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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae, the Republican Caucus of the Pennsylvania House of Representatives (House Republican Caucus), files this brief in support of the position of Appellant Kathy Boockvar, the Acting Secretary of the Commonwealth.¹

While one of the questions on appeal is focused on whether the Commonwealth Court erred in granting the League of Women Voters' application, the underlying dispute involves the constitutionality of the ballot question concerning J.R. 2019-1 (Marsy's Law), which would provide for the rights of crime victims.

The language of this proposed amendment passed the General Assembly for the first time on June 21, 2018 (Senate Bill 1011, Printer's Number 1824). In compliance with Article XI, § 1 of the Pennsylvania Constitution, it passed the General Assembly for the second time on June 19, 2019 (House Bill 276, Printer's Number 284). The interest of the House Republican Caucus in this case arises from the role of the General Assembly as the conduit through which the People of Pennsylvania amend their Constitution. *Amicus* has a significant interest in

¹ No one other than *Amicus Curiae*, its members, or its counsel paid in whole or in part for the preparation of this brief or authored in whole or in part this brief.

ensuring that the perspectives of the General Assembly on these constitutional questions are brought to bear in this Court's analysis.

SUMMARY OF ARGUMENT

The process of educating the People of Pennsylvania regarding a proposed constitutional change is a holistic one. The ballot question is but one component of a larger, and longer, effort to provide information. From the legislative process used by the General Assembly in the adoption of the proposed constitutional amendment to the multiple newspaper publications mandated by Article XI, § 1, and including both the Attorney General's Plain English Statement and the Secretary of the Commonwealth's ballot question, the people of Pennsylvania have been clearly informed of the proposed constitutional change presented by J.R. 2019-1.

The ballot question, concerning crime victims' rights, easily passes the "single subject" test necessary to present it as a single question. Further, the question fairly, accurately and clearly presents the issue to be decided.

This Court should grant the relief requested by Appellant Kathy Boockvar, the Acting Secretary of the Commonwealth.

ARGUMENT

Rather than address each element contemplated during consideration of a request for a preliminary injunction, this *Amicus* will focus on: (1) the broader

constitutional and statutory processes which ensure that the People of Pennsylvania understand the impact of this proposed constitutional change, and (2) the sufficiency of the ballot question surrounding J.R. 2019-1 (Marsy's Law).

I. The constitutional and statutory requirements attendant to submission of J.R. 2019-1 to the electorate have provided the People of Pennsylvania with clear, comprehensive information concerning the proposed amendment.

In reference to the ballot question, the Commonwealth Court found arguable merit in the Petitioners' claim that the "Proposed Amendment does not 'fairly, accurately, and clearly' apprise the electorate of the question upon which it is asked to vote." League of Women Voters of Pa. v. Boockvar, 578 M.D. 2019, slip. op. at 34 (Pa. Commw. Ct. Oct. 30, 2019). This tentative conclusion, however, rests on a myopic view of the process of voter education attendant to any proposed constitutional change.

A. Article XI, § 1.

The process of amending the Pennsylvania Constitution, found in Article XI, § 1, provides the Commonwealth's voters with information concerning a potential constitutional change on numerous occasions and by numerous means. This requirement is both express, pursuant to the publication mandate imposed upon the Secretary of the Commonwealth by Article XI, § 1, as well as inherent in the

simulacrum of the standard legislative process utilized by the General Assembly in adopting a proposed change.²

“Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon.” Pa. Const. art. XI, § 1. A Joint Resolution proposing a constitutional amendment providing for the rights of victims of crime was introduced on January 2, 2018. See Legislative History for Senate Bill 1011 at Attachment A. As explained by the prime sponsor:

I introduced Senate Bill 1011 to begin the process of amending the Constitution to grant victims inherent rights here in Pennsylvania. Marsy’s Law will insure [*sic*] that victims have the ability to be an integral part of the criminal justice system It is important to note that Marsy’s Law will not infringe in any way upon the rights that currently exist for the accused.

