important
10 rights for -- for victims.

11 It's worked out in this Commonwealth. We've had
12 the Bill of Rights for those victims. It's been in place
13 since 1998. There's been no testimony, no studies, no data
14 that that has caused any direct -- any sort of havoc in
15 Pennsylvania. And so this just goes a step further and
16 enshrines basically what's already there.

17 But those same concerns were present in Grimaud
18 when a PI was also denied in that case. Same sort of thing,
19 maybe even worse; you're going to have people sitting in jail
20 because it's just presumed they're bad people.

21 But -- and they brought in no evidence about --
22 there -- Mr. Greenblatt was mostly speculating about his
23 interpretations and what he thinks. He admitted he -- he
24 didn't bring in any studies or data or reports. So --

25 THE COURT: He's boots on the ground. He knows how

1 it works on the front lines. I mean --

2 MS. BOLAND: That's fair.

3 THE COURT: That's --

4 MS. BOLAND: That's fair. But there is more to be
5 seen yet with this -- with this amendment.

6 And -- and the short term harm in terms of the
7 electorate, in terms of the vote already cast when there's
8 just no burning need because at the end of the day, they can
9 still get the relief they seek.

10 And, you know, one of the -- the main points they
11 try to make is infringing on the right to vote. Twenty-two
12 thousand people have already voted. So the harm is there.
13 That at best cancels each other -- cancels each other out in
14 terms of their -- of their harm because the 22,000 people who
15 have already voted will be harmed if their votes aren't
16 certified. The people that are heading to the polls who are
17 going to be confused about whether or not their vote will
18 count if certification is withheld, their right to vote will
19 be harmed.

20 So, Your Honor, for those reasons -- for those
21 reasons, you know, the PI isn't necessary.

22 And just very quickly on the Costa case, counsel
23 mentioned that that's a creative resolution. Now, again,
24 Costa does not provide for withholding the certification.
25 They've produced no case law, no precedent supporting that

1 withholding the certification is at all a proper remedy.
2 And, in fact, withholding the certification appears to
3 directly contradict the Election Code which is another harm
4 on -- on our side.

5 But in addition, in Costa, everybody agreed that
6 that ballot question was not going forward. It was dead. It
7 was dead. It was over. And that is a huge distinction here
8 because the General Assembly was going --

9 THE COURT: Was that the judges' retirement?

10 MR. BIZAR: Yes, Your Honor.

11 MS. BOLAND: Yes, Your Honor. Yes.

12 So everyone agreed that that question was dead;
13 that was the end of it. We don't have that situation here.
14 This question could live on. So the Costa case is just
15 completely different and is distinguishable because it had
16 already been decided that the question -- the question was
17 dead. So I just wanted to briefly reiterate that point.

18 And then turning quickly back to the merits, Your
19 Honor, Grimaud does apply. In Grimaud, the Court finally
20 adopted the standard to apply in these types of cases. I
21 have in quotes it adopted a subject matter focus in which the
22 Court determines whether alterations are interrelated.

23 I already discussed with you, Your Honor, the
24 implicit acknowledgement that an amendment can have parts
25 which is the whole point of the standard to determine if

1 those parts are interrelated. Simply because it has parts or
2 semicolons or is bulky doesn't render it per se
3 unconstitutional. The test to be used is the common-purpose
4 formulation. Here, every single part, whether we like them
5 or not, relates to one purpose which is securing victims'
6 rights in the criminal --

7 THE COURT: And whether it facially or patently or
8 substantially affects other constitutional amendments; not
9 just related. But -- and as you know, the petitioners went
10 through an entire analysis of every constitutional amendment
11 they thought that it facially, patently, and substantially
12 affected. So not just whether it's interrelated.

13 MS. BOLAND: That's true, Your Honor. The
14 interrelated is the first part of the test, and I think -- I
15 think you've heard enough from me about that.

16 But as to the facial -- the facial aspect of it,
17 the test is very clear. The petitioners are trying to rework
18 the test or to advance their interpretation of the test. But
19 it's pretty straightforward. The test is that it must
20 facially affect other parts of the Constitution. Stated
21 another way in the case, patently affects other
22 constitutional provisions. Not, not whether it implicitly
23 has such an effect.

