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83 MAP 2019

IN THE SUPREME COURT OF PENNSYLVANIA

Nos. 83 MAP 2019 and 84 MAP 2019

LEAGUE OF WOMEN VOTERS, *et al*.,
Petitioners-Appellees,

v.

KATHY BOOCKVAR, Acting Secretary of State, *etc*.,
Respondent-Appellant

(SHAMEEKA MOORE, *et al*.,
Intervenors-Appellants in No. 83MAP2019)

BRIEF FOR PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF APPELLEES

On Appeals from Issuance of Preliminary Injunction by the Commonwealth Court, sitting in its original jurisdiction, at 578 MD 2019 (Ceisler, J.)

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I. STATEMENT OF INTEREST OF THE *AMICUS CURIAE* PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The Pennsylvania Association of Criminal Defense Lawyers (PACDL) is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. Founded in 1988, PACDL is the recognized Pennsylvania affiliate of the National Association of Criminal Defense Lawyers. As *Amicus Curiae*, PACDL presents the perspective of experienced criminal defense attorneys who seek to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and who work to achieve justice and dignity for defendants. PACDL membership currently includes more than 900 private criminal defense practitioners and public defenders throughout the Commonwealth.

PACDL and its members have a direct interest in the outcome of this case, as part of PACDL's mission is to ensure the fairness and workings of the criminal justice system in Pennsylvania; ensure the fair administration of justice; and to advocate for the rights of persons charged with, and those convicted of and imprisoned for, crimes. The proposed constitutional amendments, however, infringe upon and substantially dilute a bedrock principle of the criminal justice system, to wit: the presumption of innocence, and directly conflict with and amend several provisions of the Constitution that

seek to protect the rights of individuals that are accused of wrongdoing and that have been enshrined in the Declaration of Rights of the Constitution of this Commonwealth for decades.

Pursuant to Pa.R.App.P. 531(b)(2), PACDL states that no other person or entity has paid for the preparation of, or authored, this brief in whole or in part.

II. ARGUMENT FOR AMICUS CURIAE

A. Introduction

The Commonwealth Court (Ceisler, J.), sitting in its original jurisdiction, did not abuse its discretion in granting a preliminary injunction, following a hearing, to the League of Women Voters of Pennsylvania (the "League") and Lorraine Haw, and to their intervenor Ronald Greenblatt, Esq. (collectively, the appellees). See *Marcellus Shale Coalition v. Dept. of Environmental Protection*, 646 Pa. 482, 500, 185 A.3d 985, 995 (2018) ("Appellate courts review a trial court order granting or denying a preliminary injunction for an abuse of discretion."). The injunction temporarily halts the appellant Secretary of State from tallying and certifying the vote on a patently invalid ballot question to amend our Commonwealth's 1776 Declaration of Rights that is at the heart of the state Constitution.

The standard of review over the grant of a preliminary injunction is "highly deferential." *SEIU Healthcare Pennsylvania v. Commonwealth*, 628 Pa. 573, 583, 104 A.3d 495, 501 (2014). "In determining the propriety of the entry

of an order granting a preliminary injunction, the question is whether there were any apparently reasonable grounds in the record to justify its issuance. *Valley Forge Historical Society v. Washington Memorial Chapel*, 493 Pa. 491, 426 A.2d 1123 (1981); …." *Fischer v. Dep't of Public Welfare*, 497 Pa. 267, 270, 439 A.2d 1172, 1174 (1982) (footnote and citations omitted); accord, *Marcellus Shale Coalition*, 646 Pa. at 499, 185 A.3d at 995–96 (citing cases). Judge Ceisler's thoughtful memorandum fully demonstrates the existence of "reasonable grounds" for the injunction that the Court entered. Moreover:

> … We have stated in many of our decisions that the movant must demonstrate a clear right to relief. … However, since a preliminary injunction is designed to preserve the *status quo* pending final resolution of the underlying issues, it is obvious that the "clear right" requirement is not intended to mandate that one seeking a preliminary injunction establish his or her claim absolutely. *Valley Forge Historical Society v. Washington Memorial Chapel*, supra. Where the threat of immediate and irreparable harm to the petitioning party is evident, that the injunction does no more than restore the *status quo* and the greater injury would result by refusing the requested injunction than granting it, an injunction may properly be granted where substantial legal questions must be resolved to determine the rights of the respective parties. *Valley Forge Historical Society v. Washington Memorial Chapel*, supra.

Fischer, 497 Pa. at 271, 439 A.2d at 1174.

