

**IN THE
SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

TOM WOLF, GOVERNOR OF THE	:	No. 73 MM 2022
COMMONWEALTH OF	:	
PENNSYLVANIA, AND LEIGH M.	:	
CHAPMAN, ACTING SECRETARY	:	
OF THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
<i>Petitioners</i>	:	
	:	
v.	:	
	:	
GENERAL ASSEMBLY OF THE	:	
COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
<i>Respondent</i>	:	

**ANSWER OF AMICI CURIAE,
HOUSE MAJORITY LEADER KERRY A. BENNINGHOFF AND THE
PENNSYLVANIA HOUSE REPUBLICAN CAUCUS, IN OPPOSITION TO
APPLICATION FOR EXTRAORDINARY RELIEF**

LAMB McERLANE PC

Joel L. Frank
John J. Cunningham, IV
Scot R. Withers
Joseph R. Podraza, Jr.
I.D. Nos.: 46601; 70975; 84309; 53612
24 E. Market Street, Box 565
West Chester, PA 19381
(610) 430-8000

*Counsel for Amici Curiae,
House Majority Leader Kerry A. Benninghoff and
the Pennsylvania House Republican Caucus*

TABLE OF CONTENTS

TABLE OF CITATIONS ii

I. COUNTER-STATEMENT OF THE MATTER..... 1

II. STATEMENT OF INTEREST OF *AMICI CURIAE*..... 4

III. CONCISE STATEMENT OF REASONS RELIED UPON FOR DENIAL OF APPLICATION FOR EXTRAORDINARY RELIEF 6

A. This Matter Does Not Present Issues Of Immediate Public Importance Justifying This Court’s Exercise Of King’s Bench Powers 8

1. The Constitution contains no separate vote requirement applicable to the General Assembly 8

2. There is no exigency here 9

3. The Commonwealth Court is the proper forum for Petitioners to assert their dubious claims..... 11

B. The Governor And The Secretary Of The Commonwealth Have No Role, As Public Officials, To Interfere With The Right Of The People To Amend Their Charter 15

IV. CONCLUSION..... 17

TABLE OF CITATIONS

CASES

Commonwealth v. Tharp, 754 A.2d 1251 (Pa. 2000) 16

Gondelman v. Commonwealth, 554 A.2d 896 (Pa. 1989) 16, 17

In re Bruno, 101 A.3d 635 (Pa. 2014) 7, 15

Kremer v. Grant, 606 A.2d 433 (Pa. 1992) 2

League of Women Voters of Pa. v. Boockvar, 219 A.3d 594 (Pa. 2019)..... 13

League of Women Voters of Pa. v. Degraffenreid, 265 A.3d 207
(Pa. 2021) 11, 12, 13

Misitis v. Steel City Piping Co., 272 A.2d 883 (Pa. 1971) 11

Pennsylvania Democratic Party v. Boockvar, 238 A.3d 345 (Pa. 2020) 13

Pennsylvania Prison Soc’y v. Commonwealth, 776 A.2d 971
(Pa. 2001) 9

Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655
(Pa. 2005)..... 11

*Precision Mktg., Inc. v. Commonwealth, Republican Caucus of the
Senate of PA/AKA Senate of PA Republican Caucus*, 78 A.3d 667
(Pa. Cmwlth. 2013) 4, 5

CONSTITUTIONAL PROVISIONS

PA. CONST. art. I, § 2 (“Political Powers”) 17

PA. CONST. art. XI, § 1 (“Proposal of Amendments by the General
Assembly and Their Adoption”).....*passim*

STATUTES

42 Pa.C.S. § 502 (“General powers of Supreme Court”)6, 7, 8
42 Pa.C.S. § 726 (“Extraordinary jurisdiction”).....6, 7
42 Pa.C.S. § 761 (“Original jurisdiction”)..... 12
42 Pa.C.S. §§ 7531 *et seq.* (“Declaratory Judgments Act”) 14

