

Victims' Rights Amendment," provides for the consideration and inclusion of victims throughout the criminal justice process through notification and the opportunity to be heard. In creating rights for victims, the Crime Victims' Rights Amendment does not alter offenders' existing rights under the Pennsylvania Constitution in any manner, expressly or otherwise. *See Grimaud v. Com.*, 581 Pa. 398, 409, 865 A.2d 835, 842 (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 claim that the ballot question violates the Pennsylvania Constitution because the Crime Victims' Rights Amendment should be construed as multiple amendments instead of one. Petitioners' action is untimely. It comes almost three months after the initial advertising by the Department of State of the full text of the Crime Victims' Rights Amendment, the ballot question and the Attorney General's Plain English Statement, and two subsequent advertisements thereafter, and three weeks after ballots were largely finalized and printed (with over 9,500 absentee votes already returned), and less than three weeks before the municipal election, the Petitioners have belatedly come to this Court requesting the extraordinary relief of an injunction mandating removal of the ballot question from the already-printed and programmed ballots.

Even ignoring that the Petitioners' request is untimely and would irreparably disrupt the status quo, the Petitioners cannot prove a right to relief on the merits. The Crime Victims' Rights 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. There is no harm to be abated. The Amendment does not facially change any other provisions of the Constitution. And, this Court has repeatedly held that preliminary injunctive relief is unnecessary in ballot question cases.

The fact that the Petitioners have obvious policy disagreements with the Crime Victims' Rights Amendment does not render the ballot question constitutionally void. Petitioners' request for an injunction should be denied.

II. **ANSWER TO APPLICATION FOR RELIEF**

1. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, the ballot question proposes a single amendment to the Pennsylvania Constitution—the Crime Victims' Rights Amendment. Moreover, the ballot question fairly and accurately reflects the Amendment. It is strictly DENIED that there is a constitutional

requirement that the entire text of a proposed amendment be set forth in a ballot question, as incorrectly implied by the Petitioners.

2. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, the Crime Victims' Rights Amendment is a document that speaks for itself, and the Petitioners' characterizations of the same are strictly DENIED.

3. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, the Crime Victims' Rights Amendment does not infringe or alter the existing rights of an accused or convicted individual in any respect, let alone on its face. *See Grimaud v. Com.*, 581 Pa. 398, 409, 865 A.2d 835, 842 (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.”).

4. DENIED. After reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations related to the identity and purpose of the Petitioner, so those allegations are DENIED. Moreover, the remaining allegations set forth conclusions of law to which

no factual response is deemed necessary, and which are DENIED. By way of further response, it is strictly DENIED that the League of Women Voters has standing to bring this action.

5. DENIED. After reasonable investigation, Petitioner is without knowledge or information sufficient to form a belief as to the factual allegations of this Paragraph, so they are DENIED. Moreover, the remaining allegations set forth conclusions of law to which no factual response is deemed necessary, and which are DENIED. By way of further response, there is only one amendment, pertaining to one subject matter, that is proposed on the ballot.

6. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, the ballot question is a valid exercise of the constitutional prerogative of the electorate to make an important amendment to the Constitution to the benefit of crime victims.

7. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, it is strictly DENIED that the Petitioners are entitled to relief.

8. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED.

9. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED.

10. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, it is strictly DENIED that the Petitioners satisfy any elements requisite to obtaining injunctive relief.

11. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, it is strictly DENIED that an injunction should be granted because the Petitioners opine that the ballot question reflects unwise policy choices. The Constitution does not require that the ballot question satisfy the concerns of the Petitioners, or any other particular segment of the electorate. By way of further response, it is DENIED that the ballot question proposes multiple amendments. Rather, it proposes one amendment—the Crime Victims’ Rights Amendment.

12. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, voting is already underway. Significant harm will occur as a result of an injunction, particularly because the Petitioners delayed in bringing their request. The Acting Secretary of the Commonwealth certified the ballot question for the Crime Victims' Amendment to the county boards of elections on September 11, 2019, for inclusion on the 2019 municipal election ballot. As of October 15, 2019, 55,742 absentee ballots were printed and mailed to electors (54,645 regular and 1,097 military and overseas) and 9,518 absentee ballots (9,416 regular and 102 military and overseas) have already been returned. If the Acting Secretary were enjoined from certifying the ballot question, the status of these absentee ballots would be called into question. The uncertainty regarding the final content of the November ballot will have already delayed delivery of additional absentee ballots, compressing the time electors have to vote and return their absentee ballots. The deadline for county boards of elections to send civilian absentee ballots is next Tuesday, October 22, 2019. *See* 25 P.S. § 3146.5(b). After that date, as additional civilian absentee ballot applications are received, the county boards must deliver or mail absentee ballots within 48 hours. *Id.* Military-overseas absentee applications are already within and have been within the 48-hour processing window since September 20, 2019, which was the deadline

