

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS OF :
PENNSYLVANIA and LORRAINE :
HAW, :

Petitioners, :

v. :

KATHY BOOCKVAR, THE :
SECRETARY OF THE :
COMMONWEALTH, :

Respondent. :

578 MD 2019

**BRIEF OF *AMICUS CURIAE*, THE REPUBLICAN CAUCUS OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES, IN SUPPORT OF
THE APPLICATIONS FOR SUMMARY RELIEF OF RESPONDENT
KATHY BOOCKVAR, THE SECRETARY OF THE COMMONWEALTH,
AND INTERVENORS SHAMEEKAH MOORE, MARTIN VICKLESS,
KRISTIN JUNE IRWIN AND KELLY WILLIAMS**

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Date: December 13, 2019

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae, the Republican Caucus of the Pennsylvania House of Representatives (House Republican Caucus), files this brief in support of the Applications for Summary Relief of Respondent Kathy Boockvar, the Secretary of the Commonwealth, and Intervenors Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams.¹

This dispute involves the constitutionality of the ballot question concerning J.R. 2019-1 (Marsy’s Law), which would provide for the rights of crime victims. The language of this proposed amendment passed the General Assembly for the first time on June 21, 2018 (Senate Bill 1011, Printer’s Number 1824). In compliance with Article XI, § 1 of the Pennsylvania Constitution, it passed the General Assembly for the second time on June 19, 2019 (House Bill 276, Printer’s Number 284). The interest of the House Republican Caucus in this case arises from the role of the General Assembly as the conduit through which the People of Pennsylvania amend their Constitution. *Amicus* has a significant interest in ensuring that the perspectives of the General Assembly on these constitutional questions are brought to bear in this Court’s analysis.

¹ No one other than *Amicus Curiae*, its members, or its counsel paid in whole or in part for the preparation of this brief or authored in whole or in part this brief.

SUMMARY OF ARGUMENT

The process of educating the People of Pennsylvania regarding a proposed constitutional change is a holistic one. The ballot question is but one component of a larger, and longer, effort to provide information. From the legislative process used by the General Assembly in the adoption of the proposed constitutional amendment to the multiple newspaper publications mandated by Article XI, § 1, including both the Attorney General’s Plain English Statement and the Secretary of the Commonwealth’s ballot question, and finally as a result of tremendous increase in media reports directly related to this litigation, the people of Pennsylvania have been clearly informed of the proposed constitutional change presented by J.R. 2019-1.

The ballot question, concerning crime victims’ rights, easily passes the “single subject” test necessary to present it as a single question. Further, the question fairly, accurately and clearly presents the issue to be decided.

This Court should grant the relief requested by Respondent Kathy Boockvar, the Secretary of the Commonwealth, and Intervenors Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams.

ARGUMENT

This *Amicus* will focus on: (1) the broader constitutional and statutory processes, as well as the unique media coverage afforded this constitutional

question, which ensured that the People of Pennsylvania understood the impact of this proposed constitutional change, and (2) the sufficiency of the ballot question surrounding J.R. 2019-1 (Marsy's Law).

I. The constitutional and statutory requirements attendant to submission of J.R. 2019-1 to the electorate, as well as the significant media coverage as a result of this litigation, have provided the People of Pennsylvania with clear, comprehensive information concerning the proposed amendment.

This Court previously found arguable merit in the Petitioners' claim that the "Proposed Amendment does not 'fairly, accurately, and clearly' apprise the electorate of the question upon which it is asked to vote." League of Women Voters of Pa. v. Boockvar, 578 M.D. 2019, slip. op. at 34 (Pa. Commw. Ct. Oct. 30, 2019). This tentative conclusion, however, appears to discount the significant and varied avenues of voter education attendant to this proposed constitutional change.

A. Article XI, § 1.

The process of amending the Pennsylvania Constitution, found in Article XI, § 1, provides the Commonwealth's voters with information concerning a potential constitutional change 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, § 1, as well as inherent in the

simulacrum of the standard legislative process utilized by the General Assembly in adopting a proposed change.²

“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. A Joint Resolution proposing a constitutional amendment providing for the rights of victims of crime was introduced on January 2, 2018. See Legislative History for Senate Bill 1011 at Attachment A. As explained by the prime sponsor:

I introduced Senate Bill 1011 to begin the process of amending the Constitution to grant victims inherent rights here in Pennsylvania. Marsy’s Law will insure [*sic*] that victims have the ability to be an integral part of the criminal justice system It is important to note that Marsy’s Law will not infringe in any way upon the rights that currently exist for the accused.