RULES

Pa.R.A.P. 531 (“Participation by *Amicus Curiae*”).....1, 6
Pa.R.A.P. 3307 (“Applications for Leave to File Original Process”) 15
Pa.R.A.P. 3309 (“Application for Extraordinary Relief”).....1, 16, 15

OTHER AUTHORITIES

Robert E. Woodside, *Pennsylvania Constitutional Law* (Murrelle
Printing Company, Inc. 1985)..... 16, 17

Pursuant to Pa.R.A.P. 531(b) and 3309(b), *Amici Curiae*, House Majority Leader Kerry A. Benninghoff and the Pennsylvania House Republican Caucus (collectively “House *Amici*”), by and through undersigned counsel, Lamb McErlane PC, hereby file this Answer in Opposition to the “Application for Invocation of King’s Bench Power to Declare Senate Bill 106 of 2021 Invalid and Enjoin Further Action on Constitutional Amendments”, filed by Petitioners, Tom Wolf, Governor of Pennsylvania, and Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania.

I. COUNTER STATEMENT OF THE MATTER

The General Assembly, acting pursuant to its powers under Article XI, Section 1 of the Pennsylvania Constitution, has voted by a majority in both the Pennsylvania House and Senate to pass Senate Bill 106 (“SB 106”), a joint resolution proposing several constitutional amendments for ultimate consideration by the citizens of the Commonwealth of Pennsylvania.

The process of amending the Pennsylvania Constitution, found in Article XI, Section 1, provides the Commonwealth’s voters with information concerning a potential constitutional change. It does so 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, Section 1, as well as inherent in the simulacrum of the standard legislative process utilized by

the General Assembly in adopting any proposed change. The difference between the General Assembly's process for adoption of legislation and adoption of the constitutional change, in this instance, is the lack of required gubernatorial consent in the constitutional amendment process.

“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. Entirely consistent therewith, SB 106 was referred to and reported from committee, received three days consideration in both legislative chambers, and was passed by a majority in the Senate and House on July 8, 2022.

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 the candidates for election to the General Assembly ‘next afterwards chosen’.” *Kremer v. Grant*, 606 A.2d 433, 438 (Pa. 1992). With the next general election

scheduled to take place November 8, 2022, Article XI, Section 1 therefore imposed upon the Secretary of the Commonwealth the ministerial duty and obligation to begin first publication in local newspapers by August 8, 2022.

However, on July 28, 2022, Governor Wolf and Acting Secretary of the Commonwealth Leigh M. Chapman filed an Application for Extraordinary Relief (the “Application”), asking this Court to exercise its King’s Bench powers where no dispute exists in any judicial forum, assume jurisdiction over SB 106, declare SB 106 invalid and further enjoin action on the proposed constitutional amendments. The Application was filed notwithstanding the fact that the constitutional amendments in SB 106 are in their procedural infancy,¹ having only proceeded partway through the General Assembly’s process in addition to the other procedurally required steps before the questions contained therein would actually appear on the ballot for voter approval by the People.² Through the filing of the

¹ For ease of reference, this Answer will use the phrases “second passage of SB 106”, “passed SB 106 for a second time” and similar phrases to refer to the subsequent passage of one or more of the constitutional amendments contained in SB 106.

² The initial procedural steps regarding SB 106 have already occurred: SB 106 was adopted by the current General Assembly on July 8, 2022, and was initially published throughout the Commonwealth by August 8, 2022 (three months prior to the November 8, 2022 general election). However, there are additional procedural steps that have not yet occurred (and may or may not occur). First, following the November 8, 2022 general election, the People will elect a new General Assembly. Second, pursuant Article XI, Section 1, “in the General Assembly next afterwards chosen”, the newly elected General Assembly, in accordance with its rules and procedures, will decide whether to pass SB 106 for a second time. Third, if the General Assembly does pass SB 106 for a second time, the Secretary of the Commonwealth must publish SB 106 once again throughout the Commonwealth. At that point, with the voters of Pennsylvania (continued) . . .