by which county boards were required to transmit absentee ballots to military-overseas absentee voters. 25 Pa.C.S. § 3508(a)(1) and (d). In-person electors would also be affected. Making a late change to balloting materials will require counties to reprogram voting systems, print new election day ballots and conduct additional logic and accuracy testing. This will introduce risks to the integrity of the election by compressing the timeframe for programming and testing voting systems, increasing the likelihood of errors during programming. This is particularly true in those 36 counties who are using their new voting equipment for the first time in this November's election. Because most counties will be using paper-based optical scan voting systems this November, the costs associated with reprogramming and reprinting ballots are significant. To the best of the Department's knowledge, the cost to counties to reprint balloting materials will exceed \$1.2 million. Moreover, the Department advertised the proposed constitutional 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. Further, during the months of August, September, and October of this year (2019), the Department again advertised the Crime Victims' Rights Amendment, in its joint resolution form (Joint

Resolution 2019-1; House Bill 276), in addition to the text of the ballot question itself and the Attorney General's Plain English Statement. This second round of advertising cost the Department \$1,374,597.12, bringing the total cost of advertising to \$2,088,815.83. This is among other harm that would be suffered by the Respondent. Petitioners' delay in bringing this eleventh-hour action creates incredible challenges throughout the counties and Department. On the other hand, it is DENIED that the Petitioners will suffer any harm.

13. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, an injunction would irreparably disrupt the status quo. Respondent hereby incorporates her response to Paragraph 12, above.

14. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, it is DENIED that the Petitioners can demonstrate a clear right to relief. The ballot question proposes one amendment related to one subject. Simply because the amendment contains related subparts does not render it unconstitutional. Moreover, the Amendment does not amend existing constitutional articles, either implicitly or expressly.

15. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, it is strictly DENIED that it is necessary for an amendment to be set forth in its entirety in a ballot question. Petitioners flatly ignore the plain language of the Constitution and well-established case law establishing that it is the prerogative of the General Assembly to prescribe the manner of amendments. There is no requirement that a ballot question contain the full text of an amendment.

16. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, this claim repackages the Petitioners' claim that the amendment should be set forth in its entirety. There is no such requirement. Moreover, the summary as provided accurately reflects the effects of the amendment in creating victims' rights. Petitioners underestimate the ability of the public to understand the ballot question, particularly because it pertains to a lay subject matter—rights for crime victims.

17. DENIED. The allegations of this Paragraph set forth conclusions of law to which no factual response is deemed necessary. To the extent the allegations are deemed factual in nature, they are DENIED. By way of further response, Respondent hereby incorporates her response to Paragraph 12. The ballots have

already been printed and prepared, with some ballots already being cast, such that the process cannot be stopped. Moreover, there is no offending activity to be abated. The ballot question is constitutional and should be presented to the electorate for its consideration.

NEW MATTER TO APPLICATION FOR RELIEF

18. The foregoing Paragraphs are hereby incorporated as if set forth more fully herein.

19. Petitioners fail to state a claim upon which relief may be granted. The ballot question satisfies the Pennsylvania Constitution. It proposes a single amendment that adds one section to the Constitution, setting forth crime victims' rights. It does not, patently or latently, amend any pre-existing provisions of the Constitution, and does not detract from an accused or convicted person's rights. Furthermore, there is no requirement that the ballot question set forth the entire text of the proposed amendment. The ballot question, as posed, fairly and accurately reflects the Amendment, which is all that the law requires.

20. The Petitioners' policy disagreements with the proposed Amendment do not constitute cognizable legal harm, nor irreparable harm, and should be stricken and disregarded as improperly before the Court.

21. Petitioner(s) lacks standing.

22. This action is untimely. It was not filed until after three rounds of advertising of the full text of the Amendment, the ballot question and the Attorney General's Plain English Statement of the Crime Victims' Rights Amendment by the Department of State in at least two newspapers in each of the sixty-seven counties, and three weeks after ballots were largely finalized and printed (with over 9,500 absentee votes already returned), and less than three weeks before the election, to request an injunction.

