

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

TOM WOLF, Governor of the	:	
Commonwealth of Pennsylvania, and	:	
LEIGH M. CHAPMAN, Acting	:	
Secretary of the Commonwealth of	:	
Pennsylvania,	:	
	:	
<i>Petitioners,</i>	:	
	:	
v.	:	Docket No. 73 MM 2022
	:	
GENERAL ASSEMBLY OF THE	:	
COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
<i>Respondent.</i>	:	

**RESPONDENT’S ANSWER TO PETITIONERS’ APPLICATION FOR
LEAVE TO FILE REPLY TO RESPONDENT’S ANSWER TO
APPLICATION FOR INVOCATION OF KING’S BENCH POWER**

Petitioners’ felt need to have the last word confirms the inoperative state of its King’s Bench petition. Petitioners’ proposed reply—attached to their Application for Leave as *Exhibit A*—declares (at 1) that King’s Bench should be invoked because this matter is “of undeniable immediate statewide importance.” But litigant declarations are not legal standards. What is more, Petitioners’ proposed reply prudently declines to acknowledge *Sprague v. Cortes*, 145 A.3d 1136, 1154 (Pa. 2016), which states that “Article XI, Section 1 . . . provides that *discrete amendments must be submitted individually to the voters*, a requirement ensur[ing] that only specific and narrow *ballot questions* will be presented to the people for their

approval.” (emphasis added).¹ Petitioners’ proposed reply likewise declines to contend with *Bergdoll*’s explicit recognition that Article XI, section 1’s “separate vote” requirement applies only to the electorate—not to the General Assembly.² *See Bergdoll v. Kane*, 731 A.2d 1261, 1270 (Pa. 1999) (“We agree . . . that the **ballot question** encompassed amendments to both Article I, § 9 and Article 5, § 10(c), but did not permit the **electorate to vote separately** upon each of the amendments in violation of Article 11, § 1.”) (emphasis added). Nor does Petitioners’ proposed reply deny *Pennsylvania Prison Society*’s central holding “that the **ballot question** [as opposed to the proposed constitutional amendment] violated the separate vote requirement of Article XI, Section 1.” *Pa. Prison Soc’y v. Commonwealth*, 776 A.2d 971, 981 (Pa. 2001). Nor does Petitioners’ proposed reply even try to explain away the wall of precedent in *Mellow*,³ *Kremer*,⁴ *Common Cause*,⁵ *Sweeny*,⁶ *Markham*,⁷ *Blackwell*,⁸ and *Grimaud*,⁹ holding that the constitution grants the Legislative branch

¹ *See* Resp’t Answer 11, 29, 31.

² *See* Resp’t Answer 8–12, 32.

³ *Mellow v. Pizzigrilli*, 800 A.2d 350, 359 (Pa. Cmwlth. 2002) (en banc); *see also* Resp’t Answer 9, 19, 23, 25.

⁴ *Kremer v. Grant*, 606 A.2d 433 (Pa. 1992); *see also* Resp’t Answer 9, 14, 29, 30.

⁵ *Common Cause v. City of Phila.*, 684 A.2d 1068, 1071 (Pa. 1998); *see also* Resp’t Answer 22, 24.

⁶ *Sweeney v. Tucker*, 375 A.2d 698, 705 (Pa. 1977); *see also* Resp’t Answer 22, 23.

⁷ *Markham v. Wolf*, 190 A.3d 1175, 1177 (Pa. 2018); *see also* Resp’t Answer 22.

⁸ *Blackwell v. City of Phila.*, 684 A.2d 1068, 1071 (Pa. 1996); *see also* Resp’t Answer 22–23.

⁹ *Grimaud v. Commonwealth*, 865 A.2d 835, 847 (Pa. 2005); *see also* Resp’t Answer 23, 24, 29.

exclusive authority over the constitutional amendment process.¹⁰ None of this is by chance. Petitioners’ proposed reply refuses to grapple with these difficulties because it cannot.

As for Petitioners’ lack of standing, their proposed reply (at 10) gamely proclaims that they have standing because they take an oath to “‘support, obey and defend’” the Pennsylvania Constitution. But no court has ever found this to be a basis for standing. And in any event, Members of the General Assembly take the same oath—as do legions of other public officials. To top it off, Petitioners’ proposed reply (at 11–12) goes in search of cases to shore up its lack of standing. No matter. Each case is off point because each case deals with enacted law. But no law has been enacted here.