Application, Petitioners seek to avoid their ministerial role in the Constitutional amendment process, to arrogate to themselves the right to participate in the Constitutional amendment process, and to thereby diminish the powers and authority of the General Assembly to act under Article XI, Section 1.

II. STATEMENT OF INTEREST OF AMICI CURIAE

Majority Leader Benninghoff is one of the highest ranking officials of the House and the Caucus is a recognized body of the House. Majority Leader Benninghoff represents the interests of the House Republican members, who currently hold the majority in the House. SB 106 passed by a vote in the House of 107-92 with nearly every member of the Republican party voting in favor of SB 106. Because almost all of the members of the majority party voted in favor of SB 106, Majority Leader Benninghoff represents the interests of these members whose actions Petitioners now challenge.

The Pennsylvania House organizes its members according to the two major political party affiliations, Republican and Democratic. The two subordinate organizations (Majority and Minority), which make up the House, are known as the House “caucuses”. *Precision Mktg., Inc. v. Commonwealth, Republican Caucus*

... (continued)

having already received significant information about SB 106, both directly (by publication) and indirectly (through the legislative process), the ballot questions and “plain English” statements would be drafted and SB 106 would only then be placed on the ballot for the May 2023, or subsequent, election.

of the Senate of PA/AKA Senate of PA Republican Caucus, 78 A.3d 667, 672 (Pa. Cmwlth. 2013).³ Whichever party holds the most seats in the House is considered the Majority Caucus. The Majority Caucus is one of two subparts of the Pennsylvania House and is an integral constituent of the House. “When a caucus is effective, it creates the ‘constitutional majority’ to pass legislation.” *Precision Mktg.*, 78 A.3d at 673. As an integral part of the House, and thus the General Assembly, the House Republican Caucus encompasses the majority voting in favor of the joint resolution in the chamber and its members include the individual members of the House with the power to control the legislative calendar regarding this joint resolution and future resolutions concerning the same subject matter. The House Majority Caucus has a substantial, direct and immediate interest in the outcome of this action because if the relief requested by the Petitioners is granted, there will be a discernible and palpable unconstitutional and impermissible infringement on the legislative authority of the House Majority Caucus.

Thus, Majority Leader Benninghoff, representing the majority party of the House, and the Caucus, composed of members of the House, have a legally enforceable interest in defending the legislative interests of the Caucus and its members. The interests of House *Amici* will be substantially affected if Petitioners

³ *Precision Mktg.* specifically addresses the caucuses in the Senate, but the concept is equally applicable to the House caucuses. See *Precision Mktg.*, 78 A.3d at 672, n. 10, 11 and 12.

are ultimately granted the declaratory relief they seek and SB 106 is invalidated, since House *Amici* would thereby be deprived of their ability to decide whether to pass SB 106 for a second time, thereby diminishing the specific powers unique to the functions of the General Assembly.

The interest of House *Amici* arises from the role of the General Assembly as the conduit through which the People of Pennsylvania amend their Constitution. House *Amici* have a significant interest in ensuring that their perspectives on these constitutional questions are brought to bear in the Court's analysis.

As required by Pa.R.A.P. 531(b)(2), House *Amici* hereby disclose to this Honorable Court that no person or entity other than the House *Amici*, its members, or counsel paid, in whole or in part, for the preparation of this Answer, or authored, in whole or in part, this Answer.