As persuasively demonstrated in Judge Ceisler's memorandum, the single ballot question for the "Crime Victim Rights Amendment" (hereinafter, the "Proposed Amendments") would alter and amend multiple sections of the Pennsylvania Constitution. Not only did the appellees meet their burden to demonstrate a "clear right to relief," as thus elaborated, but the balance of

harms also strongly favors the issuance of the challenged injunction. If the injunction is reversed, the Proposed Amendments will go into effect immediately. As ably explained in the memorandum of the Commonwealth Court, the resulting harms include inevitable undermining of the rights that PACDL exists to protect for the accused, and immediate interference with the effective performance of the defense function that PACDL exists to support and facilitate for its members. These harms will be compounded by uncertainty, confusion and needlessly increased costs to all actors and institutions that make up the criminal justice system.

In addition to those sections of the Pennsylvania Constitution that the appellees and the court below identify as being amended by the challenged ballot measure, the Proposed Amendments also infringe upon and undermine additional inviolate rights held by all citizens of (and other persons within) this Commonwealth, without informing the electorate of these consequences. The voters are being presented with a ballot question which summarizes select portions of the Proposed Amendments and fails to identify all provisions of the Pennsylvania Constitution that would be amended if the Proposed Amendments are passed. The Proposed Amendments effectively strip any person within this Commonwealth who is accused of a crime of the presumption of innocence, and amends – without notice to the voters – provisions of the Pennsylvania Constitution which act as a shield against wrongful convictions. Accordingly,

the court below did not abuse its discretion by entering the preliminary injunction.

B. Without notice to the voters, the single ballot question seeks impermissibly to amend several provisions of the Declaration of Rights at once.

Expressing a fundamental political and philosophical premise of a free Commonwealth, Article I, §25 (Reservation of powers in people) since at least 1790 has provided that:

> To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Pa. Const., Art. I, § 25. In this provision, the expression "this article" refers to Article I of the Constitution of Pennsylvania, better known as the Declaration of Rights, largely drafted in 1776 and in force in its present form, with few changes, since 1790. PACDL would respectfully remind this Court that it is no coincidence that a significant majority of all the many rights that the Framers saw fit to include in the Declaration were rights for those accused of crimes. The Founding Generation was well aware that all governments, both tyrannical and democratic, must be restrained from abusing the awesome power of the criminal process to oppress the poor, the unpopular, the disadvantaged, the dissident, and the troublesome.

With respect to this Constitutional provision, this Court has observed, "We agree with the general proposition that those rights enumerated in the Declaration of Rights are deemed to be inviolate and may not be transgressed by government." *Gondelman v. Commonwealth*, 520 Pa. 451, 467, 554 A.2d 896, 904 (1989). The "people," of course, have the right to amend their Constitution, including its Declaration of Rights. *Id*. ("It is absurd to suggest that the rights enumerated in Article I were intended to restrain the power of the people themselves."). But PACDL urges that special care and restraint should be exercised whenever a proposed amendment appears to trench on one or more of these most fundamental of rights.

Of course, for the "people" to take the extraordinary step of amending the Declaration of Rights, they must understand what actually is being amended. Any argument to the contrary is an affront to the foundational philosophy embedded in Article I, §25 and results in a *de facto* – and necessarily impermissible – arrogation of this important right by the government itself.

Here, the "people" are being asked to substantially amend several provisions of the Declaration of Rights in a single ballot question drafted by the Secretary of the Commonwealth:

> 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?

(emphasis added). The Proposed Amendments "facially" amend multiple provisions of the Declaration of Rights. See *Grimaud v. Commonwealth*, 581 Pa. 398, 407–09, 865 A.2d 835, 841–42 (2005) (explaining requirements of Pa. Const., Article XI, § 1). And the Plain English Statement drafted by the Attorney General, while longer, is similarly incomplete. See *Grimaud*, 581 Pa. at 409–12, 865 A.2d at 842–44. The italicized "including" makes explicit that the official question is incomplete and therefore inaccurate and unacceptable, particular where the full text of the Proposed Amendments will not even be made available to the voters at their polling places. Indeed, the two defects that the Commonwealth Court found are intertwined. Precisely because the Proposed Amendments directly affect so many different provisions of the Constitution, it would be virtually impossible to summarize it accurately and completely in a ballot statement.[1]

[1] While the "Plain English Statement of the Office of Attorney General" provides a fuller recitation of the provisions of the Proposed Amendments, even that document is incomplete, as the appellees demonstrated in their brief below. Under the Election Code, the Attorney General is to "prepare a statement in plain English which indicates the purpose, *limitations and effects* of the ballot question on the people of the Commonwealth…" 25 Pa.Stat. § 2621.1 (emphasis added). The "Plain English Statement" in this case certainly does not address the limitations and effects of the ballot question, even assuming that voters are aware of its (the Plain English Statement) existence, and manage to seek it out wherever it may be posted in their polling place prior to entering the voting booth, and find its typography legible.