Pa. Legislative Journal, Session of 2018, 202nd of the General Assembly, No. 13, at 219 (Mar. 21, 2018) (remarks of Sen. Reschenthaler).

The Joint Resolution was referred to and reported from committee, received three days’ consideration in both legislative chambers, and followed the same procedure utilized for changes to the statutory laws of the Commonwealth. While focused specifically on an analysis of Article III, Section 4, this Court recently

² The difference between the General Assembly’s process for adoption of legislation and adoption of the constitutional change, in this instance, being the lack of required gubernatorial consent in the constitutional amendment process.

outlined the ultimate purpose of the Pennsylvania Constitution’s numerous procedural requirements for legislation:

[E]nsuring an open and deliberative legislative process in which all legislators are given a full opportunity to scrutinize a bill and offer changes which they may deem necessary, and to also make certain that, during this process, every member of the public has the opportunity to make his or her views known to their representatives and senators on all provisions of a bill before its final passage.

Washington v. Dep't of Pub. Welfare of Commonwealth, 188 A.3d 1135, 1148 (Pa. 2018). At each step of the way, the People had the opportunity to be informed and provide input concerning Senate Bill 1011. The language of this proposed amendment unanimously passed the General Assembly for the first time on June 21, 2018 (Senate Bill 1011, Printer’s Number 1824). See Attachment A.

After initial adoption by the General Assembly, a proposed amendment is entered into the legislative journals and the Secretary of the Commonwealth causes it to “be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published.” Pa. Const. art. XI, § 1. “The reason for the publication of the initial approval of the General Assembly of the proposed Constitutional amendment three months before the general election is to permit the electorate abundant opportunity to be advised of proposed amendments and to let the public ascertain the attitude of the candidates for election to the General Assembly ‘next afterwards chosen’.” Lincoln

Party by Robinson v. Gen. Assembly, 682 A.2d 1326, 1332 n. 6 (Pa. Commw. Ct. 1996) (*citations, internal quotation marks omitted*).

“[I]n the General Assembly next afterwards chosen,”³ House Bill 276 was introduced on February 1, 2019. See Legislative History for House Bill 276 at Attachment B. House Bill 276 was, similar to Senate Bill 1011 of the prior legislative term, referred to and reported from committee as well as considered on three separate days. Rep. Delozier, the prime sponsor of House Bill 276, offered the following:

I understand that we have had a lot of debate. We debated this last session. We made modifications. We made amendments. That is the process. We now move this bill, Marsy’s Law, one step closer to the voters to let them decide as to whether or not the voice of our victims should be heard in our Constitution.

Pa. Legislative Journal, Session of 2019, 203d of the General Assembly, No. 22, at 455 (Apr. 8, 2019) (remarks of Rep. Delozier).

In compliance with Article XI, § 1 of the Pennsylvania Constitution, this proposed constitutional change known as “Marsy’s Law” passed the General Assembly with an overwhelming bipartisan majority⁴ for the second time on June 19, 2019 (House Bill 276, Printer’s Number 284).

³ Pa. Const. art. XI, § 1.

⁴ The final vote in the Pennsylvania House of Representatives was 190-8. The final vote in the Pennsylvania Senate was unanimous. See Legislative History for House Bill 276 at Attachment B.

The Secretary of the Commonwealth caused “the same again to be published in the manner aforesaid.”⁵

As a result of Article XI, § 1, the voters of Pennsylvania have already received significant information, both directly (by publication) and indirectly (through the legislative process), concerning “Marsy’s Law.” That is not, however, the sum total of the information provided.

B. Plain English Statement and Ballot Question.

“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.” Costa v. Cortes, 143 A.3d 430, 436 (Pa. Commw. Ct. 2016) (*emphasis in original*).

Pursuant to this authority, the General Assembly has enacted additional measures which ensure that voters are sufficiently informed to cast a knowledgeable ballot regarding any change to Pennsylvania’s Constitution. The first of those is the Attorney General’s “Plain English Statement.”