III. CONCISE STATEMENT OF REASONS RELIED UPON FOR DENIAL OF APPLICATION FOR EXTRAORDINARY RELIEF

This Court's King's Bench and superintendency powers—including those exercised by the Justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster—retained by the Supreme Court of Pennsylvania pursuant to Section 1 of the Schedule to Article V of the Pennsylvania Constitution, and implemented under 42 Pa.C.S. §§ 502 and 726 and Pa.R.A.P. 3309, preserve this Court's power and ability to, *inter alia*, assume plenary

jurisdiction over any matter pending in any court at any stage, or even when no matter is pending in any other court, in order to cause right and justice to be done. Pursuant to 42 Pa.C.S. § 726,⁴ this Court may assume jurisdiction of any matter initially commenced in another court regardless of the procedural status of the proceedings in that forum. However, where, as here, there is no matter pending in any judicial forum, pursuant to 42 Pa.C.S. § 502,⁵ this Court may nevertheless invoke its King’s Bench powers, which as aptly stated by this Court: “encompass, supplement, and transcend the other powers and jurisdiction enumerated in the 1968 Constitution and the Judicial Code.” *In re Bruno*, 101 A.3d 635, 669 (Pa. 2014).

Only unusual circumstances justify the exercise of these unique King’s Bench powers, as codified in Section 502, for in most situations, this Court’s

⁴ Section 726 provides that: “Notwithstanding any other provision of law, the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.” 42 Pa.C.S. § 726.

⁵ Section 502 provides that:

The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court and King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722. The Supreme Court shall also have and exercise the following powers:

(1) All powers necessary or appropriate in aid of its original and appellate jurisdiction which are agreeable to the usages and principles of law.

(2) The powers vested in it by statute, including the provisions of this title.

42 Pa.C.S. § 502.

statutory appellate jurisdiction is adequate. Those unusual circumstances, properly justifying this Court’s exercise of King’s Bench powers, simply do not exist here. The Application should be denied by this Honorable Court.

A. This Matter Does Not Present Issues Of Immediate Public Importance Justifying This Court’s Exercise Of King’s Bench Powers

The use of true King’s Bench extraordinary jurisdiction, pursuant to 42 Pa.C.S. § 502, is only appropriate in extraordinary situations involving matters of immediate public importance. This is not such a situation.

1. The Constitution contains no separate vote requirement applicable to the General Assembly

Petitioners distractingly dedicate the vast majority of the Application to addressing the merits of the alleged constitutional infirmities of SB 106, but only gloss over why King’s Bench jurisdiction is supposedly appropriate. Petitioners assert that “because the constitutionally prescribed publication process is proceeding and state representative who will vote on second passage of SB 106 are up for election in November, this dispute affects all voters and is of immediate public importance.” (Application at 13.) Later, Petitioners briefly follow up on this assertion, without citation to any authority or case law whatsoever, and allege that “[t]he General Assembly denied voters their constitutional right to be notified of how their respective members voted on each amendment and their right to replace

those members with representatives who share their views[,]” (Application at 18), and that “voters are considering which candidates to support in the November elections for the Senate and House without the benefit of their representatives’ vote on each proposed amendment[,]”, (Application at 38). The Constitution, however, contains no separate vote requirement as it pertains to the General Assembly.

The Constitution only requires that after second passage of a proposed constitutional amendment by the General Assembly that: “When two or more amendments shall be submitted they shall be voted upon separately.” PA. CONST. art. XI, § 1. This provision of Article XI, Section 1 merely requires the electors to vote separately on each constitutional amendment submitted to the electorate for a vote. *E.g., Pennsylvania Prison Soc’y v. Commonwealth*, 776 A.2d 971, 981 (Pa. 2001) (“the separate vote requirement of Article XI, Section 1 ... entails an examination of whether two or more amendments have been submitted to the electorate.”) There is nothing in Article XI, Section 1 that requires the General Assembly to vote separately on each constitutional amendment.

2. There is no exigency here

The constitutional amendments in SB 106 are in their procedural infancy, having only proceeded partway through the General Assembly’s process. There are additional procedurally required steps before the questions contained therein would

actually appear on the ballot for voter approval by the People. Thus, there is no exigency in this case requiring immediate intervention by this Court.

