

twenty (20) days, or within the time set by order of the court, of service hereof or a Judgment may be entered against you.

Date: October 10, 2019

/s/ Steven E. Bizar
Attorney for Petitioners

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LEAGUE OF WOMEN VOTERS OF	:	
PENNSYLVANIA and LORRAINE HAW,	:	COMMONWEALTH COURT
	:	OF PENNSYLVANIA
	:	
Petitioners,	:	
v.	:	ORIGINAL JURISDICTION
	:	
	:	No. 578 MD 2019
	:	
KATHY BOOCKVAR, THE ACTING	:	
SECRETARY OF THE COMMONWEALTH,	:	
	:	
Respondent.	:	

**PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE FORM
OF A PRELIMINARY INJUNCTION UNDER PA. R.A.P. 1532**

Petitioners, by counsel, hereby move pursuant to Rule 1532 of the
Pennsylvania Rules of Appellate Procedure for special relief in the form of a

preliminary injunction enjoining Respondent Kathy Boockvar, the Acting Secretary of the Commonwealth, from submitting to Pennsylvania voters the November 2019 ballot question asking voters to adopt or reject the proposed constitutional amendment known as Joint Resolution 2019-1, or Marsy's Law, until resolution of this litigation, or, in the alternative, to enjoin certification of the election results on this question. In support of their application, Petitioners hereby incorporate the Verified Petition for Review filed in this action on October 10, 2019, as well as their brief and declarations in support of this Application.

Petitioners further state the following:

BACKGROUND

1. As set forth more fully in the Petition for Review filed on October 10, 2019, Petitioners allege that the Marsy's Law ballot question, scheduled to be placed before the voters on the November 5, 2019 general election ballot, violates the constitutional mandate in Article XI, § 1 of the Pennsylvania Constitution which provides that: "When two or more amendments shall be submitted they shall be voted upon separately." Pa. Const. art. XI, § 1. Article XI, § 1 "insures that the voters will 'be able to express their will as to each substantive constitutional change separately.'" *Pa. Prison Soc'y v. Commonwealth*, 776 A.2d 971, 976 (Pa. 2001) (quoting *Pa. Prison Soc'y v. Commonwealth*, 727 A.2d 632, 634 (Pa. Commw. Ct. 1999)). Because the November 2019 ballot question proposes several

amendments to Pennsylvania’s Constitution, but allows voters only a single “yes” or “no” vote, it violates Article XI, § 1’s separate-vote requirement and the electorate’s right to vote. Compounding this problem, the text of the proposed constitutional amendment will not be on the ballot; instead, the voters will be asked to vote “yes” or “no” to a brief and incomplete summary of the proposed changes.

2. The challenged ballot question asks voters to adopt or reject the proposed constitutional amendment known as Joint Resolution 2019-1, or Marsy’s Law, which would add a new section 9.1 to Article I of the Pennsylvania Constitution. The new section would create fifteen new constitutional rights for crime victims that must be enforced to the same degree as the constitutional rights of the accused in criminal court proceedings. The amendment would allow victims or prosecutors to seek a court order to enforce these constitutional rights, and, additionally, would empower the General Assembly to pass laws to define and implement these new rights.

3. These new rights would significantly change the rights now provided to the accused set forth in Article I, § 9 (“Rights of accused in criminal prosecutions”), Article I, § 6 (“Trial by jury”), Article I, § 10 (“No person shall, for the same offense, be twice put in jeopardy of life or limb”), Article I, § 14 (“Prisoners to be bailable; habeas corpus”), and Article V, § 9 (“Right of appeal”).

In addition, they would affect the public's right of access to court proceedings set forth in Article I, § 11; the governor's power to pardon, set forth in Article IV, § 9; and the Supreme Court's authority over court proceedings, set forth in Article V § 10 ("Judicial administration"), and jurisdiction over appeals, set forth in the Schedule to the Judiciary Article. Thus, these amendments encompass multiple subject matters that affect at least three articles, eight sections, and a schedule of the Pennsylvania Constitution.

4. Petitioner the League of Women Voters is a nationwide, nonpartisan grassroots organization of women and men who believe that through informed action, people can make profound changes in their communities. The League of Women Voters of Pennsylvania ("the League") is the state chapter of the League of Women Voters. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League frequently takes positions on issues such as voting and election reforms, criminal justice reform, fair funding for education, environmental protection, and more. The League and the members it represents have a substantial, direct, and immediate interest in this case, because the challenged ballot question threatens to deprive the voters of the Commonwealth of their right to decide what changes to make to their Constitution. *See* Declaration of Jill Greene (attached hereto as Exhibit A).