Section 201.1 of the Pennsylvania Election Code provides, in relevant part, as follows:

Whenever a proposed constitutional amendment or other State-wide ballot question shall be submitted to the electors of the Commonwealth in referendum, the Attorney General shall prepare a statement in plain English

⁵ Pa. Const. art. XI, § 1.

which indicates the purpose, limitations and effects of the ballot question on the people of the Commonwealth. The Secretary of the Commonwealth shall include such statement in his publication of a proposed constitutional amendment as required by Article XI of the Constitution of Pennsylvania. The Secretary of the Commonwealth shall certify such statement to the county boards of elections who shall publish such statement as a part of the notice of elections required by section 1201 or any other provision of this act. The county board of elections shall also require that at least three copies of such statement be posted in or about the voting room outside the enclosed space with the specimen ballots and other instructions and notices of penalties.

25 P.S. § 2621.1.

The Plain English Statement should accurately describe the “principle purpose, limitations and effect of the amendment.” Bergdoll v. Com., 858 A.2d 185, 196 (Pa. Commw. Ct. 2004), aff’d, 874 A.2d 1148 (Pa. 2005). It need not, however, be a “treatise.” Grimaud v. Com., 865 A.2d 835, 843 (Pa. 2005).

In the case of J.R. 2019-1, the Pennsylvania Attorney General’s Plain English Statement provides a comprehensive explanation to inform the Commonwealth’s voters about the proposed change. It exists, along with the ballot question, at each polling place in order to ensure that the electorate understands the import of Marsy’s Law.⁶

⁶ For the vast majority of Pennsylvania’s voters, these resources are also but a moment away on their smart phones. Pennsylvania Department of State, *Proposed Constitutional Amendment: Crime Victim Rights (Marsy’s Law)*, <https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/Joint-Resolution-2019-1.aspx> (last visited Nov. 1, 2019).

Beyond the Plain English Statement, the ballot question itself serves to educate voters about the potential change to their governmental charter. As the Commonwealth Court explained in Bergdoll v. Commonwealth, pursuant to the authority granted by Article XI, § 1:

[T]he General Assembly has directed, in the relevant part of Section 605 of the Election Code, that “proposed constitutional amendments shall be printed on the ballots or ballot labels in brief form to be determined by the Secretary of the Commonwealth with the approval of the Attorney General.” 25 P.S. § 2755. In addition, Section 1110(b) of the Code specifies the length of the question and directs its preparation by the Secretary. It states, in relevant part, that “[e]ach question to be voted on shall appear on the ballot labels, in brief form, of not more than seventy-five words, to be determined by the Secretary of the Commonwealth in the case of constitutional amendments or other questions to be voted on by the electors of the State at large....” Section 1110(b), *as amended*, 25 P.S. § 3010(b). In light of the Constitution's grant of authority to prescribe the manner in which the amendments shall be presented to the electorate, the General Assembly quite properly directed in the Election Code that proposed amendments to the Constitution shall be presented as ballot questions composed by the Secretary.

Bergdoll v. Com., 858 A.2d at 194–95; See also 25 P.S. § 2621(c), 25 P.S. § 2944.

In sum, Pennsylvania’s electorate have been informed of the proposed constitutional changes encompassed in Marsy’s Law on numerous occasions and by numerous means, including:

- proposal and adoption of two joint resolutions by the General Assembly;
- multiple publications in newspapers throughout the Commonwealth;

- the promulgation of the Attorney General’s Plain English Statement;
and
- finally, the Secretary’s ballot question.

These steps do not exist in a vacuum. They go well beyond the “ballot question, the plain English statement ... [and] the Proposed Amendment” (League, slip. op. at 35) in informing the electorate. In fact, the components utilized in the adoption and publication of J.R. 2019-1, both constitutional and statutory, provide for a holistic approach which ensures voters are sufficiently educated to cast a knowledgeable ballot regarding changes to the foundational document of the Commonwealth’s government.

