[J-74-2023] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 11 MM 2023
Petitioner	:	
v.	:	SUBMITTED: October 11, 2023
MICHAEL NOEL YARD,	:	
Respondent	:	

DISSENTING OPINION

CHIEF JUSTICE TODD **DECIDED: September 26, 2024**

I join Justice Donohue's pointed and insightful dissenting opinion in full. As I see it, the majority has sacrificed a constitutional provision on the altar of plain language interpretation.

We – appropriately – enforce the Constitution's plain language because it is the best indicator of the voter's intent. That is, we deem the plain language as the best *window* into their intent. But which voter's intent is the majority discerning in this case? Is it the voter that went to the polls and read the ballot question for Article I, Section 14 – the only text they saw on the ballot – and voted? As Justice Donohue explains in her dissent, clearly not. Is it the voter that read the Plain English Statement and voted? No again. Is it the voter who dug into the text of the proposed amendment, compared it against the existing provision, and noticed, self-evidently, that where there was one scenario for which bail could be denied upon special proof, two new scenarios were inserted? Still no. Is it the (likely rare) voter who ignored all of these things and reviewed

the text as revised – text that did not actually appear on the ballot – in isolation? *Maybe?* So if, as the concurrence blithely concedes, Concurring Opinion (Wecht, J.) at 12, the voters were misled and their intent was to do one thing, while the majority interprets the provision to do another, whose intent is the majority's plain language interpretation discerning? With its myopic focus on plain language in this situation, the majority treats the meaning of constitutional language as if it exists *outside* the voters themselves.

As my colleague emphasizes, *id.* at 12, this is a *constitution* we are construing, not a contract, not a will or regulation, not a statute – we have a special duty, our highest duty, to get it right. For as long as our courts have existed, judges have fashioned rules governing the construction of written documents – constitutions being at the apex of those efforts – with the goal of discerning intent. Plain language is the governing rule. But rules have their exceptions. Rules are powerful only to the degree they do justice. Rules can be sacrosanct, until they must not be.

This is a very special case – perhaps there are others like it, but I suspect it is one of a kind. Here, there is patent tension between the plain language of Section 14 and evidence of what the voters' intended. The voters were specifically counseled, in every way the General Assembly requires that they be counseled, on the meaning of the amendment to Section 14. This Court endorsed the accuracy of those instructions. In all of this, the voters were instructed precisely and clearly, and they approved the amendment. If we now construe Section 14 to mean the opposite of those instructions, as the majority does, we are complicit in a deception of the voters of the greatest magnitude.

If our rules for construing written language cannot get the Constitution right, then it is the rules that must bend, not the other way round.

Justice Donohue joins this dissenting opinion.