

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**LEAGUE OF WOMEN VOTERS OF** :  
**PENNSYLVANIA and LORRAINE** :  
**HAW,** :  
  
**Petitioners** : **No. 578 MD 2019**  
  
**v.** :  
  
  
  
**KATHY BOOCKVAR, The Secretary** : **Electronically Filed Document**  
**of the Commonwealth,** :  
  
**Respondent** :

**BRIEF IN SUPPORT**  
**OF SECRETARY BOOCKVAR'S**  
**APPLICATION FOR SUMMARY RELIEF**

**Respectfully submitted,**

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**Date: December 13, 2019**

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## **I. INTRODUCTION**

The ballot for the November 5, 2019 Municipal Election contained a ballot question presenting voters with the opportunity to pass an amendment to the Pennsylvania Constitution to secure rights for victims of crimes. That amendment, the “Crime Victims’ Rights Amendment” (“Amendment”), provides for the consideration and inclusion of victims in the criminal justice process primarily through notification and the opportunity to be heard. In creating rights for victims, the Amendment does not alter, expressly or otherwise, any existing Pennsylvania constitutional right of those accused of crimes. *See Grimaud v. Com.*, 865 A.2d 835, 842 (Pa. 2005) (“The test to be applied is not merely whether the amendments might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution.”).

Petitioners are advancing this lawsuit as a vehicle to second-guess the wisdom of the citizenry and the policy prerogatives of the General Assembly. The questions remaining are technical in nature, however, and those policy considerations, including whether the Amendment is wise or unwise, are not properly before the Court.

Particularly, as to the Amendment itself, the only issue for consideration is whether it satisfies the separate vote requirement of the Pennsylvania Constitution—a standard that is met if the parts relate to a common whole. Here,

the Amendment pertains to a single subject matter—securing victims’ rights in the criminal cases in which they suffered direct harm. Every single subpart of the Amendment advances this one goal. And, the ballot question fairly and accurately reflects the Amendment, and its goal, for the electorate.

The fact that the Petitioners have obvious policy disagreements with the Amendment does not render it, nor the ballot question, constitutionally void. For these reasons, Secretary Boockvar’s Application for Relief should be granted.

## **II. STATEMENT OF THE CASE**

The Crime Victims’ Rights Amendment was introduced in the Pennsylvania General Assembly as Senate Bill 1011 (SB 1011) during the 2018 legislative session. The Senate approved SB 1011 in a unanimous vote of 50-0, and an amended version of the bill passed both houses. The Amendment was introduced for the second time during the 2019 legislative session, as House Bill 276 (HB 276) where it, again, resoundingly passed the House and Senate. In June 2019, the Senate approved HB 276, as Joint Resolution 2019-1, and directed the Secretary to submit the Amendment to the electorate at the 2019 Municipal Election, which was the next election at least three months after final passage of the Amendment by the two houses of the General Assembly. The 2019 Municipal Election was held November 5, 2019.

## Background of Victims' Rights in Pennsylvania

The Crime Victims' Rights Amendment will secure basic rights for the victims of crimes. Particularly, it provides for the inclusion and consideration of victims throughout the criminal justice process. It largely effectuates its purpose through notification and an opportunity to be heard in relation to non-confidential public proceedings. These concepts are not new to Pennsylvania.

In 1998, the Pennsylvania Crime Victims Act (CVA) was enacted in Pennsylvania. For over twenty years, the CVA has provided for a Victims' Bill of Rights and sets forth rights that mirror those in the Amendment. Rights contained in the CVA Bill of Rights include the right "[t]o be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case," and the right "[t]o not be excluded from any criminal proceeding...." 18 P.S. § 11.201. Additionally, the CVA allows a victim to take actions that may negatively impact an offender's criminal case. For example, it provides victims with the opportunity to submit prior comment before pre-trial disposition in cases involving bodily injury or burglary; and, the chance to submit a victim-impact statement that "shall" be considered by the court in fashioning a sentence. *Id.* § 11.201(5).