24 In Grimaud, just as here, the petitioners were
25 arguing about that new safety exception, like I said, Your

1 Honor, with -- for the bail and saying, Well, that -- that
2 implicitly impacts the right to defend yourself and the
3 presumption of innocence and the right against excessive
4 bail. And the Court literally said because the language of
5 those rights was the same prior to the amendment as after the
6 amendment, literally the language was the same, their
7 argument failed.

8 I think the Court really strived to make clear that
9 it meant literally facially change other parts of the
10 Constitution. That's why it said not whether it implicitly
11 has such an effect. And despite the case saying that, the
12 petitioners are still arguing that it implicitly has that
13 effect, just like they did in Grimaud. And -- and that's
14 just simply not the standard. The standard couldn't be any
15 more clear from the Supreme Court.

16 This amendment only adds a provision. It does not
17 -- excuse me -- delete any existing language. It's not like
18 Bergdoll. In Bergdoll, on one hand, it deleted -- literally
19 deleted the face-to-face requirement on one hand and on the
20 other added something new. We don't have that here. It
21 didn't delete any part of any other constitutional amendment.
22 So their argument under the standard just is unavailing. It
23 doesn't facially alter any other parts.

24 And because of that, Your Honor, because the -- the
25 parts of the amendment are interrelated and work towards the

1 same common purpose, which is the test, it satisfies that
2 aspect of Grimaud. And because it doesn't facially affect
3 any other provisions, meaning it doesn't delete, it doesn't
4 supplant any language, it satisfies the other part too. So
5 for that reason, Your Honor, they can't show a clear right to
6 relief on the merits.

7 And the same goes for their other two arguments.
8 They didn't get into it. I'll just quickly say that as to
9 the full text, even they admit in their brief that the
10 Supreme Court has allowed a summary to go on the ballot. And
11 they are requesting -- they're arguing a change in the law.
12 So that's as to the full text. And they certainly can't have
13 a clear right to relief if they're arguing for a change in --
14 in the law.

15 And -- and finally, the question and -- does fairly
16 apprise the standard. It's a very high bar to strike down a
17 ballot question. It has to be just woefully inadequate. The
18 standard is that it has to be so lacking and so confusing
19 that voters can't intelligently express their intentions.

20 Here, that's -- that's not the case. The -- the
21 ballot question literally takes direct quotes and covers a
22 lot of -- of the amendment. So, Your Honor, for those
23 reasons, they don't have a clear right to relief on the
24 merits.

25 And finally, Your Honor, I just want to close in

1 saying that it's against the public interest to issue an
2 injunction in case. It encourages petitioners, like the
3 petitioners in this case, to wait until ballots are printed
4 inexplicably when they had notice till -- until July and to
5 potentially disrupt an election when they could have done
6 this before.

7 It hurts the public because 22,000 votes may not be
8 -- may not be counted or certified after they were already
9 cast. That is a true harm. That is a true infringement on
10 the right to vote, after your vote has already been cast,
11 someone taking that away from you, where on the other hand,
12 they can get their relief if they -- if -- if this Court so
13 decides that's appropriate later on without potentially
14 throwing a big wrench and jeopardizing the election.

15 THE COURT: Okay.

16 MS. BOLAND: Thank you, Your Honor.

17 THE COURT: Thank you kindly.

18 Mr. Withers, if you could, you know, just touch on
19 new -- new issues and not repeat, I'd appreciate it.

20 MR. WITHERS: Thank you, Your Honor. I will do so.

21 First, Your Honor, thank you for the privilege of
22 being here today. The -- my clients, the intervenors on
23 behalf of Marsy's Law, are very appreciative of the expedited
24 consideration that was given to the intervention application
25 that ultimately provided the intervenors the opportunity to

1 be here today, and we thank the Court for that, first of all.