5. Petitioner Lorraine Haw is a resident and registered voter in the Commonwealth. Ms. Haw agrees with parts of Marsy’s Law—like considering the safety of victims and their families at bail hearings. But she is opposed to the parts of the amendment that she believes will take away rights from defendants. Ms. Haw cannot vote for the parts of the amendment she agrees with without voting for other things she disagrees with. She wants to be able to vote separately on each change to the Constitution, as is her right. *See* Declaration of Lorraine Haw (attached hereto as Exhibit B).

6. This Court should enjoin this illegal amendment process, not only because it violates the rights of the voters, but also because, once enacted (even if ultimately struck down), the new constitutional dictates would wreak havoc on our criminal justice system; impose enormous financial and administrative burdens on courts, counties, and law enforcement without providing the additional resources needed to meet those mandates; and mire in uncertainty every current and new criminal proceeding until the amendment is voided. This is not speculation: it is the experience in many other states that have adopted similar versions of Marsy’s Law.

INJUNCTIVE RELIEF

7. Petitioners move this Court for an Order declaring (1) that the constitutional amendment proposed by Joint Resolution 2019-1 and the November

2019 ballot question violates the requirement of Article XI, § 1 of the Pennsylvania Constitution that “when two or more amendments shall be submitted they shall be voted upon separately;” (2) that the November 2019 ballot question violates the requirement of Article XI, § 1 of the Pennsylvania Constitution that the “proposed amendment or amendments shall be submitted to the qualified electors of the State;” and (3) that the November 2019 ballot question violates the electorate's right to be fully informed of the question to be voted on because it does not fairly, accurately, and clearly apprise voters of the issue. To effectuate that ruling, Petitioners now seek a preliminary injunction to enjoin the Respondent from submitting the November 2019 ballot question to the voters.

8. Pursuant to Pa. R.A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction “in the interest of justice and consistent with the usages and principles of law.” The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434, 439 (Pa. 1982); *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Commw. Ct. 2004). Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

9. A preliminary injunction is warranted if: (1) relief is necessary to prevent immediate and irreparable harm; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to the status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the public interest will not be harmed if the injunction is granted. *Brayman Const. Corp. v. Com., Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011); *see also Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Pennsylvania courts have granted preliminary injunctions enjoining placement of a question on a ballot in an upcoming election. *See, e.g., Pa. Gaming Control Bd. v. City Council of Phila.*, 928 A.2d 1255, 1262 (Pa. 2007).

10. Petitioners meet all of the elements for the entering of a preliminary injunction in this case.

11. **First**, an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. A preliminary injunction is necessary to prevent immediate and irreparable harm to the “bedrock” right to vote, the state’s financial resources, law enforcement’s limited resources, and public safety. An injunction is necessary here to ensure that the electorate is given the opportunity to vote on each proposed change to the Constitution and not

forced to allow the General Assembly to usurp that right by impermissibly packaging multiple changes as one. In addition, once enacted (even if ultimately struck down), the new constitutional dictates would wreak havoc on our criminal justice system; impose enormous financial and administrative burdens on courts, counties, and law enforcement without providing the additional resources needed to meet those mandates; and mire in uncertainty every current and new criminal proceeding until the amendment is voided. This has been the experience in many other states that have adopted similar versions of Marsy's Law, as set forth more fully in Petitioners' brief in support of this Application.

12. *Second*, greater injury would result from allowing the electorate to vote on the illegal ballot question than from issuing the requested injunctive relief. Absent an injunction, the ballot question will compromise the rights of all Pennsylvanians by depriving them of the ability to vote separately on distinct and weighty proposed changes to the foundational law of the Commonwealth. Without an injunction, the Secretary will present a ballot question that violates the separate-vote requirement, as well as the constitutional requirement that the entire ballot question be presented to the electorate (or at the very least, the statutory requirement that the ballot question convey the purpose, limitations, and effects of the constitutional amendment). In contrast, by granting the requested injunction, the Court will affirm the clear intent of the people of Pennsylvania that

constitutional amendments be voted upon separately and that the people be afforded the opportunity to have a full understanding of the changes being made to the Constitution.

13. **Third**, Petitioners' requested injunction seeks only to preserve the status quo. *See City of Philadelphia v. Commonwealth*, 837 A.2d 591, 604 (Pa. Commw. Ct. 2003) (granting preliminary injunctive relief and noting that "the public interest lies in favor of maintaining the status quo" pending determination of the merits in the case). Here, Petitioners ask the Court to prevent any proposed constitutional amendments—in other words, to maintain the status quo—until the Court determines whether the challenged ballot question complies with Article XI, § 1's separate-vote requirement.