Pa. Legislative Journal, Session of 2018, 202nd of the General Assembly, No. 13, at 219 (Mar. 21, 2018) (remarks of Sen. Reschenthaler).

The Joint Resolution was referred to and reported from committee, received three days’ consideration in both legislative chambers, and followed the same procedure utilized for changes to the statutory laws of the Commonwealth. While focused specifically on an analysis of Article III, Section 4, the Pennsylvania

² The difference between the General Assembly’s process for adoption of legislation and adoption of the constitutional change, in this instance, being the lack of required gubernatorial consent in the constitutional amendment process.

Supreme Court recently outlined the ultimate purpose of the Pennsylvania Constitution's numerous procedural requirements for legislation:

[E]nsuring an open and deliberative legislative process in which all legislators are given a full opportunity to scrutinize a bill and offer changes which they may deem necessary, and to also make certain that, during this process, every member of the public has the opportunity to make his or her views known to their representatives and senators on all provisions of a bill before its final passage.

Washington v. Dep't of Pub. Welfare of Commonwealth, 188 A.3d 1135, 1148 (Pa. 2018). At each step of the way, the People had the opportunity to be informed and provide input concerning Senate Bill 1011. The language of this proposed amendment unanimously passed the General Assembly for the first time on June 21, 2018 (Senate Bill 1011, Printer's Number 1824). See Attachment A.

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 proposed amendments and to let the public ascertain the attitude of the candidates for election to the General Assembly 'next afterwards chosen'." Lincoln

Party by Robinson v. Gen. Assembly, 682 A.2d 1326, 1332 n. 6 (Pa. Commw. Ct. 1996) (*citations, internal quotation marks omitted*).

“[I]n the General Assembly next afterwards chosen,”³ House Bill 276 was introduced on February 1, 2019. See Legislative History for House Bill 276 at Attachment B. House Bill 276 was, similar to Senate Bill 1011 of the prior legislative term, referred to and reported from committee as well as considered on three separate days. Rep. Delozier, the prime sponsor of House Bill 276, offered the following:

I understand that we have had a lot of debate. We debated this last session. We made modifications. We made amendments. That is the process. We now move this bill, Marsy’s Law, one step closer to the voters to let them decide as to whether or not the voice of our victims should be heard in our Constitution.

Pa. Legislative Journal, Session of 2019, 203d of the General Assembly, No. 22, at 455 (Apr. 8, 2019) (remarks of Rep. Delozier).

In compliance with Article XI, § 1 of the Pennsylvania Constitution, this proposed constitutional change known as “Marsy’s Law” passed the General Assembly with an overwhelming bipartisan majority⁴ for the second time on June 19, 2019 (House Bill 276, Printer’s Number 284).

³ Pa. Const. art. XI, § 1.

⁴ The final vote in the Pennsylvania House of Representatives was 190-8. The final vote in the Pennsylvania Senate was unanimous. See Legislative History for House Bill 276 at Attachment B.

The Secretary of the Commonwealth caused “the same again to be published in the manner aforesaid.”⁵

As a result of Article XI, § 1, the voters of Pennsylvania have already received significant information, both directly (by publication) and indirectly (through the legislative process), concerning “Marsy’s Law.” That is not, however, the sum total of the information provided.

B. Plain English Statement and Ballot Question.

“Article XI, section 1 of the Pennsylvania Constitution vests within the General Assembly the *exclusive* authority to determine the ‘time’ and ‘manner’ amendments are to be submitted to qualified electors for approval.” Costa v. Cortes, 143 A.3d 430, 436 (Pa. Commw. Ct. 2016) (*emphasis in original*).

Pursuant to this authority, the General Assembly has enacted additional measures which ensure that voters are sufficiently informed to cast a knowledgeable ballot regarding any change to Pennsylvania’s Constitution. The first of those is the Attorney General’s “Plain English Statement.”