The Commonwealth's failure to provide to "the people" a full and accurate summary of the Proposed Amendments is significant. By way of example only, the Proposed Amendments include in subsection (c) only a partial definition of the term "victim." The definition is incomplete because it states what the term "victim" "*includes*" but not what it "means." No reference is made to that fact in the ballot question; and nothing in the ballot question reflects that: (i) for a person to be a "victim" within the meaning of the Proposed Amendments, he or she only needs to *accuse* somebody of a crime and that no determination has to be made (so far as it appears) that the person has actually been victimized by the accused (or at all)[2] before the rights set forth in the Proposed Amendments are triggered; and (ii) the Proposed Amendment expressly excludes from the definition of a "victim" the accused (among others). Hence, a woman who has been the subject of prior domestic violence and finally defends herself against the perpetrator but is charged with a crime as a result of her actions (a not-uncommon occurrence) cannot be considered a "victim" under the Proposed Amendments.

By way of further example, the ballot question:

[2] Although the language of the Proposed Amendments makes no explicit reference to any offense committed "by the accused," it refers to a person victimized by "*the* offense," not "*an* offense" (and certainly not "an alleged offense") and thus necessarily means "the offense specified in the complaint or information," and thus, "the offense allegedly committed by the accused."

- While referencing the rights of crime victims to have their safety considered in bail proceedings, fails to alert the electorate that the Proposed Amendments actually seek to provide: "to have the safety of the victim *and the victim's family* considered *in fixing the amount of bail and release conditions* for the accused" (emphasis added), thus actually extending this rights beyond "victims," while not even defining the scope of "family" included in this right, and quite plainly suggesting that bail may be set in an amount designed to ensure pretrial detention, thus wholly ignoring the presumption of innocence while amending the right to reasonable bail heretofore guaranteed in nearly all cases[3];
- While referencing the right of crime victims to have "reasonable protection from the accused," the electorate is not advised that the Proposed Amendments actually provide a "right … to reasonable protection from the accused *or any person acting on behalf of the accused* ...." (emphasis added), again expanding, without explanation or guidance, the scope of individuals who fall within that latter clause, including the distinct suggestion that criminal defense lawyers are a threat to crime victims, from whom the latter are said to need legal "protection";

[3] In fact, the original supposed outrage against which the so-called "Marsy's Law" was directed by the California billionaire who is its sole financial sponsor was the release on bail of an ex-boyfriend accused of killing the sponsor's sister (in 1983). The asserted "harm" to the victim's "family" was their surprise and unhappiness at seeing the accused carrying out normal daily activities in his neighborhood, such as shopping, while free on pretrial bail. *See* Beth Schwartzapfel, "The Billionaire's Crusade," The Marshall Project (posted 5/22/18), available at https://www.themarshallproject.org/2018/05/22/nicholas-law (last accessed 10/31/19).

- While referencing the right of crime victims to "refuse discovery requests made by the accused," the electorate is not advised that the Proposed Amendments actually provide the victim with the right "to refuse an interview, deposition[4] or other discovery request made by the accused *or any person acting on behalf of the accused*…" (emphasis added), thus directly interfering with and impeding the duty of defense counsel, heretofore guaranteed by Article I, section 9, to investigate the case and prepare for hearings or trial;
- Nothing in the ballot question reflects that the Proposed Amendments require that the rights to be conferred through these amendments "be protected in a manner no less vigorous than the rights afforded to the accused," thus inevitably leading to "balancing" of these supposedly co-equal rights that will necessarily lead to instances in which the heretofore guaranteed rights of the accused will not be enforced at all.

The above examples are merely illustrative of the failure of the ballot question, on its face, to fully advise "the people" of the substance of the Proposed Amendments. Critically, the ballot question does not even attempt to advise "the people" that the Proposed Amendments also facially amend a multitude of other rights set forth in the Declaration of Rights, and that, most

[4] "Depositions" are allowable under Pennsylvania criminal procedure only in extraordinary circumstances when necessary to protect the compulsory process rights of the accused. *See* 42 Pa.C.S. § 5919; Pa.R.Crim.P. 500–501.

fundamentally, the Proposed Amendments directly threaten, by facially disregarding, the presumption of innocence. *See* Argument C., *infra*.