All in all, Petitioners’ proposed reply leaves Respondent’s Answer unscathed. And so Respondent does not oppose Petitioners’ application for leave to reply.

¹⁰ Petitioners’ proposed reply (at 2, n.1) attempts to meaningfully distinguish *Costa v. Cortes*, 143 A.3d 430 (Pa. Cmwlth. 2016), *affd* 145 A.3d 721 (Pa. 2016). But *Costa*’s different factual circumstances do not blunt its purpose, effect, or application here. In particular, that:

Article XI, section 1 of the Pennsylvania Constitution vests within the General Assembly the *exclusive* authority to determine the time and manner amendments are to be submitted to qualified electors for approval. Article XI, section 1 of the Pennsylvania Constitution provides the complete and detailed process for the amendment of that document.

Id. at 426. (emphasis in original) (internal quotations and citations omitted).

Respectfully submitted,

POST & SCHELL PC

Dated: Aug. 29, 2022

BY: /s/ Erik R. Anderson
Erik R. Anderson (203007)
James J. Kutz (21589)
Erin R. Kawa (308302)
Sean C. Campbell (321246)
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101
eanderson@postschell.com
jkutz@postschell.com
ekawa@postschell.com
scampbell@postschell.com

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

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

Dated: Aug. 29, 2022

/s/Erik R. Anderson
Erik R. Anderson

CERTIFICATE OF SERVICE

I certify that I served the foregoing document on the individuals and in the manner reflected below, which service satisfies the requirements of Pa. R.A.P. 121 via PACFile:

Gregory G. Schwab, General Counsel
Governor's Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17126-0333
Counsel for Petitioners

Daniel T. Brier, Esq.
Donna A. Walsh, Esq.
John B. Dempsey, Esq.
Richard L. Armezzani, Esq.
Meyers, Brier & Kelly, LLP
425 Spruce St., Suite 200
Scranton, PA 18503
Counsel for Petitioners

Jessica Schidlow, Esquire
145 Timothy Circle
Wayne, PA 19087
Amicus Curiae CHILD USA

John R. Bielski, Esq.
Bruce M. Ludwig, Esquire
Stuart W. Davidson, Esq.
Amy L. Rosenberger, Esq.
Deborah R. Willig, Esq.
Alaine S. Williams, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

Irwin W. Aronson, Esq.
Willig, Williams & Davidson
212 Locust Street, Suite 601
Harrisburg, PA 17101

*Amicus Curiae PA AFL-CIO, AFSCME
Council 13, SEIU Pa. Joint Council,
UFCW Local 1776 Keystone*

Matthew H. Haverstick, Esq.
Shohin H. Vance, Esq.
Joshua J. Voss, Esq.
Kleinbard LLC
Three Logan Square, 5th Floor
17171 Arch Street
Philadelphia, PA 19103
*Amicus Curiae Ward and PA
Senate Republican Caucus*

Tara L. Hazelwood, Esq.
Matthew S. Salkowski, Esq.
Lam Dang Truong, Esq.
PA House of Representatives
620 Main Capitol Building
Harrisburg, PA 17120
Amicus Curiae McClinton

John P. Lavelle, Jr., Esq.
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103
*Possible Intervenor League of Women
Voters of PA, Sajda Adam and Simone
Roberts*

Marci Hamilton
3508 Market Street, Suite 202
Philadelphia, PA 19104

Alison M. Kilmartin, Esq.
21283 Victorias Cross Terrace
Ashburn, VA 20147
*Amicus Curiae Pro-Life Union of
Greater Philadelphia*

Janice L. Martino-Gottshall, Esq.
Randall L. Wenger, Esq.
Independence Law Center
23 North Front Street
Harrisburg, PA 17101
*Amicus Curiae Pennsylvania Family
Institute*

John J. Cunningham, IV, Esq.
Joel L. Frank, Esq.
Scot R. Withers, Esq.
Lamb McErlane
24 East Market Street
P.O. Box 565
West Chester, PA 19380
*Amicus Curiae Benninghoff and PA
House Republican Caucus*

Joseph R. Podraza, Esq.
Lamb McErlane
One South Broad Street, Suite 1500
Philadelphia, PA 19107
*Amicus Curiae Benninghoff and PA
House Republican Caucus*

Dated: Aug. 29, 2022

/s/Erik R. Anderson
Erik R. Anderson