II. The J.R. 2019-1 ballot question is constitutionally sound.

A. It is properly presented as a single question.

The appropriate test to determine whether a constitutional change could be presented to the People of Pennsylvania in a single question was announced in Grimaud v. Commonwealth. In Grimaud, the court adopted a “subject matter test for determining whether a ballot question violates Article XI, § 1.” 865 A.2d at 841. The Court focused on whether the “proposed changes were related to a single subject.” Id.

In this instance, both the proposed amendment and its ballot question simply encompass the subject of crime victims’ rights. All the changes revolve around

that central, and narrow, theme. The changes related to crime victims’ rights are “sufficiently interrelated ... to justify inclusion in a single question.” Id.; See also Grimaud v. Com., 806 A.2d 923, 929-30 (Pa. Commw. Ct. 2002), aff’d, 865 A.2d 835 (Pa. 2005) (discussing proposed constitutional changes as constituting a “single amendment” if they “serve one core purpose” and effectuate one substantive change, which in that case was “to reinforce public safety by making it more difficult for seriously dangerous criminals to obtain bail.”).

“[T]he provisions of Article III [of the Pennsylvania Constitution] relating to the enactment of legislation are inapplicable” to a constitutional amendment. Costa v. Cortes, 143 A.3d at 436 (*internal citations omitted*). Despite this distinction, however, a short discussion of some recent determinations under Article III, § 3’s “single subject” rule⁷ may prove instructive. In Robinson Twp. v. Commonwealth, this Court affirmed the Commonwealth Court’s conclusion that “regulation of the oil and gas industry” was a single subject. 147 A.3d 536, 568–69 (Pa. 2016). This Court further recognized that “multiple topics” do not violate the single subject rule “provided that those topics are ‘germane’ to a single subject.” Id. at 568 (*citations omitted*). In Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com. (PAGE), the regulation of gaming was determined

⁷ “No bill shall be passed containing more than one subject ...” Pa. Const. art. III, § 3.

to be a single subject. 877 A.2d 383, 396 (Pa. 2005).⁸ The subject of crime victims' rights would pass this "single subject" test with ease.

The Commonwealth Court seemingly adopted the argument of Appellees that the ballot question amends multiple sections of the Constitution's existing text. League, slip op. at 30-33. Even a cursory review of the language of the proposed amendment puts this concern to rest. The proposed amendment, and its ballot question, address the adoption of an entirely new section of Article I of the Pennsylvania Constitution (adding Section 9.1 relating to rights of victims of crime). The relevant inquiry is not whether an amendment "might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution.... The question is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect." Grimaud v. Com., 865 A.2d at 842 (*emphasis in original*). J.R. 2019-1 does not "facially affect" other parts of the Pennsylvania Constitution and, therefore, both the proposed amendment and its ballot question pass constitutional muster.

B. The question is fair, accurate and clear.

⁸ Certain provisions related to a Volunteer Fire Company Grant Program and a Forest Reserves Municipal Financial Relief Law which exceeded the single-subject rule were determined to be severable from the Act. PAGE, 877 A.2d at 403.

A ballot question must “fairly, accurately and clearly apprise the voter of the question... to be voted on.” Stander v. Kelley, 250 A.2d 474, 480 (Pa. 1969).

The ballot question crafted for J.R. 2019-1 by the Secretary asks the following:

Shall the Pennsylvania Constitution be amended to grant certain rights to crime victims, including to be treated with fairness, respect and dignity; considering their safety in bail proceedings; timely notice and opportunity to take part in public proceedings; reasonable protection from the accused; right to refuse discovery requests made by the accused; restitution and return of property; proceedings free from delay; and to be informed of these rights, so they can enforce them?⁹

In Sprague v. Cortes, Justices Baer, Donohue and Mundy explained that:

[J]udicial interference with a question posed to voters is warranted only where the form of the ballot is so lacking in conformity with the law and so confusing that the voters cannot intelligently express their intentions.... Requiring such a high burden to invoke judicial interference with the Secretary's phrasing of a proposed constitutional amendment ballot question is consistent with the doctrine of separation of powers, which dictates that each branch of government give due deference to the actions and authority of its sister branches.