## The Amendment

The Amendment secures—and constitutionally enshrines—rights that have largely already been available to Pennsylvanians in the CVA. The Amendment *does not* delete anything from the Constitution. The Amendment *does not* change any existing language in the Constitution. Rather, the Amendment adds a provision to Article 1 of the Constitution, creating a new Section “9.1.” titled “Rights of victims of crime.”

The Amendment states that its purpose is to secure rights for victims in the “criminal and juvenile justice systems.” It then goes on to enumerate those rights, which are principally composed of rights to be notified of public proceedings. The Amendment requires that victims receive notification of: public proceedings, pre-trial dispositions, parole and escape. It states that victims have a right to be heard, *if* their rights are implicated, in proceedings such as sentencing, parole hearings and pardon hearings. Lastly, the Amendment provides for basic protections as part of the process, including consideration of the safety of the victim when bail is set.

The Amendment tasks the courts with enforcement responsibility. Victims are *not* able to pursue monetary damages under the Amendment, however, nor does the Amendment make the victim a party to a criminal proceeding. Moreover, victims are limited to include those against whom a criminal offense is committed

or who is directly harmed by a crime. The Amendment states that the rights therein shall exist “as further provided and as defined by the General Assembly...”

### Advertising of the Amendment

The Department advertised the proposed Amendment, in its joint resolution form (Joint Resolution 2018-1; Senate Bill 1011), during the months of August, September, and October of 2018. The advertisements appeared in newspapers across the Commonwealth. The cost of this first round of advertising was \$714,218.71, with payment being made from the general fund as required under Section 1201.2 of the Election Code, 25 P.S. § 3041.2.

In August, September, and October of this year (2019), the Department again published the constitutional amendment in its joint resolution form (Joint Resolution 2019-1; House Bill 276). This year’s round of advertising also included the text of the ballot question, developed by the Department and approved by the Office of the Attorney General, in the form it is to appear on the ballot, as well as the Plain English Statement prepared by the Office of the Attorney General. This second round of advertising cost the Department \$1,374,597.12, bringing the total cost of advertising to \$2,088,815.83.

The Department also created a page on its website with the text of the Joint Resolution, the ballot question, and the Plain English Statement. This page went live on July 26, 2019 and a link was added to the Department’s homepage on

August 8, 2019. All pertinent information was made available to voters at least ninety days prior to the Election.

### Ballot Question

Article XI, Section 1 of the Pennsylvania Constitution sets forth the procedure by which the General Assembly may amend the Constitution. “[P]roposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe.” Pa. Const. art. XI, § 1.

The General Assembly directed the Secretary of the Commonwealth, through the Pennsylvania Election Code, to print proposed constitutional amendments on the ballots in a “brief form” that has been approved by the Attorney General. 25 P.S. § 2755. And, in at least one section of the Election Code, the General Assembly defined “brief form” as “not more than seventy-five words” and authorized the Secretary of the Commonwealth to draft the brief form for constitutional amendments. 25 P.S. § 3010(b). Ballot questions for proposed constitutional amendments have historically adhered to this 75-word standard.

In accordance with her statutory mandate, the Secretary drafted the ballot question for the Amendment and submitted it to the Attorney General on July 5,

2019. The Attorney General approved the ballot question on July 12, 2019. The ballot question as it appears on the ballot states:

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?

The question is seventy-three words in length and contains direct quotes of the Amendment.

To aid voters in voting on the ballot question, information was made available at each polling place. Pursuant to law, the Attorney General's Plain English Statement and the full text of the proposed Amendment was posted for voters. *See* 25 P.S. § 2621.1. Additionally, as noted, the ballot question was advertised and furnished to the electorate in advance of the election.