2 THE COURT: And the petitioners agreed too.

3 MR. WITHERS: Yes, they did.

4 I'd like to address your question about restitution
5 that was given to my colleague. The Pennsylvania Crime
6 Code's sentencing provisions already require full
7 restitution. I would cite you to 18 Pa.C.S. Section 1106(a).
8 That statute requiring full restitution has been challenged
9 repeatedly and upheld as constitutional.

10 Commonwealth versus Burwell, 58 A.3d 790. That's a
11 Pennsylvania Superior Court case in 2012. And while there
12 have been claims that requiring full restitution could be a
13 violation of a defendant's due process rights, that argument
14 has been rejected. Commonwealth versus Ortiz, 854 A.2d 1280.
15 That's PA Superior Court 2004. Those cites are in our brief
16 at page 28.

17 Your Honor, on the question of irreparable harm,
18 which is the first of the six elements of the injunction that
19 must be shown by petitioners in this case, intervenors
20 respectfully submit that as a matter of law, you cannot find
21 immediate and irreparable harm in this case. And let me tell
22 you why.

23 Mr. Greenblatt's testimony in this matter was
24 nothing but pure speculation on what he thinks might happen
25 and how the courts might rule. The harm that has been

1 identified by Mr. Bizar was the harm to the electorate's
2 rights to vote separately. Okay.

3 If you do not enjoin certification of the ballot
4 question, that claim will not be irreparably lost. There
5 will be no toothpaste that comes out of the tube that cannot
6 be put back in if you don't issue an injunction here.

7 Let's look at Grimaud and Bergdoll. In Grimaud,
8 the declaration sought from the Commonwealth Court was that
9 the amendments to the PA Constitution that had been adopted
10 by the electorate could be rendered invalid.

11 In Bergdoll, the residents of Pennsylvania filed a
12 petition for review with the Commonwealth Court, seeking to
13 void amendments that were passed. This Court does not need
14 to stop the election -- the elective process to ultimately
15 give petitioners relief.

16 If this Court or the Supreme Court, after a full
17 hearing on the merits, a full trial on the merits, or maybe
18 through the summary relief procedures of Chapter 15 of the
19 Rules of Appellate Procedure or review by the Supreme
20 Court -- if it is ultimately determined that there is
21 something infirm in this constitutional amendment and that it
22 violates the single subject rule, then it can be rendered
23 invalid.

24 And for there -- that very reason, there cannot be
25 irreparable harm here as a matter of law. They cannot get

1 past the first prong of the injunction test. There will be
2 no irreparable harm in this case. The denial of an
3 injunction here does not preclude the ultimate relief they
4 seek on the merits after the election.

5 As to the merits on the single subject question, in
6 intervenors' brief, we have done an exhaustive analysis of
7 the 15 clauses in Section (a) of the proposed Article I,
8 Section 9 where we've separated out each one of those clauses
9 and in intricate detail articulate to the Court why they do
10 not facially or patently affect other pages of the
11 Constitution.

12 I would direct you to our brief at pages 16-35 for
13 that analysis. And I know you -- we've had a lot of
14 discussion about the merits, and I'm not going to belabor
15 that point.

16 As to laches, the petitioners have argued that
17 laches is inappropriate here because there's a constitutional
18 question. And they've cited to the case of Taurig (ph) back
19 in the '30s. First of all, Taurig (ph) --

20 THE COURT: Have you come up with any law that has
21 a time limit for challenging these ballot questions?

22 MR. WITHERS: I am not aware of a law that prevents
23 a time limit. But the argument I'm making is no -- is not a
24 statutory argument. It's an equitable argument. They are
25 here seeking preliminary injunctive relief; and, therefore,

1 laches does apply.

2 And I would submit to this Court that the per- --
3 that the denial of a permanent injunction, injunction on the
4 basis of laches would be improper and violate the precedents
5 of this Court. But we are here not on a permanent
6 injunction. We are here on a preliminary injunction. And
7 laches should not -- should be a bar to a case in -- in that
8 matter for all of the reasons articulated by my colleague at
9 the end of her argument.

10 This is not a request that laches bar their request
11 for ultimate relief. But on a preliminary basis, it's
12 absolutely an issue in this case; how long they've known
13 about this matter, how they've sat on their hands and not
14 done anything and come into court and caused us to have a
15 fire drill. That's -- that's truly what this is. And -- and
16 for those reasons also, this should be denied.