45 A.3d 1136, 1141 (Pa. 2016) (*citations, internal quotation marks omitted*).¹⁰

The deferential review advocated by the Justices in Sprague is an appropriate recognition of the interrelationship between the branches of government. Absent such a standard, however, the text of the ballot question is still sufficient to adequately instruct voters. If a voter somehow managed to

⁹ See supra note 6.

¹⁰ In Sprague, this Court was evenly divided regarding which parties were entitled to summary relief. As a result, the status quo was maintained.

avoid all the information about the proposed amendment which flows from the constitutional and statutory components of the amendment process (discussed above) – and the ballot question was the only information provided to the voter – it would fairly, accurately, and clearly apprise the voter of the issue to be decided.

CONCLUSION

Appellees, in their filings below, were correct on the limited question of where the ultimate authority to amend the Pennsylvania Constitution resides. This power is reserved for the People of Pennsylvania, speaking both through their elected representatives in the General Assembly and directly at the ballot box. “All amendments since 1790, whether proposed by convention or by the legislature, were submitted to the electorate and approved by a majority of those voting on them before they became effective.” Robert E. Woodside, *Pennsylvania Constitutional Law* 9 (Murrelle Printing Company, Inc. 1985). In a late-to-the-game entreaty heavier on policy arguments than constitutional principles, Appellees seek to prevent the People from exercising that fundamental authority by raising unconvincing arguments about the ballot question for Marsy’s Law.

“As the founder of our Commonwealth once recognized, ‘to delay Justice is Injustice.’ William Penn, *Some Fruits of Solitude* 86 (Headley Bros. 1905) (1693).” McGrath v. Pennsylvania Bd. of Prob. & Parole, 712 C.D. 2018, 2019 WL 5078259, at *5, n. 14 (Pa. Commw. Ct. Oct. 10, 2019); Manigo v.

Pennsylvania Bd. of Prob. & Parole, 1125 C.D. 2018, 2019 WL 2605839, at *5, n. 6 (Pa. Commw. Ct. June 26, 2019). In modern parlance, this translates as justice delayed is justice denied. The victims of crime have waited patiently for 22 months¹¹ as the People of the Commonwealth, through the General Assembly, have twice adopted a proposed amendment to constitutionally recognize their rights. They should not have to wait any longer for a final determination.

For the foregoing reasons, this Court should grant the relief requested by Appellant Kathy Boockvar, the Acting Secretary of the Commonwealth.

¹¹ Senate Bill 1011 was introduced on January 2, 2018. As of November 2, 2019, this will be 22 months. See Legislative History for Senate Bill 1011 at Attachment A.

Respectfully submitted,

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Date: November 1, 2019

CERTIFICATE OF COMPLIANCE

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

I further certify that this filing complies with the 7,000 word limit of Pa.R.A.P. 531(b)(1)(i) based on the word count of 3,427 according to the word processing system used to prepare it.

/s/ Rodney A. Corey
Rodney A. Corey (Pa. 69742)
Republican Caucus
Pennsylvania House of Representatives

Attachment A

SENATE BILL 1011 REGULAR SESSION 2017-2018

History

Sponsors:

RESCHENTHALER, ARGALL, RAFFERTY, FONTANA, MARTIN, BARTOLOTTA, SABATINA, COSTA, YAW, STEFANO, SCHWANK, KILLION, BOSCOLA, VULAKOVICH, HUGHES, REGAN, McGARRIGLE, BAKER, WAGNER, FOLMER, BROWNE, DiSANTO, VOGEL, SCARNATI, WARD, CORMAN, BROOKS, WHITE, YUDICHAK, AUMENT, BLAKE, DINNIMAN, TARTAGLIONE and SCAVELLO

Short Title:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

Printer's No. (PN):

[1824*](#), [1564](#), [1402](#)

(* denotes Current Printer's Number)

Actions:

