

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

APPLICATION FOR SUMMARY RELIEF

Respondent, Kathy Boockvar, Secretary of the Commonwealth¹ (“Respondent” or “Secretary”), hereby files this Application for Summary Relief from the Petition for Review filed by Petitioners, League of Women Voters and Lorraine Haw (“Petitioners” or “the League”) and Intervenor Ronald Greenblatt, pursuant to Pennsylvania Rule of Appellate Procedure 1532(b), Pennsylvania Rule of Appellate Procedure 123, and Pennsylvania Rule of Civil Procedure 1035.2, as follows.

1. Respondent is entitled to summary relief, as a matter of law, because the Crime Victims’ Rights Amendment (“Amendment”) advances a single purpose—securing victims’ rights in the criminal cases in which they suffered direct harm—that satisfies the separate vote requirement of the Pennsylvania

¹ Kathy Boockvar was appointed as Acting Secretary of State on January 5, 2019 and was confirmed by the Senate on November 19, 2019.

Constitution. In serving this singular purpose, the Amendment does not facially alter any existing provisions of the Constitution. Put another way, the rights of criminal offenders remain intact.

2. Moreover, Respondent is entitled to summary relief because the ballot question, as posed, fairly and accurately reflects the content of the Amendment, which is all that the law requires. Additionally, contrary to Petitioners' claim, there is no requirement under Pennsylvania law that the full text of a proposed amendment be published on the ballot—indeed, existing case law indicates oppositely.

Factual Background

3. 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.

4. 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.

5. 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.

6. Joint Resolution No. 2019-1, provides, in pertinent part:

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That Article I be amended by adding a section to read:

§ 9.1. Rights of victims of crime.

(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as further provided and as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused: to be treated with fairness and respect for the victim's safety, dignity and privacy; 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; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; to reasonable protection from the accused or any person acting on behalf of the accused; to reasonable notice of any release or escape of the accused; to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; full and timely restitution from the person or entity convicted for the unlawful conduct; full

and timely restitution as determined by the court in a juvenile delinquency proceeding; to the prompt return of property when no longer needed as evidence; to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related postconviction proceedings; to confer with the attorney for the government; and to be informed of all rights enumerated in this section.

(b) The victim or the attorney for the government upon request of the victim may assert in any trial or appellate court, or before any other authority, with jurisdiction over the case, and have enforced, the rights enumerated in this section and any other right afforded to the victim by law. This section does not grant the victim party status or create any cause of action for compensation or damages against the Commonwealth or any political subdivision, nor any officer, employee or agent of the Commonwealth or any political subdivision, or any officer or employee of the court.

(c) As used in this section and as further defined by the General Assembly, the term "victim" includes 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. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Joint Resolution No. 2019-1.

7. As required, the Secretary then prepared the text of the ballot question to be posed to the electorate for a vote as to whether the Constitution should be amended. The ballot question 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?

8. Both the Petitioners, and this Honorable Court, have acknowledged that the Secretary, Attorney General, and General Assembly properly followed constitutional procedure in placing the ballot question on the ballot. *See* Memorandum Opinion by Judge Ceisler (Oct. 30, 2019), Fn. 18.

Legal Discussion

9. Rule 1532(b) of the Pennsylvania Rules of Appellate Procedure addresses applications for summary relief filed with this Court, and 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.” *Bell Atlantic–Pennsylvania, Inc. v. Turnpike Comm’n*, 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 Dep’t of Corr.*, 892 A.2d 872, 879 n. 13 (Pa. Cmwlth. 2006).

10. As will be further set forth in Respondent’s Brief in Support, Respondent is entitled to summary relief because there is no dispute of material fact, and because she is entitled to relief as a matter of law.

11. Our Constitution grants the General Assembly the right to amend the Constitution by way of ballot question presented to the electorate. Pa. Const. art.

XI. The General Assembly exercised that power, and, along with the Secretary and Attorney General, followed proper procedure in placing the ballot question on the ballot.

12. As to the Amendment, the question for the Court is technical in nature—whether it satisfies the separate vote requirement of Article XI, which requires that “[w]hen two or more amendments shall be submitted they shall be voted upon separately.” Pa. Const. art. XI, § 1.

13. The Amendment satisfies the separate vote requirement. 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

14. 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.”).

15. In addition to challenging the Amendment, Petitioners also take issue with the ballot question. They claim that the ballot question should have included the full text of the Amendment, and that the electorate was not fully apprised by the ballot question. There is no requirement under Pennsylvania law that the full text be delineated on the ballot, however, and, the ballot question, containing, seventy-three words which cover almost the entirety of the Amendment, convey the import of the Amendment.

16. Put simply, the Amendment is constitutional, and was properly presented to the electorate by way of the ballot question, such that summary relief should be entered in the Respondent's favor and against Petitioners. The voices of the electorate must be heard and the votes counted consistent with the power to amend the Constitution under Article XI.

WHEREFORE, Respondent respectfully requests that this Honorable Court enter judgment in her favor, and declare the Crime Victims' Rights Amendment constitutional.

Respectfully submitted,

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