14. **Fourth**, Petitioners are likely to prevail on the merits of the underlying claims in this case. As set forth more fully in the brief accompanying this application, the ballot question violates the separate-vote requirement contained in Article XI, § 1 of the Pennsylvania Constitution because it creates multiple independent substantive rights and changes multiple existing provisions of the Constitution. *See Pa. Const. art. XI, § 1* ("When two or more amendments shall be submitted they shall be voted upon separately."). This separate-vote requirement is violated when a ballot question proposes changes related to different subject matters. *Grimaud v. Commonwealth*, 865 A.2d 835, 841 (Pa.

2005) (adopting Justice Saylor’s concurrence in *Pa. Prison Soc’y*, 776 A.2d 971, 984 (Pa. 2001) (Saylor, J., concurring)). Here, the constitutional amendment presented by the November 2019 ballot question (1) itself contains multiple changes to the Constitution because it provides a whole series of new and mutually independent rights to victims of crimes, and (2) would amend multiple existing constitutional articles and sections across multiple subject matters. In specific, it proposes changes to multiple enumerated constitutional rights of the accused—including the right to a speedy trial, the right to confront witnesses, the right against double jeopardy, the right to pretrial release, the right to post-conviction relief, the right to appeal—as well as changes to the public’s right of access to court proceedings, to the Governor’s pardoning power, and to powers given to the judiciary by the Constitution. These amendments encompass multiple subject matters that affect at least three articles, eight sections, and a schedule of the Pennsylvania Constitution.

15. Furthermore, the form of the ballot question fails to comply with Article XI, § 1 because it does not set forth the text of the proposed amendment. Pa. Const. art. XI, § 1 (“[S]uch 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.”). Because the November 2019 ballot question does not include the proposed amendment’s text, it is unconstitutional.

16. Finally, the form of the ballot question violates the electorate’s right “to be clearly and more fully informed of the question to be voted on.” *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969). That right is only satisfied if the form of the ballot question put to the voters “fairly, accurately and clearly apprize[s] the voter of the question or issue to be voted on.” *Id.* The 73-word ballot question omits many of the new rights afforded to crime victims and their families, as well as all of the many changes to existing constitutional provisions affording rights to the accused and the public’s right of access to court proceedings, to the Governor’s pardoning power, and to powers given to the judiciary by the Constitution.

17. *Fifth*, the requested injunctive relief is reasonably suited to abate the offending activity in this case. The offending activity is a November 2019 ballot question that violates Article XI, § 1’s fundamental requirements for amending the Constitution by electorate vote. No violation will occur if the Court enjoins the Secretary from proposing the offending ballot question to the electorate in November or, in the alternative, enjoins certification of the election results on this question.

WHEREFORE, for all of the foregoing reasons and those alleged in the Petition for Review, Petitioners respectfully request that this Honorable Court

grant their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondent, her agents, servants, and officers, and others from submitting to voters the November 2019 ballot question asking voters to adopt or reject the proposed constitutional amendment known as Joint Resolution 2019-1, or Marsy's Law, until resolution of this litigation, or, in the alternative, to enjoin certification of the election results on this question.

Respectfully submitted,

Date: October 10, 2019

/s/ Steven E. Bizar

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CERTIFICATION

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 require filing confidential information and documents differently than non-confidential information and documents.

Date: October 10, 2019

/s/ Tiffany E. Engsell
Tiffany E. Engsell (Pa. 320711)

CERTIFICATE OF SERVICE

I, Tiffany E. Engsell, hereby certify that on October 10, 2019, I caused a true and correct copy of the foregoing document titled Petitioners' Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532, together with all supporting materials thereto, be served via hand delivery to Respondent Kathy Boockvar, Acting Secretary of the Commonwealth, at the following addresses:

Office of the Secretary of the Commonwealth
302 North Office Building, 401 North Street
Harrisburg, PA 17120

Pennsylvania Office of the Attorney General
Strawberry Square Fl. 16
Harrisburg, PA 17120

Date: October 10, 2019

/s/ Tiffany E. Engsell
Tiffany E. Engsell (Pa. 320711)

AND NOW, this day of , 2019, upon consideration of
Petitioners' Petition for Review and Application for Special Relief in the
Nature of a Preliminary Injunction, it is hereby **ORDERED** that said Application
is **GRANTED**.

IT IS FURTHER ORDERED that Respondent and her agents, servants,
and officers and others are hereby **ENJOINED** from submitting to Pennsylvania
voters the November 2019 ballot question asking voters to adopt or reject the
proposed constitutional amendment known as Joint Resolution 2019-1, or
Marsy's Law, which is the subject of said Petition and Application.