17 Our brief fully sets forth the remaining arguments.

18 The one thing that hasn't been touched on and is
19 curiously absent from the petitioners' proposed orders in
20 this Court is any mention of the bond that would be required
21 to -- to support injunction in this matter.

22 Under the Rules of Civil Procedure 1531(b), no
23 injunction can be entered by this Court without a bond that
24 covers all of the expenses undertaken by the Commonwealth if
25 it's later determined that that injunction was improperly

1 entered.

2 The bond that would have to be posted in this
3 matter to support a preliminary injunction would be
4 momentous. And I wanted to point that out. Any injunction
5 entered without a bond, where a bond is not paid, is
6 automatically void ab initio and doesn't even require an
7 appeal.

8 It's an absolute requirement of the preliminary
9 injunction law, incorporated under the petition for review
10 rules by Rule 106, and that is Rule 1531 Civil.

11 And for those reasons and mainly for the reason
12 that as a matter of law, there is no immediate and
13 irreparable harm in this case, intervenors respectfully
14 request that the injunction request for preliminary
15 injunction be denied with prejudice.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 Does somebody want to address the bond issue?

19 MR. BIZAR: We're -- we're checking that, Your
20 Honor. But I'm pretty sure it doesn't apply in a
21 constitutional challenge like this one. So --

22 THE COURT: Because that -- if it does and if you
23 lost later on --

24 MR. BIZAR: We'd have to deal with that.

25 THE COURT: -- it's millions and millions of

1 dollars.

2 MR. BIZAR: Well, bonds are usually not -- yeah,
3 we'd have to -- we could submit on that, Your Honor, if you
4 like. And we'd be happy to do that.

5 So there were pretty mean-spirited -- a couple of
6 mean-spirited remarks, but I want to just come back to one
7 point. If laches were a bar to a preliminary injunction in a
8 constitutional challenge, then --

9 THE COURT: You know, I --

10 MR. BIZAR: -- I would think that the respondents
11 would have a case for that. But the Tausig case says it's
12 not.

13 THE COURT: Right.

14 MR. BIZAR: And that --

15 THE COURT: I don't think --

16 MR. BIZAR: Okay.

17 THE COURT: -- we have to address that.

18 MR. BIZAR: Fine.

19 THE COURT: I think both sides have addressed that.

20 MR. BIZAR: I want to come back to the -- the issue
21 of enjoining certification. We cited a -- a case, Westerfelt
22 (ph), which is from Kentucky. It's a Kentucky Supreme Court
23 case. We cited that case in our papers for the proposition
24 that the Secretary's ballot question did not adequately
25 apprise the voters of the issue.

1 THE COURT: By the way, the Supreme Court was
2 looking to other jurisdictions for guidance. Usually it's
3 not -- you know, because there's so little law on this --

4 MR. BIZAR: Right.

5 THE COURT: -- that they did look --

6 MR. BIZAR: Right.

7 THE COURT: So -- so I forgot to ask this question.
8 You -- you just said that it's caused -- wreaked havoc and
9 have been problems in other states. What states and what's
10 happened?

11 MR. BIZAR: So they're in our -- the citations to
12 the articles that report on that are in our primary brief.

13 THE COURT: So one state was \$660,000 in --

14 MR. BIZAR: Yes.

15 THE COURT: All right. Well --

16 MR. BIZAR: We -- we don't know what the record is
17 on the costs that would be imposed on the system. But I
18 would say this: the Crime Victims Act is not a good proxy
19 for what's going to happen if this amendment were to be
20 passed because the Crime Victims Act is not coterminous with
21 the rights that are afforded to victims in the -- in the --
22 Marsy's Law.

23 THE COURT: You're repeating yourself right now.

24 MR. BIZAR: Okay.

25 THE COURT: I think that you folks really need to

1 look at this bond issue.