SB 106 was adopted by the current General Assembly on July 8, 2022, and was initially published throughout the Commonwealth by August 8, 2022 (three months prior to the November 8, 2022 general election). Next, following the November 8, 2022 general election, the People will elect a new General Assembly. Pursuant to Article XI, Section 1, “in the General Assembly next afterwards chosen”, the newly elected General Assembly, in accordance with its rules and procedures, will decide whether to pass SB 106 for a second time. If the General Assembly does pass SB 106 for a second time, the Secretary of the Commonwealth must publish SB 106 once again throughout the Commonwealth. At that point, with the voters of Pennsylvania having already received significant information about SB 106, both directly (by publication) and indirectly (through the legislative process), the ballot questions and the “plain English” statements would be drafted and SB 106 would only then be placed on the ballot for the May 2023, or subsequent, election.

The mere fact that the proposed Constitutional amendments set forth in SB 106 may at some point in the future be ready to appear on the ballot for approval by the People does not rise to the level of an issue of immediate public importance. Petitioners seek to invoke this Court’s King’s Bench powers to have this

Honorable Court in essence issue an advisory opinion on the propriety of a constitutional process that currently is incomplete and ongoing within the General Assembly. “The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005). *See also generally, e.g., Misitis v. Steel City Piping Co.*, 272 A.2d 883, 884 (Pa. 1971) (“We have repeatedly followed the general rule that we will not decide a constitutional question unless absolutely necessary”).

3. The Commonwealth Court is the proper forum for Petitioners to assert their dubious claims

This Court should decline to exercise King’s Bench jurisdiction, when, in these circumstances, there are no proceedings in any court below. The proper course would have been for the Governor to take advantage of his ability to file, as a registered Pennsylvania voter,⁶ a petition for review in the Commonwealth Court’s original jurisdiction, seeking a declaratory judgment and an injunction against the Secretary.

The proceedings underlying this Court’s recent decision in *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d 207 (Pa. 2021), provide the

⁶ *See* Application at 10 (“Governor Wolf brings this action as a constitutional officer ... and as a voter with the right to vote on proposed constitutional amendments according to the procedure in Article XI, § 1. Acting Secretary Chapman also brings this action as a voter and as the Commonwealth officer charged in Article XI, § 1 with responsibility for publishing notice of the proposed amendments to Pennsylvania voters.”) (Emphasis supplied.)

roadmap for how a matter such as this can expeditiously proceed through the normal course of litigation, notwithstanding practical time constraints which are not even present in this matter. In the *Degrafferreid* proceedings, the petitioners filed an original jurisdiction petition for review in the Commonwealth Court pursuant to 42 Pa.C.S. § 761(a), naming the acting Secretary of the Commonwealth as the respondent, and seeking a declaratory judgment and permanent injunctive relief based on allegations that a proposed constitutional amendment, creating a crime victims' bill of rights ("Marcy's Law"), violated, *inter alia*, Article XI, Section 1. The original jurisdiction petition for review, and an accompanying application for a preliminary injunction, were filed on October 10, 2019, a mere twenty-six days before the November 5, 2019 general election, at which Marcy's Law would be presented to the People for their vote. *Degrafferreid*, 265 A.3d at 212.

Notwithstanding the petitioners' delay in waiting to challenge Marcy's Law until the eleventh hour, the Commonwealth Court was able to expedite the proceedings, grant several intervention applications, and on October 23, 2019, hold an evidentiary hearing and hear argument on the application for preliminary injunction. *Id.* On October 30, 2019, within a week of the injunction hearing, the Commonwealth Court issued its opinion and order granting the preliminary injunction and enjoining the Secretary "from tabulating and certifying the votes in

the November 2019 General Election relating to the ballot question” *Id.* Upon the filing of a direct appeal, this Court expedited the appeal proceedings and on November 4, 2019, affirmed the order of the Commonwealth Court. *Id.* at 212-13. *See League of Women Voters of Pa. v. Boockvar*, 219 A.3d 594 (Pa. 2019) (*per curiam* order).