#### Preliminary Injunction Proceedings

On October 23, 2019, Honorable Judge Ceisler, sitting in equity, held a preliminary injunction hearing on the Petitioners' Application for Summary Relief in the form of a Preliminary Injunction. The Court heard testimony from Intervenor Greenblatt who provided his thoughts as to the shortcomings of the Amendment,

and possible impediments that he may face should the Amendment pass.<sup>1</sup> On the basis of this testimony, the Court ruled that irreparable harm may result if the Amendment passed, finding grounds for injunctive relief, and also holding, *inter alia*, that the Amendment appeared to violate the separate vote rule because, in addition to providing new rights for victims, it affected the rights of criminal defendants. Judge Ceisler enjoined the Secretary from tabulating and certifying the votes on the ballot question pending resolution of this lawsuit. The Supreme Court of Pennsylvania, in a 4-3 ruling with no opinion, accompanied by a dissent written by Justice Saylor, affirmed the ruling.

### **III. ARGUMENT**

#### Standard of Review

Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure addresses applications for summary relief filed with this Court. It provides that: “[a]t any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear.” Pa. R.A.P. 1532(b). The Court must determine, based upon the undisputed facts, whether “either party has a clear right to the relief requested.”

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<sup>1</sup> Mr. Greenblatt admitted that his testimony was based upon speculation and his unilateral interpretations of the law. *See* Transcript, pg. 71 (“I’m trying to say that is the irreparable harm of this law, so, of course, there is some speculation to it.”).

*Bell Atlantic–Pennsylvania, Inc. v. Turnpike Commission*, 703 A.2d 589, 590 (Pa. Cmwlth. 1997).

The record, for purposes of a motion for summary relief, is the same as a record for a motion for summary judgment. *Meggett v. Pennsylvania Department of Corrections*, 892 A.2d 872, 879 n. 13 (Pa. Cmwlth. 2006). “The record must be viewed in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” *Baker v. City of Philadelphia*, 603 A.2d 686, 688 (Pa. Cmwlth. 1992). Here, Secretary Boockvar is entitled to summary relief because there is no genuine dispute of material fact, and because the Amendment and ballot question are constitutional as a matter of law.

**1. The Crime Victims’ Rights Amendment relates to a single subject matter and does not facially alter any existing provisions of the Pennsylvania Constitution.**

The ballot question proposes a single amendment that adds one section to the Constitution setting forth crime victims’ rights. It does not delete, change or facially alter any existing provision of the Constitution.

Our Constitution states that, “[w]hen two or more amendments shall be submitted they shall be voted upon separately.” Pa. Const. art. XI, § 1. The Supreme Court of Pennsylvania has adopted a single subject test to determine whether separate votes are necessary. The single subject test examines “the

interdependence of the proposed constitutional changes in determining the necessity for separate votes.” *Grimaud*, 865 A.2d at 841. In doing so, the high court adopted a “common-purpose formulation” to inquire into whether the proposed amendments are sufficiently related to “constitute a consistent and workable whole on the general topic embraced.” *Id.* It posits whether there is a “rational linchpin” of interdependence, or whether all of the proposed changes “are germane to the accomplishment of a single objective.” *Id.* (citing *inter alia* other state supreme court decisions, including *Fugina v. Donovan*, 104 N.W.2d 911, 914 (Minn. 1960) (upholding amendment containing sections that, although they could have been submitted separately, were rationally related to a single, purpose, plan, or subject)). Here, the parts making the whole Amendment are “sufficiently interrelated,” and are part of a “consistent and workable whole.”

- a. The Amendment relates to a single subject matter, and its length and form do not render it void.*

Nowhere in the Pennsylvania Constitution, or caselaw, is there a word limit as to the length of an amendment, or a proscription against subparts. Rather, this Court has specifically acknowledged that amendments may be “bulky” in nature. In *Mellow v. Pizzingrilli*, 800 A.2d 350 (Pa. Cmwlth. 2002), this Court noted that six articles of the Constitution of 1873 were amended by way of “‘bulk’ amendments, submitted to the electorate with the opportunity to vote in favor or

against amendment of an entire article, containing numerous substantive changes.” The Court stated that it was aware “of no challenges to the ‘bulk’ amendments of the 1960’s.” *Id.* at 355.