2 MR. BIZAR: We will. We will.

3 THE COURT: I'm sure Ms. Haw doesn't want to be on
4 the hook for \$4 million or something.

5 MR. BIZAR: No. I understand.

6 THE COURT: Or three million or whatever it is.

7 MR. BIZAR: And I -- I certainly don't either.

8 THE COURT: Yeah.

9 MR. CHRISTY: Your Honor, although I don't have
10 any --

11 MR. BIZAR: Stand.

12 MR. CHRISTY: Oh, pardon me. Thank you.

13 Although I don't have any case to cite at the
14 moment, the ACLU has gotten many injunctions in this court
15 and in other courts in the state without having to post a
16 bond.

17 THE COURT: All right.

18 MR. CHRISTY: And we'll certainly be happy to -- to
19 brief that for you, Your Honor.

20 THE COURT: Please do.

21 MR. BIZAR: We'll brief it immediately, Your Honor.

22 THE COURT: Yes.

23 MR. BIZAR: But I want to go back to this Kentucky
24 case that we cited for another proposition, Westerfelt (ph).

25 THE COURT: Wester- -- yes.

1 MR. BIZAR: In that -- in that case, the Kentucky
2 -- the trial court enjoined certification, the tabulation and
3 certification of the election results, and the Supreme Court
4 ruled that Marsy's Law was unconstitutional.

5 THE COURT: The Supreme Court of Kentucky?

6 MR. BIZAR: Kentucky. So 22,000 votes that --

7 THE COURT: Was that -- was that amendment as
8 complex as this one?

9 MR. BIZAR: Very similar, Your Honor.

10 THE COURT: Very similar?

11 MR. BIZAR: There's a standard template that
12 they're using across the country.

13 Ms. Boland talks about the 22,000 votes. Those
14 22,000 votes, or others, those would only be counted if we --
15 if we were not to prevail, they would be counted. They would
16 only not be counted if we were to prevail. In other words,
17 if we win --

18 THE COURT: I understand.

19 MR. BIZAR: -- they don't get counted. So --

20 THE COURT: Right.

21 MR. BIZAR: If -- if they -- if we prevail, there
22 was no right to vote at all, so there's no
23 disenfranchisement.

24 Pennsylvania voters have no right to vote on a
25 ballot question that's not constitutionally proper. So it

1 doesn't matter that they already voted in that instance.

2 But if they -- if we fail, if we're -- if we're
3 unsuccessful, the votes are there; they'll be counted. No
4 one will lose their vote. The only way there would be
5 disenfranchisement, Your Honor, is if voters who would have
6 voted for separate amendments --

7 THE COURT: Yeah. Now you're just kind of
8 repeating yourself --

9 MR. BIZAR: Okay.

10 THE COURT: -- at this point. You've made those
11 arguments quite clearly to me. Anything new?

12 MR. BIZAR: There was a lot of speculation in what
13 we heard from Ms. Boland. What if the voters stay home
14 because they like some of the amendments from Marsy's Law and
15 not others? That's equally speculation. The point is we
16 just don't know what's going to happen.

17 We know that the ballot question looks like this or
18 the ballot -- the ballots look like this. (Indicating.)
19 This is going to be one of the exhibits. It's the Cumberland
20 County official municipal ballot. And there are many that
21 are similar. This is what will be on the screens in the --
22 in the voting booths. And there -- they'll be part of the
23 record that you have.

24 THE COURT: Speaking of this, how are we going to
25 make a record as to what has been moved into evidence?

1 MR. BIZAR: We'll do that right after we're done
2 with the argument, Your Honor, if that's all right with you.

3 THE COURT: All right.

4 MR. BIZAR: Lots of questions. Not just the ballot
5 question. There are 13 other contested issues on this
6 ballot, and that's true for many of the other counties. So
7 voters -- there's absolutely no showing by Mr. Marks, by
8 anybody that voters will stay home for this point.

9 Now, we -- we heard about the -- the 1967 bulk
10 amendments. I want to talk about that, Your Honor. I
11 haven't really addressed that.

12 The 1967 bulk amendments were part of a process
13 that was leading up to a constitutional convention. So the
14 posture was completely different than the posture here.