23. To be sure, greater harm will result from the issuance of an injunction. The Acting Secretary of the Commonwealth certified the ballot question for the Crime Victims' Amendment to the county boards of elections on September 11, 2019, for inclusion on the 2019 municipal election ballot. As of October 15, 2019, 55,742 absentee ballots were printed and mailed to electors (54,645 regular and 1,097 military and overseas) and 9,518 absentee ballots (9,416 regular and 102 military and overseas) have already been returned. If the Acting Secretary were enjoined from certifying the ballot question, the status of these absentee ballots would be called into question. The uncertainty regarding the final content of the November ballot will have already delayed delivery of additional absentee ballots, compressing the time electors have to vote and return their absentee ballots. The deadline for county boards of elections to send civilian absentee ballots is next Tuesday, October 22, 2019. *See* 25 P.S. § 3146.5(b). After that date, as additional

civilian absentee ballot applications are received, the county boards must deliver or mail absentee ballots within 48 hours. *Id.* Military-overseas absentee applications are already within and have been within the 48-hour processing window since September 20, 2019, which was the deadline by which county boards were required to transmit absentee ballots to military-overseas absentee voters. 25 Pa.C.S. § 3508(a)(1) and (d). In-person electors would also be affected. Making a late change to balloting materials will require counties to reprogram voting systems, print new election day ballots and conduct additional logic and accuracy testing. This will introduce risks to the integrity of the election by compressing the timeframe for programming and testing voting systems, increasing the likelihood of errors during programming. This is particularly true in those 36 counties who are using their new voting equipment for the first time in this November's election. Because most counties will be using paper-based optical scan voting systems this November, the costs associated with reprogramming and reprinting ballots are significant. To the best of the Department's knowledge, the cost to counties to reprint balloting materials will exceed \$1.2 million. Moreover, the Department advertised the proposed constitutional 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. Further, during the months of August, September, and October of this year (2019), the Department again advertised the Crime Victims' Rights Amendment, in its joint resolution form (Joint Resolution 2019-1; House Bill 276), in addition to the text of the ballot question itself and the Attorney General's Plain English Statement. This second round of advertising cost the Department \$1,374,597.12, bringing the total cost of advertising to \$2,088,815.83. Petitioners' delay in bringing this eleventh-hour action creates incredible challenges throughout the counties and Department.

24. This action is barred by laches.

25. An injunction will not preserve the status quo.

26. An injunction will harm the public and will disrupt the November election.

27. Petitioners cannot demonstrate any harm.

WHEREFORE, Petitioners' Application for Special Relief in the Form of a Preliminary Injunction should be denied.

Respectfully submitted,

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Date: October 16, 2019

Counsel for Respondent

I 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 requires filing confidential information and documents differently than non-confidential information.

**IN THE COMMONWEALTH COURT OF
PENNSYLVANIA**

REGINALD ANDREWS,	:	
	Petitioner	: No. 578 MD 2019
	:	
v.	:	
	:	
TOM WOLF, JOHN E. WETZEL,	:	Electronically Filed Document
SECRETARY SWOPE,	:	
CORRECTIONAL OFFICER	:	
SWANGER, CORRECTIONAL	:	
OFFICER L. T. KEEL, L. T.	:	
MYERS, DORNIA VARNER <i>and</i>	:	
HOLLIBAUGH,	:	
	Respondent	:

CERTIFICATE OF SERVICE

I, Nicole J. Boland, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on October 16, 2019, I caused to be served a true and correct copy of the foregoing document to the following:

VIA ELECTRONIC SERVICE

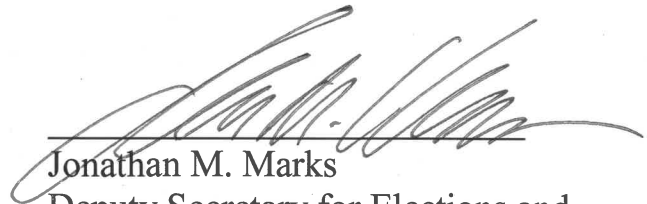
All counsel of record

s/ Nicole J. Boland

NICOLE J. BOLAND
Deputy Attorney General

VERIFICATION

I, Jonathan M. Marks, Deputy Secretary for Elections and Commissions within the Pennsylvania Department of State, verify that the statements made in the foregoing Answer to Petitioners' Application for Special Relief in the Form of Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that statements therein are made subject to the penalties of 18 Pa.C.S § 4904 relating to unsworn falsification to authorities.



Jonathan M. Marks
Deputy Secretary for Elections and
Commissions
Pennsylvania Department of State

Date: October 16, 2019