On November 5, 2019, the electorate cast votes in the general election, but the Secretary did not tabulate or certify the results regarding Marsy’s Law. *Degraffenreid*, 265 A.3d at 213. Thereafter, cross motions for summary relief were filed, and on January 7, 2021, a divided *en banc* Commonwealth Court granted the request for declarative relief based on its determination that Marsy’s Law violated Article XI, Section 1, declared all votes cast on it to be invalid and entered a permanent injunction enjoining the Secretary from tabulating or certifying the votes. *Id.* On appeal, this Court affirmed.

The *Degraffenreid* proceedings, involving a practical time limitation on orderly court proceedings drastically far more acute than present in this matter, illustrate why this is not a situation where the “exercise of extraordinary jurisdiction by this Court is the only means available to resolve these disputes without disrupting the election.” *Compare Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 354 (Pa. 2020) (quoting the respondent Secretary’s application for extraordinary relief). Extraordinary jurisdiction should not

cavalierly be sought in a matter such as this, where the Commonwealth Court is uniquely suited to initially review Petitioners' claims in the normal course of exercising its original jurisdiction through its authorization and ability to serve as a trial court, and where all parties' interests would be protected by normal procedural safeguards.

Nor is there any exigency that would support this Court granting the extraordinary and overreaching prayer for relief contained in the Application, which requests that this Court simply exercise King's Bench jurisdiction and summarily "declare that SB 106 is constitutionally invalid and enjoin further action on the joint resolution." (Application at 40.) Petitioners certainly must recognize that in "seek[ing] a declaration from this Court under the Declaratory Judgments Act, 42 Pa.C.S.A. §[§] 7531 *et seq.*, that the amendments in SB 106 are constitutionally invalid and may not be further advertised or put to a second vote in the General Assembly", (Application at 10-11), there must first be, at a minimum, an actual pleading filed by Petitioners, naming the respondent(s), initiating a cause of action under the Declaratory Judgments Act seeking declaratory and injunctive relief, and thereafter providing the respondent(s) an opportunity to file responsive pleadings and participate in such litigation with all necessary and appropriate procedural steps and safeguards.

In the clear absence of a sufficient exigency, Petitioners should not be allowed to utilize this Court’s King’s Bench jurisdiction and Pa.R.A.P. 3309 as a procedural vehicle for Petitioners to, in effect, file original process in this Court, where original jurisdiction properly lies with the Commonwealth Court pursuant to the Judicial Code. *Compare* Pa.R.A.P. 3307 (“Applications for Leave to File Original Process”). “The purpose of [King’s Bench jurisdiction] is not to permit or encourage parties to bypass an existing constitutional or statutory adjudicative process and have a matter decided by this Court, but aids the Court in its duty to keep all inferior tribunals within the bounds of their own authority.” *In re Bruno*, 101 A.3d 635, 670 (Pa. 2014).

This matter does not necessitate the immediate intervention by this Honorable Court of last resort.

B. The Governor And The Secretary Of The Commonwealth Have No Role, As Public Officials, To Interfere With The Right Of The People To Amend Their Charter

In Article XI, Section 1, the authority to amend the Pennsylvania Constitution is unequivocally reserved for the People of Pennsylvania, speaking both through their elected representatives in the General Assembly and 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).

Not only is Article XI, Section 1 devoid of any requirement for gubernatorial consent in the constitutional amendment process, it likewise is devoid of any grant of authority for any substantive gubernatorial participation or input into the constitutional amendment process. Instead, the role of the Executive branch is purely ministerial.

Petitioners’ Application is nothing but a transparent attempt to avoid their ministerial role in the Constitutional amendment process, to arrogate to themselves the right to participate in the Constitutional amendment process, and to thereby diminish the powers and authority of the General Assembly to act under Article XI, Section 1.

Notwithstanding the absence of any legitimate role in the constitution amendment process, the Governor improperly seeks to prevent the People from exercising their constitutional right to amend their Charter. “[T]he people of the Commonwealth have the authority to amend their state constitution as they see fit[.]” *Commonwealth v. Tharp*, 754 A.2d 1251, 1253 (Pa. 2000). *See also Gondelman v. Commonwealth*, 554 A.2d 896, 904 (Pa. 1989) (“It is absurd to suggest that the rights enumerated in Article I were intended to restrain the power of the people themselves. Such a proposition loses sight of ‘the basic overriding

principle of American government—that all power is in the people.”” (citing Woodside, *Pennsylvania Constitutional Law* 3)).