Section 201.1 of the Pennsylvania Election Code provides, in relevant part, as follows:

Whenever a proposed constitutional amendment or other State-wide ballot question shall be submitted to the electors of the Commonwealth in referendum, the Attorney General shall prepare a statement in plain English

⁵ Pa. Const. art. XI, § 1.

which indicates the purpose, limitations and effects of the ballot question on the people of the Commonwealth. The Secretary of the Commonwealth shall include such statement in his publication of a proposed constitutional amendment as required by Article XI of the Constitution of Pennsylvania. The Secretary of the Commonwealth shall certify such statement to the county boards of elections who shall publish such statement as a part of the notice of elections required by section 1201 or any other provision of this act. The county board of elections shall also require that at least three copies of such statement be posted in or about the voting room outside the enclosed space with the specimen ballots and other instructions and notices of penalties.

25 P.S. § 2621.1.

The Plain English Statement should accurately describe the “principle purpose, limitations and effect of the amendment.” Bergdoll v. Com., 858 A.2d 185, 196 (Pa. Commw. Ct. 2004), aff’d, 874 A.2d 1148 (Pa. 2005). It need not, however, be a “treatise.” Grimaud v. Com., 865 A.2d 835, 843 (Pa. 2005).

In the case of J.R. 2019-1, the Pennsylvania Attorney General’s Plain English Statement provides a comprehensive explanation to inform the Commonwealth’s voters about the proposed change. It exists, along with the ballot question, at each polling place in order to ensure that the electorate understands the import of Marsy’s Law.⁶

⁶ For the vast majority of Pennsylvania’s voters, these resources are also but a moment away on their smart phones. Pennsylvania Department of State, *Proposed Constitutional Amendment: Crime Victim Rights (Marsy’s Law)*, <https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/Joint-Resolution-2019-1.aspx> (last visited Dec. 12, 2019).

Beyond the Plain English Statement, the ballot question itself serves to educate voters about the potential change to their governmental charter. As the Commonwealth Court explained in Bergdoll v. Commonwealth, pursuant to the authority granted by Article XI, § 1:

[T]he General Assembly has directed, in the relevant part of Section 605 of the Election Code, that “proposed constitutional amendments shall be printed on the ballots or ballot labels in brief form to be determined by the Secretary of the Commonwealth with the approval of the Attorney General.” 25 P.S. § 2755. In addition, Section 1110(b) of the Code specifies the length of the question and directs its preparation by the Secretary. It states, in relevant part, that “[e]ach question to be voted on shall appear on the ballot labels, in brief form, of not more than seventy-five words, to be determined by the Secretary of the Commonwealth in the case of constitutional amendments or other questions to be voted on by the electors of the State at large....” Section 1110(b), *as amended*, 25 P.S. § 3010(b). In light of the Constitution's grant of authority to prescribe the manner in which the amendments shall be presented to the electorate, the General Assembly quite properly directed in the Election Code that proposed amendments to the Constitution shall be presented as ballot questions composed by the Secretary.

Bergdoll v. Com., 858 A.2d at 194–95; See also 25 P.S. § 2621(c), 25 P.S. § 2944.

C. Additional Media Coverage

Article XI, § 1 presumes the value of traditional newspapers in promulgating information concerning a constitutional amendment. Pa. Const. art. XI, § 1; See also Lincoln Party, 682 A.2d at 1332 n. 6 (discussed above); Com. ex rel.

Woodruff v. King, 22 A. 279, 280 (Pa. 1923).⁷ In addition to this mandated publication, however, newspaper articles about proposed constitutional changes have always served a more informal, yet still important, educational role. See Journal of the Pa. Const. Convention of 1967-1968, Vol. I, 1340-41 (Feb. 28, 1968).⁸

The authors of Article XI, § 1, could not have envisioned today's instant, at-the-fingertips access to news media throughout the Commonwealth. Undoubtedly similar to news concerning other recent proposed constitutional amendments, online articles concerning the proposed addition of Marsy's Law to the Pennsylvania Constitution appeared through the amendment process. A list of just

⁷ In this instance, the court was discussing the second publication requirement of the then-extant Article XVIII, § 1 of the Pennsylvania Constitution, amended and renumbered as Article XI, § 1 by Joint Resolution No. 6, 1967, P.L. 1052, and explained:

The purpose of the second publication [which is the one here in question] is to advise the electors themselves, so that they may vote intelligently [and directly] upon the proposed amendment.

(citations, internal quotation marks omitted, material in brackets in original).