In this case, the Crime Victims’ Rights Amendment pertains to one subject matter, serving one overarching goal—protecting victims’ rights in the criminal justice process. It establishes a consistent and workable framework regarding the general topic of victims’ rights in the criminal justice system. Petitioners’ pleadings do not identify any other subject-matter implicated by the Amendment outside of victims’ rights.

Instead, the Petitioners’ argument rests on form and punctuation. Petitioners argue that the Amendment violates the separate vote rule because of the number of semicolons, reflecting “numerous” rights. They seize words such as the plural “rights,” and a prefatory “including,” as proof that the Amendment is really many Amendments disguised as one. They posit that each semicolon reflects a right that must be set forth separately, regardless of a common nucleus. But, Pennsylvania law does not compel an examination of the punctuation or length of an amendment. Rather, the question is whether the content of the amendment is related to the same subject matter. And, in this case, it is.

This case is dissimilar from *Bergdoll v. Kane*, 731 A.2d 1261 (Pa. 1999), a case largely supplanted by the later *Grimaud* opinion. In *Bergdoll*, the Court found

that two separate votes were required for an amendment that not only added language to the Constitution by way of a new provision, but which also *deleted* existing language from the Constitution. Particularly, the amendment, on one hand, removed an accused's right to face-to-face confrontation, while on the other hand, added a provision that shifted courtroom procedures regarding the manner in which children can testify from the Judiciary to the General Assembly. The Court, noting particular impropriety with regard to the shift in duties, ruled that Article XI's separate vote requirement was violated.

No similar facts are present in this case. The critical consideration in *Bergdoll* was that the amendment facially changed an existing right in the Constitution, while also adding a new provision. The amendment in *Bergdoll* literally deleted the face-to-face confrontation requirement from our organic charter. This was not an implicit or arguable change, but, rather, a patent alteration to the existing language of the Constitution. The deletion, coupled with an addition of new rights, proved fatal for the ballot question. Here, the Crime Victims' Rights Amendment does not delete, or otherwise facially change any existing language of our Constitution. It solely adds a new and stand-alone amendment regarding victims' rights. This distinction is dispositive.

This case is akin to *Grimaud*. There, an amendment proposed two changes related to bail—(1) expanding the capital offenses bail exception to include life

imprisonment, and (2) adding preventive detention to the purpose of bail. *Grimaud*, 865 A.2d at 841. Under Petitioners’ theory, each should have been set forth separately because they affect different “rights” related to bail. The Court did not so hold, however. Rather, the Court held, straightforwardly, that, under the same subject-matter test, the amendment survived because it had a single subject matter: bail. In this case, there is a single subject matter: victims’ rights. Petitioners’ case fails under *Grimaud*.

*b. The Amendment does not alter any existing rights, as a matter of law, because it does not facially affect other provisions.*

Petitioners’ alternative claim is that the Amendment violates Article XI because it “effectively” amends multiple existing constitutional articles. *See* Petition for Review, ¶ 37(b). But, this argument lacks merit under Pennsylvania Supreme Court jurisprudence.

The *Grimaud* case provides clear instruction on this point. In *Grimaud*, in addition to arguing that the ballot question related to bail actually proposed multiple amendments, appellants argued that the ballot question also effectively amended a multitude of existing rights, like those Petitioners list in their filings. *See Grimaud*, 865 A.2d at 840. While the amendment at-issue did not expressly alter any rights, appellants claimed that several constitutional rights were vitiated,

including: Article I, § 1's right to defend one's self; Article I, § 9's presumption of innocence; and, Article I, § 13's right to be free from excessive bail.