PACDL suggests that the ballot question, crafted by the State, is couched in politically expedient terms and seeks an *uninformed* vote by the people based on emotion and prejudice. After all, who would vote against a question which seeks to grant to "crime victims" the right "to be treated with fairness, respect and dignity"? The ballot question includes amendments to multiple provisions of the venerable and ostensibly "inviolate" Declaration of Rights, without fully advising voters of its multifarious and profound impacts, and without giving the voters their right to approve or disapprove some, all or none of the Proposed Amendments. Given the failure of the ballot to question to fully inform "the people" of the full scope of rights which the Proposed Amendments seek to provide, it is the government, and not the people, that is actually amending the constitution. Such impugns Article I, §25 of the Constitution and must fail.[5]

C. The Proposed Amendments alter and effectively repeal the presumption of innocence that is part of "the law of the land."

The presumption of innocence is a fundamental right – recognized since long before the Founding and thus a critical component of "the law of the land,"

[5] The appellees discuss at length how the proposed amendments would amend multiple section of the Constitution without advising voters of these effects and without giving them the opportunity to vote on some, all or none of the amendments. PACDL concurs with that analysis and will not reiterate it here.

Art. I, section 9 – that cloaks every person charged with a criminal offense. *See Commonwealth v. Allshouse*, 614 Pa. 229, 268, 36 A.3d 163, 186 (2012) ("the fundamental rule that the state, as a condition of its authority to take the life of an accused, must overcome the presumption of his innocence"), quoting *Thompson v. Missouri*, 171 U.S. 380, 387, 18 S.Ct. 922, 925 (1898). This right has been recognized as an essential and "basic component of a fair trial under our system of criminal justice." *Taylor v. Kentucky*, 436 U.S. 478, 479, 98 S. Ct. 1930, 1931 (1978) (quoting *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691, 1692 (1976)). Its history as a foundation of due process and the "law of the land" predates the Revolution and the Constitution itself. *See* William Blackstone, 2 COMMENTARIES ON THE LAWS OF ENGLAND, bk. IV ("Of Public Wrongs"), ch. 27, *358 (1753) ("the law holds that it is better that ten guilty persons escape than that one innocent suffer"); John Adams, *Defense Opening Statement at the Boston Massacre Trial* (1770) (explaining why "[i]t is more important that innocence be protected than it is that guilt be punished ….").

Indeed, this bedrock right is "axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Taylor*, 436 U.S. at 483 (quoting *Coffin v. United States*, 156 U.S. 432, 453, 15 S.Ct. 394, 403 (1895)). More than sixty years ago, this Court, in *Commonwealth v. Bonomo*, opined:

> The presumption of innocence grew up as a policy of law and is not based upon probabilities at all. It represents the law's humane approach to the solution of a dispute which may result in the loss

> of life or liberty. Because of this concern the law has ordained that any government which seeks to take from any person his life or liberty has the burden of proving justification for doing so. It is the continuing presumption of innocence which is the basis for the requirement that the state has a never-shifting burden to prove guilt beyond a reasonable doubt. Since this presumption is with the defendant not only at the beginning of the trial but throughout all its stages, and even while the jury is considering its verdict, it is obvious that no contrary presumption can be indulged.

396 Pa. 222, 229, 151 A.2d 441, 445 (1959) (footnote and internal citation omitted).

The presumption of innocence applies equally to the pre-trial process as it does at trial. The Proposed Amendments, however, define "victim" to include "any person against whom the criminal offense or delinquent act *is committed* or who is directly harmed by the commission of *the offense* or act." But no judge could find that a crime has been committed, much less that the accused is the person who committed it, at the pre-verdict stages of the case where these Proposed Amendments are to be enforced. In requiring that judges act as if guilt were presumed, the Proposed Amendments strip an accused of this fundamental right. Instead, it would create an irrefutable presumption that a complainant (among others deemed in some undefined way to be "directly harmed") in every criminal case is, in fact, a "victim," that is, a person against whom "the crime" was in fact committed. This result cannot stand without being approved by a fully-informed citizenry.

The citizens of this Commonwealth, since 1776, have recognized as "inherent rights of mankind" "certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty …." Pa. Const., Art. I, § 1. The presumption of innocence is a bedrock principle of law, firmly established in our jurisprudence as part of "the law of the land," which zealously guards these constitutional rights. By establishing the presumption that every complainant is actually a "victim," along with a broad additional class of previously undefined persons deemed to be "directly harmed," the Proposed Amendments would turn the accused's right to the presumption of innocence on its head, if not eradicate the right entirely.