15 THE COURT: That's what created this Court.

16 MR. BIZAR: Yes, among other things.

17 THE COURT: Right.

18 MR. BIZAR: And those bulk amendments in 1967 were
19 never challenged. So there was no opinion on it of whether
20 it was proper under Article XI, Section 1 or not. There just
21 wasn't a challenge.

22 The -- for the 1960s issue, those bulk amendments,
23 it's no -- there's no dispute here that the proper test is --
24 the current framework is set forth in Grimaud and Bergdoll.
25 Your Honor acknowledged it. Respondents and we do not

1 disagree about that. We just disagree about how that test
2 works.

3 And we've set that all forth in our papers, but the
4 point is from our perspective, there is not a common
5 objective or a common purpose. These parts are not
6 sufficiently interrelated and connected to -- to achieve
7 that.

8 And that's not a question of colons or the fact
9 that the ballot question has one question mark. It's -- it's
10 looking at the substance of the amendment and applying it to
11 the Constitution which is what the Court is entrusted to do
12 in this process.

13 Bergdoll, PA Prison Society, all those cases had
14 less sweeping changes than the changes we had here. And so
15 the injunctions that were denied in those cases, to the
16 extent they were, it's a different context. And these have
17 to be fact-by-fact decisions -- or case-by-case decisions.
18 There has never been an amendment like this, ever.

19 THE COURT: How about those bulk amendments?

20 MR. BIZAR: Leading to the Constitutional
21 Convention. A completely different situation and not
22 challenged at the time.

23 THE COURT: Okay.

24 MR. BIZAR: We'll address the bond issue right
25 away.

1 THE COURT: Okay.

2 So did you need to respond to anything that was --
3 or we can be done?

4 MS. BOLAND: Just very quickly, Your Honor.

5 THE COURT: Very quickly.

6 MS. BOLAND: I can stand -- stand from the table.

7 THE COURT: Anything that we haven't gone over.

8 MS. BOLAND: Yep. Just the Westerfield Kentucky
9 case that -- that petitioners cited is completely different.
10 It was based upon different language in the Kentucky
11 Constitution. The Kentucky Constitution required that the
12 full amendment be put in the ballot question. That's why it
13 was struck down. Totally different situation.

14 THE COURT: And our -- and Pennsylvania's -- it's
15 -- the law is interesting on that. But that was the reason?

16 MS. BOLAND: That was the reason, Your Honor.

17 THE COURT: Okay.

18 MR. BIZAR: Your Honor, it's a completely incorrect
19 statement. There's only two words' difference between the
20 Kentucky Constitution and the Pennsylvania Constitution.
21 It's almost identical.

22 THE COURT: Well, I will definitely look at those
23 much more closely.

24 Counsel, thank you for your great arguments, your
25 great advocacy today. I understand how important this is to

1 everybody, so I will do my best to get an order out in the
2 next couple days. But I won't necessarily get an opinion out
3 until maybe a week or so because there's a lot of issues for
4 me to think about and -- and some additional issues that I
5 need to research after today. But I would appreciate the
6 bond quickly.

7 MR. BIZAR: We'll have that in very quickly, Your
8 Honor.

9 THE COURT: So thank you all very much. I hope the
10 gallery enjoyed the argument. And it was -- it was a
11 privilege having to hear this case as well.

12 MR. BIZAR: Thank you for your courtesy.

13 THE COURT: Okay.

14 THE COURT CRIER: Commonwealth Court is now
15 adjourned.

16 MR. WITHERS: Your Honor, if I may, I'm sorry --
17 sorry to interrupt, but we still have not had a discussion on
18 the record regarding the evidence.

19 THE COURT: Right. Can -- can -- I'll just wait
20 back there. Can you just agree on everything or --

21 MR. WITHERS: I don't believe we can just agree on
22 everything, Your Honor. I think we --

23 THE COURT: I mean, you gave --

24 MR. WITHERS: I think the record needs to reflect
25 what the record --

1 THE COURT: Okay.

2 MR. WITHERS: The record made today needs to
3 reflect --

4 THE COURT: I'll sit here while --

5 MR. WITHERS: -- what the evidentiary record is.

6 THE COURT: -- while you go through the exhibits
7 and make a record. And then you'll go through the exhibits,
8 and we'll be sure that the record is complete.