Appellants' argument is unavailing. The High Court noted that, "merely because an amendment 'may possibly impact other provisions' does not mean it violates the separate vote requirement." *Grimaud*, 865 A.2d at 842. It stated that, "[i]ndeed, it is hard to imagine an amendment that would not have some arguable effect on another provision; clearly the framers knew amendments would occur and provided a means for that to happen." *Id.* Thus, the Court ruled that, "[t]he test to be applied is not merely whether the amendments might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution." *Id.* In other words, and to be clear, "[t]he question is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect, as appellants suggest." *Id.*

Despite this clear and controlling mandate from the Supreme Court of Pennsylvania, Petitioners' argue that because the Amendment "effectively" alters other constitutional provisions, it is void. Petition for Review, ¶ 37(b). As stated above, it is not enough for it to "implicitly [have] such *an effect*." *Grimaud*, 865 A.2d at 842 (emphasis added). It needs to *facially* alter the existing language of the Constitution. The amendment here simply does not change any existing language in any manner whatsoever. No argument to be proffered under the binding case

law makes the Petitioners' claim valid as a matter of law, due to the absence of the requisite patent and facial change to the Constitution. Petitioners' speculations about the impacts of the Amendment, and creative rewritings of the Constitution, do not change this reality.

Indeed, the fact that the Petitioners must resort to creatively re-writing and interjecting their own theory and artistic flourish into the language of the Constitution highlights the frailty of their position. If the Amendment facially changed the Constitution, the Petitioners would not need to insert their own self-serving alterations. The lack of facial revisions, which are required in order to invalidate the Amendment under *Grimaud*, is not remedied by the Petitioners' imaginings.

Finally, the Petitioners' arguments that the Amendment "effectively" amends other provisions of the Constitution, such that criminals' existing rights would be drastically curtailed and the operations of the courts disrupted, fail under scrutiny. For instance, Petitioners have argued, among other things, that the inclusion of a "right to privacy" for victims could effectively amend the Constitution's requirement governing open courts. There already exists, however, a constitutional right to privacy in Pennsylvania. The Amendment would not create any novel rules with respect to privacy.

Petitioners also have submitted, for example, that the Amendment would impact a criminal's right to speedy trial because the Amendment provides that victims shall have the right to participate and be heard at all stages of the criminal justice process. But, again, this is not a new right for victims in Pennsylvania. Currently, the CVA provides that victims are "[t]o not be excluded from any criminal proceeding...." 18 P.S. § 11.201. The existence of this statutory right has not been found to infringe upon the rights of criminals as a legal or practical matter. Moreover, the Petitioners ignore the plain language of the Amendment that provides that the victims are not a party to the criminal proceeding. There is no indication that criminal proceedings must come to a halt at the command of a victim as construed by the Petitioners.

The foregoing policy considerations and discussions of the implicit impacts on other amendments, underscore the wisdom of the Supreme Court's straightforward test in *Grimaud*, which posits only whether the proposed amendment facially alters any other provisions of the Constitution. Instantly, because the Amendment does not facially change any provisions, it satisfies the second *Grimaud* test.

2. **There is no requirement that the ballot question set forth the full text of the Crime Victims' Rights Amendment.**

Petitioners claim that the ballot question should have included the full text of the Amendment. There is no requirement under Pennsylvania law to this effect, and, indeed, the Constitution plainly states otherwise.

Petitioners have admitted in their filings that, “[a]lthough the Pennsylvania Supreme Court has implicitly permitted ballot questions that did not include the entire text, *see, e.g., Grimaud*, 865 A.2d at 843-44, it has never directly addressed the meaning of the phrase ‘such proposed amendment or amendments shall be submitted to the qualified electors of the State [in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe.]’” Petitioners’ PI Brief, p. 46. There is no mandate that the text be set forth at-length. Petitioners urge that the Court “should establish” the law in their favor.