Through the Application, the Governor seeks to withhold from the People the opportunity to indicate their pleasure at the ballot box as to whether they will amend their Charter. The Governor is thereby improperly attempting to effectuate what could only be described as a King’s Bench facilitated veto of SB 106. To the extent Petitioners have couched their objections to SB 106 in terms of the sanctity of the Pennsylvania Constitution’s Declaration of Rights, (*see* Application at 24-27), these efforts are in direct contravention to the Constitution’s guarantee that:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

PA. CONST. art. I, § 2. This Court should not countenance Petitioners’ endeavor.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, *Amici Curiae*, House Majority Leader Kerry A. Benninghoff and the Pennsylvania House Republican Caucus, respectfully request that this Honorable Court DENY the Application for Extraordinary Relief filed by Petitioners, Tom Wolf, Governor of Pennsylvania, and Leigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania.

Respectfully submitted,

LAMB McERLANE PC

Date: August 24, 2022

By: /s/ Joel L. Frank

Joel L. Frank
Attorney I.D. No. 46601
John J. Cunningham, IV
Attorney I.D. No. 70975
Scot R. Withers
Attorney I.D. No. 84309
Joseph R. Podraza, Jr.
Attorney I.D. No. 53612
24 E. Market Street, Box 565
West Chester, PA 19381-0565
(610) 430-8000

*Counsel to Amici Curiae,
House Majority Leader
Kerry A. Benninghoff and the
Pennsylvania House Republican Caucus*

Pa.R.A.P. 531(b)(3) & 2135(d) CERTIFICATE OF COMPLIANCE

Because the August 18, 2022 Orders of this Court allowing the proposed intervenors who were denied intervention to file *amici curiae* submissions on or before August 24, 2022, did not specify the word limit for those submissions, it is presumed that the Pa.R.A.P. 531(b)(3) word limit would be half the length of a party's principal brief as specified in Pa.R.A.P. 2135(a)(1).

It is therefore hereby certified that the foregoing *Amici Curiae* Answer complies with the word count limit set forth in Pa.R.A.P. 531(b)(3) & 2135(a)(1) because it contains 4,132 words, as computed by the "Word Count" function in Microsoft Word 2013, excluding the parts exempted by Pa.R.A.P. 2135(b).

Respectfully submitted,

LAMB McERLANE PC

Date: August 24, 2022

By: /s/ Joel L. Frank

Joel L. Frank
Attorney I.D. No. 46601
John J. Cunningham, IV
Attorney I.D. No. 70975
Scot R. Withers
Attorney I.D. No. 84309
Joseph R. Podraza, Jr.
Attorney I.D. No. 53612
24 E. Market Street, Box 565
West Chester, PA 19381-0565
(610) 430-8000

*Counsel to Amici Curiae,
House Majority Leader
Kerry A. Benninghoff and the
Pennsylvania House Republican Caucus*

PUBLIC ACCESS POLICY CERTIFICATE OF COMPLIANCE

It is hereby certified by the undersigned 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.

Respectfully submitted,

LAMB McERLANE PC

Date: August 24, 2022

By: /s/ Joel L. Frank

Joel L. Frank
Attorney I.D. No. 46601
John J. Cunningham, IV
Attorney I.D. No. 70975
Scot R. Withers
Attorney I.D. No. 84309
Joseph R. Podraza, Jr.
Attorney I.D. No. 53612
24 E. Market Street, Box 565
West Chester, PA 19381-0565
(610) 430-8000

*Counsel to Amici Curiae,
House Majority Leader
Kerry A. Benninghoff and the
Pennsylvania House Republican Caucus*