Yet the ballot question ignores the irreconcilable conflict that the Proposed Amendments would create between the constitutional rights of an accused and the "rights" of a person who has not been, and cannot consistent with due process for the accused be established factually from the moment of arrest or before as, a true victim. Moreover, the stated ballot question wholly disregards the untenable situation which lower courts will face when, for example, hearing a plea for bail by an arrested individual against whom the evidence may be slight, while hearing the claims of the accuser or his or her family that bail must be set high because of "fear." The proposed Amendments state that the rights are to be given equal weight. Which right will prevail, and by what criteria?

Critically, the Proposed Amendments ignore the fact that when criminal charges are filed, the accused is confronted with a potential deprivation of inherent rights that the Constitution of the Commonwealth of Pennsylvania protects, to wit: life and liberty. Pa. Const., Art. I, § 1. These rights are so fundamental that our Framers ensured, for example, that "[n]o person shall, for the same offense, be twice put in jeopardy of life or limb[.]" Pa. Const., Art. I, § 10. Although an actual victim in a criminal case also suffers a deprivation, that harm is categorically different; it is not the State that has deprived the crime victim of life, liberty or property. Constitutional rights are enumerated because they represent what it means to be free in one's relation to the State, not in our relations with fellow citizens, which is the proper subject of civil law and of legislation.

Nothing in either the ballot question or the "Plain English Statement" accompanying the ballot question begins to explain these consequences to voters. A right that is bestowed on all citizens and serves as part of the essential foundation upon which our liberty (and our criminal justice system) is built, such as the presumption of innocence, should not be constitutionally undermined or abrogated without informing voters of the same in the plainest language and allowing them to exercise an informed vote on that issue. The ballot question fails to achieve that goal.

D. The Proposed Amendments amend those provisions of the Pennsylvania Constitution and implementing statutory protections which attempt to guard against wrongful convictions.

Regrettably, wrongful convictions occur in the United States, and innocent individuals have been incarcerated, sometimes for decades, for crimes that they did not commit. *See* Samuel R. Gross, "The staggering number of wrongful convictions in America," *The Washington Post* (7/24/15) (information from National Registry of Exonerations), available at https://www.washingtonpost.com/opinions/the-cost-of-convicting-the-innocent/2015/07/24/ 260fc3a2-1aae-11e5-93b7-5eddc056ad8a_ story.html (last accessed 10/31/19). Pennsylvania is not immune from this travesty. *See* Pennsylvania Innocence Project, "About: Our Impact" (16 exonerations in Project's first ten years), available at https://www.innocenceprojectpa.org/about (last accessed 10/31/19).

Criminal defendants have a protected right under Article I, Section 14 of the Pennsylvania Constitution to pursue *habeas corpus* relief, even after their convictions have otherwise "become final." Chapter 65 of the Judicial Code, 42 Pa.C.S. §§ 6501–6505, addresses the process for obtaining habeas corpus relief. Section 6503 provides:

> **(a) General rule.--**Except as provided in subsection (b), an application for habeas corpus to inquire into the cause of detention

> may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever.
>
> **(b) Exception.--**Where a person is restrained by virtue of sentence *after* conviction for a criminal offense, the writ of habeas corpus shall not be available *if a remedy may be had by post-conviction hearing proceedings authorized by law*.

42 Pa.C.S. § 6503(emphasis added).

Through the Post Conviction Relief Act, 42 Pa.C.S. § 9541 *et seq.* (the "PCRA"), the legislature has provided a process and remedy for an individual to secure relief after a conviction for a criminal offense, as assured by the Constitution's habeas corpus clause. *Commonwealth v. Peterkin*, 554 Pa. 547, 553, 722 A.2d 638, 641 (1998). Section 9542 states, in part, that "[t]his subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief…" 42 Pa.C.S. § 9542.

The PCRA sets forth certain time parameters pursuant to which a petition seeking PCRA relief must be filed:

> (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:
>
> (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this

> Commonwealth or the Constitution or laws of the United States;
>
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
>
> (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.
>
> (2) Any petition invoking an exception provided in paragraph (1) shall be filed within one year of the date the claim could have been presented.