The Supreme Court has resolved this issue, however. The high Court has allowed amendments to be proposed in abbreviated form. For example, in *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016), the Supreme Court noted that “the Constitution does not speak to the wording of ballot questions but merely provides the General Assembly with the power to decide the manner and time to which to present proposed constitutional amendments to voters.” *Id.* at 1141. It affirmed that

the General Assembly correctly delegated the job of crafting the question in an abbreviated form to the Secretary. *Id.*

This Court has also so ruled. In *Bergdoll v. Commonwealth*, 858 A.2d 185 (Pa. Cmwlth. 2004), *aff'd*, 874 A.2d 1148 (Pa. 2005), this Court described the amendment procedure stating that, “the General Assembly shall prescribe the manner in which the proposed amendments are to be submitted to the qualified electors. Pursuant to this authority and appearing in our Constitution as early as 1874, the General Assembly directed, in the relevant part of Section 605 of the Election Code, [25 P.S. §§ 2600 – 3591] 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.” *Bergdoll v. Commonwealth*, 858 A.2d at 194-95. This Court reiterated that, “[i]n 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.” *Id.* at 195.

Under the plain language of our Constitution and *Bergdoll*, among other authority, the Petitioners’ claim fails. And, Petitioners cannot overcome the clear language of our Constitution and our cases by reference to a Kentucky case, as the

Kentucky Constitution differs due to the placement of a comma, and because the jurisdictions have applied their constitutions differently.

3. **The ballot question fairly, accurately and clearly apprises the electorate of the Crime Victims' Rights Amendment.**

The ballot question contains seventy-three words which cover almost the entirety of the Amendment. The electorate is fairly apprised of what they are voting for or against.

Under the Pennsylvania Constitution, questions on constitutional amendments must “fairly, accurately and clearly apprise the voter of the question or issue to be voted on.” *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969). 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 . . . it may be proper and necessary for a court to nullify an election. But where the irregularity complained of could not reasonably have misled the voters,” there is no cause for judicial relief. *Oncken v. Ewing*, 8 A.2d 402, 404 (Pa. 1939).

The ballot question appearing on the ballot (drafted by the Acting Secretary and approved by the Attorney General) satisfies the *Stander* requirements. The ballot question clearly and accurately provides notice to the voters that crime victims would be provided an array of rights:

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?

Petition for Review, Ex. A. The vote is to provide protections to crime victims. Voters are not in a situation where they are voting to provide protections to crime victims, and, for example, also considering an amendment regarding environmental laws—a true situation involving “logrolling.”

A closer review of the facts of the *Stander* case provides even greater support that the ballot question here passes constitutional scrutiny. The ballot question challenged in *Stander* was “but a tiny and minuscular statement of the very *lengthy* provisions of the proposed Judiciary Article V.” *Stander*, 250 A.2d at 480 (emphasis added). The amendment at issue was a *complete* revision of Article V relating to the Judiciary. For that revision, the 54-word ballot question submitted to the electorate read as follows:

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

*Id.* Nothing in the *Stander* ballot question explained any of the several substantive changes that would result from a “yes” vote, including the adoption of 18 different sections of proposed Article V, including: the establishment of the unified judicial

system; the different appellate courts, courts of common pleas and magisterial districts; appellate rights; judicial administration; qualifications for justices, judges and others; elections and vacancies; and myriad other provisions, all consisting of over 5,000 words.

Despite this lack of information, the Pennsylvania Supreme Court upheld the ballot question and determined that it “fairly, accurately and clearly apprized the voter of the question or issue to be voted on.” *Id.* The Court reached this conclusion because it determined that the ballot question was buttressed by other information—namely, the publications showing the proposed amendatory language to the Constitution and notices (like the Attorney General’s Plain English Statement) available in the polling places. *Stander*, 250 A.2d at 480. Those same accompanying documents exist in the matter, *sub judice*.