BY THE COURT:

EXHIBIT A

JILL GREENE makes the following declaration:

1. This declaration is submitted in support of Petitioner's Application for a Preliminary Injunction.

2. I am the Executive Director of the League of Women Voters of Pennsylvania. That organization has its principal place of business at 226 Forster Street in Harrisburg, PA.

3. The League of Women Voters is a nationwide, nonpartisan grassroots organization of women and men who believe that through informed action, people can make profound changes in their communities. The League of Women Voters of Pennsylvania ("the League") is the state chapter of the League of Women Voters. There are 33 Local Leagues and 2,279 individual members.

4. The League encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League does not support or oppose any political party or candidate but does take — and always has taken — stands on issues its members have studied.

5. The League frequently takes positions on issues such as voting and election reforms, criminal justice reform, fair funding for education, environmental protection, and more.

6. The ultimate goals of the League and its members is to create an informed, empowered citizenry and a responsible, responsive government.

7. The League and the members have a substantial, direct and immediate interest in this case, because the challenged ballot question threatens to deprive the voters of the Commonwealth of their right to decide what changes to make to their Constitution.

These statements are all true and correct to the best of my knowledge. I make these statements subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

Executed this 10th day of October 2019.



EXHIBIT B

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LEAGUE OF WOMEN VOTERS OF
PENNSYLVANIA and LORRAINE HAW,

Petitioners,

v.

KATHY BOOCKVAR, THE ACTING
SECRETARY OF THE COMMONWEALTH,

Respondent.

:
:
: COMMONWEALTH COURT
: OF PENNSYLVANIA
:
: ORIGINAL JURISDICTION
:
: No. _____

DECLARATION OF LORRAINE HAW
IN SUPPORT OF APPLICATION FOR SPECIAL RELIEF IN THE FORM
OF A PRELIMINARY INJUNCTION UNDER PA. R.A.P. 1532

LORRAINE HAW makes the following declaration:

1. This declaration is submitted in support of Petitioners' Application for Special Relief.
2. I am Lorraine Haw, better known as Ms. Dee Dee.
3. I lost both my brother and my son – my brother to gun violence and my son to prison.
4. My son has been incarcerated over 25 years. He was 18 years old and 3 months when he was incarcerated.
5. My brother was killed when he was 25 years old. The man who killed him will spend the rest of his life in jail.
6. If you had asked me when it had happened, I would have said 'Execute him. Fry him.' When your hurt is so fresh, you don't think. You're going by emotions. But you see, after all these years, I realized, you know, he's somebody's son. He's somebody's brother. He made a mistake like all of us do.
7. Me feeling hatred is not going to bring my brother back. Him spending the rest of his natural life in jail is not going to bring my brother back. When I think of my brother, I think of that young man. When I think of my son, I think of that young man. I fight for his freedom as hard and as much as I fight for my son's.
8. I am a member of Coalition to Abolish Death by Incarceration (CADBI), a campaign fighting to end life without parole, or death by incarceration as we call it,

in Pennsylvania. I am also a member of Free the Ballot, which works to make criminal justice reform an issue in elections, and of FAMM – Families Against Mandatory Minimums.

9. Everyone deserves a second chance. I refuse to write off anyone as beyond saving, beyond hope, beyond change. Even the worst of the worst deserves a second chance. If we can learn to forgive, we can have a way better world for the next generation that comes in. Let's rehabilitate people. Let's help people. Let's transform people. Stop locking them up like animals.

10. I ended up in the criminal justice system, too. In the 1980s and 90s I was addicted to drugs, and I committed crimes to support that habit. I got clean, and served my sentences. I deserve forgiveness, too. I am applying for a pardon from the Governor. What if someone claims to be "directly hurt" by my crime and demands a hearing to testify against my pardon? All these years later?

11. I stand for the rights of victims. But I don't think that they should take the place of the rights of the accused.

12. The Marsy's Law amendment goes too far. Some of it is good – like considering the safety of victims and their families at bail hearings. But mostly it wants to take things away from people accused of crimes before they are even convicted. Those people have already lost so much and you want to take away the few rights they do have?

13. I have just one vote, but I want it to go toward justice, not toward vengeance. I want to be able to vote for real victims' rights – but not to have to vote against the accused.

14. It hurts to lose someone. We have lost too many of our loved ones already, to violence, to jail. We need to find another way.

15. Marsy's Law is not the way.

These statements are all true and correct to the best of my knowledge. I make these statements subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

Executed this 9th day of October 2019.

Lorraine How