⁸ The Delegates to the 1967-1968 Pennsylvania Constitutional Convention unanimously adopted a resolution which, in relevant part, noted:

WHEREAS, The press, with vigilance and determination, has informed the citizens of Pennsylvania of the progress of this Convention, and
WHEREAS, The press has demonstrated a commitment to a better Constitution for all Pennsylvanians; there be it
RESOLVED, That this Convention express its gratitude, its appreciation, and its commendation to the members of the press for their daily and regular coverage of this Constitutional Convention from December 1, 1967 to February 29, 1968, and for their devotion to the best interests of the people of Pennsylvania.

some of those articles, which concerned the constitutional change but not the court challenge, appears at Attachment C.

In this instance, however, the online (and presumably accompanying traditional) media concerning **this litigation** has meaningfully increased the news resources discussing the proposed constitutional change and the ballot question in the context of the lawsuit. A list of nearly 60 of those articles which appeared on or before election day (November 5, 2019) discussing this litigation, including a few examples, appears at Attachment D.

In sum, Pennsylvania's electorate have been informed of the proposed constitutional changes encompassed in Marsy's Law on numerous occasions and by numerous means, including:

- proposal and adoption of two joint resolutions by the General Assembly;
- multiple publications in newspapers throughout the Commonwealth;
- the promulgation of the Attorney General's Plain English Statement;
- the Secretary's ballot question, and
- the considerably increased media coverage as a result of this litigation.

These steps do not exist in a vacuum. They go well beyond the "ballot question, the plain English statement ... [and] the Proposed Amendment" (League,

slip. op. at 35) in informing the electorate. The constitutional and statutory components utilized in the adoption and publication of J.R. 2019-1, in concert with the notably increased media coverage of this proposed change as a particular result of this litigation, blanketed the voters of the Commonwealth with more than sufficient information to cast a knowledgeable ballot regarding changes to the foundational document of the Commonwealth's government.

II. The J.R. 2019-1 ballot question is constitutionally sound.

A. It is properly presented as a single question.

The appropriate test to determine whether a constitutional change could be presented to the People of Pennsylvania in a single question was announced in Grimaud v. Commonwealth. In Grimaud, the court adopted a “subject matter test for determining whether a ballot question violates Article XI, § 1.” 865 A.2d at 841. The Court focused on whether the “proposed changes were related to a single subject.” Id.

In this instance, both the proposed amendment and its ballot question simply encompass the subject of crime victims' rights. All the changes revolve around that central, and narrow, theme. The changes related to crime victims' rights are “sufficiently interrelated ... to justify inclusion in a single question.” Id.; See also Grimaud v. Com., 806 A.2d 923, 929-30 (Pa. Commw. Ct. 2002), aff'd, 865 A.2d 835 (Pa. 2005) (discussing proposed constitutional changes as constituting a

“single amendment” if they “serve one core purpose” and effectuate one substantive change, which in that case was “to reinforce public safety by making it more difficult for seriously dangerous criminals to obtain bail.”).

“[T]he provisions of Article III [of the Pennsylvania Constitution] relating to the enactment of legislation are inapplicable” to a constitutional amendment. Costa v. Cortes, 143 A.3d at 436 (*internal citations omitted*). Despite this distinction, however, a short discussion of some recent determinations under Article III, § 3’s “single subject” rule⁹ may prove instructive. In Robinson Twp. v. Commonwealth, this Court affirmed the Commonwealth Court’s conclusion that “regulation of the oil and gas industry” was a single subject. 147 A.3d 536, 568–69 (Pa. 2016). This Court further recognized that “multiple topics” do not violate the single subject rule “provided that those topics are ‘germane’ to a single subject.” Id. at 568 (*citations omitted*). In Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com. (PAGE), the regulation of gaming was determined to be a single subject. 877 A.2d 383, 396 (Pa. 2005).¹⁰ The subject of crime victims’ rights passes this “single subject” test with ease.

⁹ “No bill shall be passed containing more than one subject ...” Pa. Const. art. III, § 3.

¹⁰ Certain provisions related to a Volunteer Fire Company Grant Program and a Forest Reserves Municipal Financial Relief Law which exceeded the single-subject rule were determined to be severable from the Act. PAGE, 877 A.2d at 403.

In its prior decision, this Court appears to have countenanced the argument of Petitioners that the ballot question amends multiple sections of the Constitution's existing text. League, slip op. at 30-33. In fact, the proposed amendment and its ballot question address the adoption of an entirely new section of Article I of the Pennsylvania Constitution (adding Section 9.1 relating to rights of victims of crime). The relevant inquiry is not whether an amendment "might touch other parts of the Constitution when applied, but rather, whether the amendments *facially* affect other parts of the Constitution.... The question is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect." Grimaud v. Com., 865 A.2d at 842 (*emphasis in original*). J.R. 2019-1 does not "facially affect" other parts of the Pennsylvania Constitution and, therefore, both the proposed amendment and its ballot question pass constitutional muster.