As required under Article XI, Section 1 of the Pennsylvania Constitution, newspaper publications have run in every county across the Commonwealth. Additionally, notices were present at the polling places pursuant to Section 201.1 of the Election Code, 25 P.S. § 2621.1. Between the two, voters had the chance to examine the actual text of the changes to be wrought by their vote, along with the Attorney General’s Plain English Statement explaining the effects of the change. Moreover, voters had access to this same information as it has been available on the Department of State’s publicly accessible website—a fact

conceded by Petitioners. Petition for Review, ¶ 31. Thus, through the advertisements, voters were exposed to a combination of the Amendment, the ballot question, and the Plain English Statement a total of three times prior to the November election.

As noted above, this Plain English Statement, in addition to being published in various newspapers, was posted in at least three distinct areas in all polling places. *See* 25 P.S. § 2621.1. Additionally, the county boards of election included the Plain English Statement, along with the text of the proposed amendment and ballot question, in the notice of election published by the board in a newspaper in the county between three and 10 days prior to the election. *See id.* §§ 2621.1 and 304. Voters were given both broad and detailed opportunities to read the proposed constitutional amendment, the Plain English Statement, and the ballot question, and to associate the ballot question with this detailed additional information. Therefore, the ballot question was associated with the language of the Amendment numerous times prior to the November 5, 2019 election, allowing a voter to understand the entirety of the proposed constitutional amendment envisioned by HB 276.

The holding in *Stander* is not an anomaly. In *Sprague v. Cortes*, 145 A.3d 1136 (Pa. 2016),<sup>2</sup> Justice Baer, writing separately to deny relief for petitioners, noted “the *Stander* ballot did not specifically reference or explain the several substantive changes that would result from a ‘yes’ vote,” on the question of approval of a completely new Article V for the Pennsylvania Constitution, and inasmuch as “the Secretary’s framing of the ballot question [in *Sprague*] clearly conveyed the proposed constitutional amendment,” the ballot question satisfied the *Stander* test, even if other language might have made the ballot question “more informative.” *Sprague*, 145 A.3d at 1142 (opinion of Baer, J.).

This Honorable Court also found that the *Stander* test—again, requiring that the ballot question “fairly, accurately and clearly” inform the voter—was met in *Weiner v. Sec’y of Commonwealth*, 558 A.2d 185 (Pa. Cmwlth. 1989). In *Weiner* the Court found that the failure to include the word “classes” had no import, and that “the voters, armed with the ballot question, the Attorney General’s [P]lain [E]nglish [S]tatement prepared and disseminated for publication and posting at the polls, and the abilities and reasons of common sense, are sufficiently notified of the effect of the constitutional amendment put before them.” *Weiner*, 558 A.2d at 189.

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<sup>2</sup> In *Sprague*, the Supreme Court assumed plenary jurisdiction of an action commenced in Commonwealth Court that challenged as misleading the wording of the ballot question regarding a change in the mandatory judicial retirement age; because the Court was evenly divided on the merits, no relief could be granted, and the status quo prior to the filing of the lawsuit was maintained. *Sprague*, 145 A.3d at 1137 (per curiam order).

Here, the ballot question, standing alone, satisfies the Constitution as it sets forth the gist of the Amendment. But, its constitutionality is further bolstered by the fact that the electorate had access to the full text of the Amendment and the Attorney General’s Plain English Statement. The Amendment and Plain English Statement were included in three newspaper advertisements, which were repeated by the county boards of elections, and at least three copies of the Plain English Statement explaining the proposed Amendment were posted in the polling place, along with the specimen ballots and other instructions. *See* 25 P.S. § 2621.1. All these efforts collectively provided the voters the ability to understand these matters in relation to each other and to use “the abilities and reasons of common sense” in considering the ballot question.

In sum, the Petitioners’ claim fails because the ballot question adequately informs the electorate.

**V. CONCLUSION**

For the foregoing reasons, because there is no genuine dispute of material fact and because the Secretary is entitled to judgment as a matter of law, this Honorable Court should grant her Application for Summary Relief.

**Respectfully submitted,**

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**Date: December 13, 2019**

**Counsel for Respondent**

**CERTIFICATE OF COMPLIANCE**

I, Nicole J. Boland, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, 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.

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