9 MR. WITHERS: Thank you, Your Honor.

10 THE COURT: For everyone here, it's going to be
11 very dull from this point. So -- but you're welcome to stay,
12 of course.

13 MR. BIZAR: So, Your Honor, petitioner offers
14 Plaintiffs' Exhibit -- or Petitioners' Exhibit -- sorry; I
15 slipped there -- P-1 through P-10.

16 THE COURT: Thank you for reminding me, counsel, by
17 the way.

18 MR. WITHERS: Yes.

19 THE COURT: Mr. Wisler, is it?

20 MR. WITHERS: Withers.

21 THE COURT: Thank you for reminding me.

22 MR. WITHERS: Thank you, Your Honor.

23 THE COURT: Okay. All right. So let's go through
24 the exhibits.

25 MR. BIZAR: P-1.

1 MS. BOLAND: No objection.

2 MR. BIZAR: You're good with all --

3 MS. BOLAND: I --

4 MR. BIZAR: -- all ten?

5 MS. BOLAND: We don't --

6 MR. BIZAR: Okay. P-1 --

7 MS. BOLAND: We don't object.

8 MR. BIZAR: -- through P-10.

9 MS. BOLAND: Yes.

10 THE COURT: P-1 through P-10? All right. You're
11 not going to name each one then. All right.

12 MR. BIZAR: I can.

13 THE COURT: No, you don't have to.

14 MR. BIZAR: There -- there's a table, Your Honor,
15 in the book. So you'll have them.

16 THE COURT: And these were submitted as part of
17 your petition and your brief and your injunction?

18 MR. BIZAR: And today.

19 THE COURT: All right. So it's all part of the
20 record?

21 MR. BIZAR: Yes.

22 THE COURT: All right.

23 MS. BOLAND: Your Honor, we would like -- we have
24 22 exhibits. We agree we stipulate as to all of them except
25 for statements as to the ACLU. And Mr. Withers can take up

1 that argument.

2 THE COURT: Statement as to the ACLU?

3 MS. BOLAND: Mr. Withers, did you want to cover
4 that point?

5 MR. WITHERS: Your Honor, in the answer of the
6 intervenors to the injunction for -- the petition -- the
7 application for a preliminary injunction, we cited to four
8 press releases and memorandums type documents. One of them
9 was the October 10th I believe statement of the League of
10 Women Voters which is Exhibit --

11 THE COURT: Would you have any objections to the
12 press releases and whatnot not being included because, I
13 mean, I just -- they're not really evidence necessarily.

14 MR. WITHERS: They go to laches, Your Honor, and
15 knowledge.

16 MR. BIZAR: So let me just for the record -- and
17 you can overrule this if you like, Your Honor; there are four
18 items. Three involve the ACLU. One involves the League of
19 Women Voters. League of Women Voters item is Exhibit G, or
20 21.

21 THE COURT: And that's the one that you want to
22 be --

23 MR. BIZAR: That's --

24 MR. WITHERS: That's the one that there -- I do not
25 believe there's a dispute --

1 MR. BIZAR: That's correct.

2 THE COURT: Okay.

3 MR. BIZAR: That's the press release by the League
4 of Women Voters.

5 THE COURT: All right.

6 MR. BIZAR: Let's be very clear that the League of
7 Women Voters is the petitioner here, not the ACLU. The ACLU
8 is counsel. So we don't have an objection to the
9 petitioner's statement about this lawsuit which was filed the
10 day that the lawsuit -- or submitted the day -- posted the
11 day that the lawsuit was filed.

12 The other three documents are documents by the ACLU
13 that relate to the legislative process by which Marsy's Law,
14 or the Crime Victims' Rights Amendment, was adopted. The
15 Exhibit E, or Exhibit 19, in petitioners' -- sorry; in
16 respondent's -- respondent's volume is an ACLU statement from
17 April 8th, '19; 2019.

18 Exhibit F, or Number 20, is an ACLU statement from
19 June 20th, 2019. And Exhibit H is a memo from the ACLU to
20 the PA House, Pennsylvania House, on June 12th, 2019.