[PN 1402](#) Referred to JUDICIARY, Jan. 2, 2018
Reported as committed, [Jan. 30, 2018](#)
First consideration, Jan. 30, 2018
Second consideration, Jan. 31, 2018
Re-referred to APPROPRIATIONS, Jan. 31, 2018
Re-reported as committed, [March 19, 2018](#)

[PN 1564](#) Amended on third consideration, [March 20, 2018](#)
(Remarks see Senate Journal Page [202-203](#)), March 20, 2018
Third consideration and final passage, March 21, 2018 ([50-0](#))
(Remarks see Senate Journal Page [219](#)), March 21, 2018
In the House
Referred to JUDICIARY, March 26, 2018

[PN 1824](#) Reported as amended, [June 5, 2018](#)
First consideration, June 5, 2018
Laid on the table, June 5, 2018
Removed from table, June 6, 2018
Second consideration, June 11, 2018
Re-referred to APPROPRIATIONS, June 11, 2018
Re-reported as committed, [June 20, 2018](#)
Third consideration and final passage, June 20, 2018 ([197-0](#))
In the Senate
Referred to RULES AND EXECUTIVE NOMINATIONS, June 20, 2018

Re-reported on concurrence, as committed, [June 21, 2018](#)

Senate concurred in House amendments, June 21, 2018 ([48-0](#))

Signed in Senate, June 21, 2018

Signed in House, June 22, 2018

Filed in the Office of the Secretary of the Commonwealth, June 22, 2018

Pamphlet Laws Resolution No. 1

 [How to Read a Bill](#)

Attachment B

HOUSE BILL 276 REGULAR SESSION 2019-2020

History

Sponsors:

DELOZIER, BENNINGHOFF, BARRAR, BERNSTINE, BIZZARRO, BOBACK, CALTAGIRONE, COMITTA, COOK, CUTLER, T. DAVIS, DIGIROLAMO, ECKER, EVERETT, FARRY, FLYNN, FRITZ, GREGORY, HERSHEY, HICKERNELL, HILL-EVANS, KAUFFMAN, KEEFER, KLUNK, KORTZ, MALONEY, MATZIE, McNEILL, MIZGORSKI, MURT, NELSON, OBERLANDER, ORTITAY, PASHINSKI, PICKETT, RAVENSTAHL, READSHAW, RYAN, SAYLOR, SCHLOSSBERG, STRUZZI, TOEPEL, TOOIL, TOPPER, ZIMMERMAN, KINSEY, ROZZI, HELM, JONES, KAUFER, O'MARA, MOUL, GILLEN, DEASY, KIM and GLEIM

Short Title:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

Printer's No. (PN):

0284*

(* denotes Current Printer's Number)

Actions:

PN 0284 Referred to [JUDICIARY](#), Feb. 1, 2019
Reported as committed, [Feb. 21, 2019](#)
First consideration, Feb. 21, 2019
Laid on the table, Feb. 21, 2019
Removed from table, Feb. 21, 2019
Second consideration, March 11, 2019
Re-committed to [APPROPRIATIONS](#), March 11, 2019
(Remarks see House Journal Page [241-248](#)), March 11, 2019
Re-reported as committed, [April 8, 2019](#)
Third consideration and final passage, April 8, 2019 ([190-8](#))
(Remarks see House Journal Page [453-455](#)), April 8, 2019
In the Senate
Referred to [JUDICIARY](#), June 5, 2019
Reported as committed, [June 11, 2019](#)
First consideration, June 11, 2019
Second consideration, June 17, 2019
Re-referred to [APPROPRIATIONS](#), June 17, 2019
Re-reported as committed, [June 18, 2019](#)
Third consideration and final passage, June 19, 2019 ([50-0](#))
(Remarks see Senate Journal Page [668-669](#)), June 19, 2019

Signed in House, June 19, 2019

Signed in Senate, June 19, 2019

Filed in the Office of the Secretary of the Commonwealth, June 20, 2019

Pamphlet Laws Resolution No. 1

Passed Sessions of 2018 and 2019

 [How to Read a Bill](#)