42 Pa.C.S. § 9545(b)(1), (2).

As the foregoing reflects, an individual who is convicted of a crime and who remains in custody has at least one year from the date that the conviction becomes final – which itself may be many years after the crime was committed – to exercise the constitutional right of access to habeas corpus by initiating an application for relief under the PCRA. Indeed, that one-year period can be extended significantly if one or more of the provisions of subsection (b)(1) are triggered.

The Proposed Amendments, however, provide "victims" with the right to be heard in any proceeding where a right of the victim is implicated, including a new and unexplained "right" to "proceedings free from unreasonable delay and *a prompt and final conclusion of the case and any related postconviction*

proceedings" (emphasis added). Victims will urge a broad interpretation of the Proposed Amendments, and judges will be obligated to consider denying access to PCRA relief for this reason alone, as a "victim" contends that exploration of new questions about guilt violates the right to a prompt and final conclusion of the case.

Experience teaches that exonerations can often take a decade of digging and litigation. For example, in *Lee v. Glunt*, 667 F.3d 397 (3d Cir. 2012), although Lee was convicted of first degree murder and arson in Monroe County in 1990 and his direct appeal rights (and then PCRA) were subsequently exhausted without success, in 2012 the Third Circuit found that Lee was entitled to discovery to pursue his claim that the "admission of the Commonwealth's fire expert testimony undermined the fundamental fairness of Lee's entire trial because the testimony was premised on unreliable science and was therefore itself unreliable. *Id.* at 407. The Third Circuit observed that "[t]hese factual allegations are not contradicted by the existing record, not least because the Commonwealth has not offered any evidence supporting the validity of the old methodology and does not challenge the accuracy of the Lentini affidavit, which describes the developments in fire science since Lee's trial and explains that many of the scientific theories relied upon by the Commonwealth's experts have been refuted." *Id.*

It took another three years of litigation before the Third Circuit, in *Lee v. Sup't, Houtzdale SCI*, 798 F.3d 159 (3d Cir. 2015), was able to affirm the

federal district court's grant of habeas corpus relief to Lee, observing that Lee "was convicted of murdering his daughter based primarily on scientific evidence that, as the Commonwealth now concedes, is discredited by subsequent scientific developments" and that "the Commonwealth has not pointed to 'ample evidence' sufficient to prove guilt beyond reasonable doubt." *Id*. at 161, 169. After 24 years of wrongful imprisonment, Lee was released, and the Commonwealth determined that Lee would not be re-prosecuted. *See* National Registry of Exonerations, Univ. of Michigan, "Other Arson Cases: Han Tak Lee" (added 12/28/15), available at https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4820 (last accessed 10/31/19). Lee sat in prison for decades for a crime that he did not commit and as a result of a conviction that was premised on faulty science. Indeed, as it turned out, there was never any crime at all, and therefore no "victim" of any "offense"; the fire was actually an accident. Regrettably, many other cases like Lee's exist.[6] *See e.g.*, National Registry of Exonerations, "Recent Exonerations," https://www.law.umich.edu/special/exoneration/Pages/recentcases.aspx (last accessed, 10/31/19). A defined "victim" (such as Lee's ex-wife, mother of the deceased), asserting a "right" to "prompt" and "final resolution" of the case, might prevent

[6] The problem of belated exoneration is not limited to murder cases. See, *e.g.*, *Commonwealth v. Williams*, 215 A.3d 1019 (Pa.Super. 2019) (denial of PCRA relief reversed, where all testimony in ten-year old drug case was entirely discredited by newly-discovered evidence, while defendant was in custody for alleged probation violation); *see also* No. 31 EM 2018 (4/24/18) (order of this Court directing grant of bail in same case).

such belated exercises of justice from being obtained under our PCRA. The Proposed Amendments thus appear to directly amend the anti-suspension clause of Article I, section 14, which protects the right to habeas corpus.

Promptness and finality are important interests in our system of justice, but to elevate them to the level of a constitutional right threatens the innocent with a permanently locked prison cell. Nothing in the official summary or ballot statement even alludes to this impact of passing the Proposed Amendments.

CONCLUSION

For the foregoing reasons, *amicus curiae* PACDL respectfully requests that this Honorable Court affirm the order of the Commonwealth Court granting a Preliminary Injunction against tallying and certification of the November 5, 2019, vote on the Proposed Amendments.

Respectfully submitted,

Dated: November 1, 2019

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CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify pursuant to Pa. R. App. P. 127 that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (eff. 1/5/2018) that require filing of confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

I certify pursuant to Pa.R.App.P. 531(b)(3), that this Brief contains no more than 5113 words, including footnotes, which is less than the allowable 7000 words.