21 With respect to that which is tab 22 in the
22 respondent's volume of exhibits, there is no laches argument
23 that could even possibly apply to that statement because that
24 statement was submitted to the House before the bill, before
25 the amendment went through its second vote. It has to go

1 through two votes at the Legislature before it becomes a
2 joint resolution that can be enacted. So it's just a
3 lobbying piece by the ACLU which is not a petitioner.

4 THE COURT: So then you have --

5 MR. BIZAR: So there's no laches.

6 THE COURT: -- no objections to it being excluded
7 from evidence?

8 MR. BIZAR: I -- I think it should be excluded from
9 evidence.

10 THE COURT: Okay. Counsel?

11 MR. BIZAR: They're offering it.

12 THE COURT: All right. It's excluded. You're --
13 you're --

14 MR. WITHERS: I'm not asking it be excluded, Your
15 Honor. I'm asking it be admitted. They are opposing.

16 THE COURT: Oh, you're asking it to be admitted.

17 MR. WITHERS: Yes. Those documents --

18 THE COURT: I'm sorry.

19 MR. WITHERS: It -- it's a little confusing because
20 of the four exhibits, Your Honor. And I apologize if I did
21 not fully explain myself, and that's probably why you're
22 confused.

23 The position of the intervenors is that the ACLU
24 and the League of Women Voters, who have been working
25 together on this case -- and we don't know how long because

1 Ms. Haw and the League of Women Voters representative didn't
2 testify today; but those --

3 THE COURT: Oh, that's why you want it for laches.
4 I see.

5 MR. WITHERS: And -- and it -- it goes to --

6 THE COURT: Laches.

7 MR. WITHERS: It goes to notice and knowledge.
8 We're not asking it for the truth of the matters asserted in
9 those documents. We're -- we're asking that it be noticed by
10 -- by this Court for their knowledge that this process was
11 going on and their failure to act. And that's the reason
12 we're seeking to have it admitted.

13 THE COURT: I'll allow it be admitted and give it
14 the consideration it deserves. Okay?

15 MR. BIZAR: Okay, Your Honor. But would that apply
16 to all three then, to all three --

17 THE COURT: Yes. Yes.

18 MR. BIZAR: Okay. Fine.

19 THE COURT: I mean, I'll look at it, and I'll apply
20 it to the whole theory of --

21 MR. BIZAR: Right.

22 THE COURT: All right. So --

23 MR. WITHERS: Your Honor --

24 THE COURT: -- folks --

25 MR. WITHERS: -- finally, I have one more thing,

1 and that will be it.

2 THE COURT: Oh, do you?

3 MR. WITHERS: Yes. Appended to the brief of the
4 petitioners are several newspaper articles. They haven't
5 sought to admit those newspaper articles into evidence here.
6 All of them are -- are classic hearsay. They go to the --

7 THE COURT: News articles are not -- don't worry;
8 they're not evidence.

9 MR. WITHERS: They're not evidence. And so -- but
10 they are part of the brief. They've been attached to the
11 brief of the petitioners. And I would just like to make sure
12 that we note for the record that they will not be considered
13 as evidence of the harms that could occur in this case.

14 THE COURT: Absolutely not.

15 MR. WITHERS: Thank you, Your Honor.

16 THE COURT: I mean absolutely what you're saying.

17 MR. WITHERS: I have nothing further, Your Honor.

18 THE COURT: Okay. All right. Thank you,
19 everybody.

20 MS. BOLAND: Thank you, Your Honor.

21 MR. BIZAR: Thank you, Your Honor.

22 THE COURT CRIER: Commonwealth Court is now
23 adjourned.

24 (Whereupon, the proceedings adjourned at
25 11:31 a.m.)

1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 on the proceedings of the above cause and that this copy is a
4 correct transcript of the same.

5
6 DATED: October 29, 2019

7 

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9 Rebecca Toner, RPR

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22 apply to any reproduction of the same by any means unless
23 under the direct control and/or supervision of the certifying
24 reporter.)
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