B. The question is fair, accurate and clear.

A ballot question must "fairly, accurately and clearly apprise the voter of the question... to be voted on." Stander v. Kelley, 250 A.2d 474, 480 (Pa. 1969).

The ballot question crafted for J.R. 2019-1 by the Secretary asks the following:

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?¹¹

In Sprague v. Cortes, Justices Baer, Donohue and Mundy explained that:

[J]udicial interference with a question posed to voters is warranted only where the form of the ballot is so lacking in conformity with the law and so confusing that the voters cannot intelligently express their intentions.... Requiring such a high burden to invoke judicial interference with the Secretary's phrasing of a proposed constitutional amendment ballot question is consistent with the doctrine of separation of powers, which dictates that each branch of government give due deference to the actions and authority of its sister branches.

45 A.3d 1136, 1141 (Pa. 2016) (*citations, internal quotation marks omitted*).¹²

The deferential review advocated by the Justices in Sprague is an appropriate recognition of the interrelationship between the branches of government. Absent such a standard, however, the text of the ballot question is still sufficient to adequately instruct voters. If a voter somehow managed to avoid all the information about the proposed amendment which flows from the constitutional and statutory components of the amendment process as well as the media reports about this litigation (discussed above) – and the ballot question was the only information provided to the voter – it would fairly, accurately, and clearly apprise the voter of the issue to be decided.

¹¹ See supra note 6.

¹² In Sprague, this Court was evenly divided regarding which parties were entitled to summary relief. As a result, the status quo was maintained.

CONCLUSION

Petitioners, in some of their earlier filings, were correct on the limited question of where the ultimate authority to amend the Pennsylvania Constitution resides. This power is reserved for the People of Pennsylvania, speaking both through their elected representatives in the General Assembly and directly at 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). In a late-to-the game entreaty heavier on policy arguments than constitutional principles, Petitioners seek to prevent the Commonwealth from recognizing the People’s recent exercise of that fundamental authority at the ballot box by raising unconvincing arguments about the ballot question for Marsy’s Law.

“As the founder of our Commonwealth once recognized, ‘to delay Justice is Injustice.’ William Penn, *Some Fruits of Solitude* 86 (Headley Bros. 1905) (1693).” McGrath v. Pennsylvania Bd. of Prob. & Parole, 712 C.D. 2018, 2019 WL 5078259, at *5, n. 14 (Pa. Commw. Ct. Oct. 10, 2019); Manigo v. Pennsylvania Bd. of Prob. & Parole, 1125 C.D. 2018, 2019 WL 2605839, at *5, n. 6 (Pa. Commw. Ct. June 26, 2019). In modern parlance, this translates as justice delayed is justice denied. The victims of crime have waited patiently for 23

months¹³ as the People of the Commonwealth, through the General Assembly and in the voting booth, have considered a proposed amendment to constitutionally recognize their rights. The victims should not have to wait any longer for a final determination.

For the foregoing reasons, this Court should grant the relief requested by Respondent Kathy Boockvar, the Secretary of the Commonwealth, and Intervenors Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams.

¹³ Senate Bill 1011 was introduced on January 2, 2018. As of December 2, 2019, this will be 23 months. See Legislative History for Senate Bill 1011 at Attachment A.

Respectfully submitted,

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Date: December 13, 2019

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

I further certify that this filing complies with the 7,000 word limit of Pa.R.A.P. 2135 and Pa.R.A.P. 531(b)(1)(iii) based on the word count of 3,911 according to the word processing system used to prepare it.

/s/ Rodney A. Corey
Rodney A. Corey (Pa. 69742)
Republican Caucus
Pennsylvania House of Representatives

Attachment A

SENATE BILL 1011 REGULAR SESSION 2017-2018

History

Sponsors:

RESCHENTHALER, ARGALL, RAFFERTY, FONTANA, MARTIN, BARTOLOTTA, SABATINA, COSTA, YAW, STEFANO, SCHWANK, KILLION, BOSCOLA, VULAKOVICH, HUGHES, REGAN, McGARRIGLE, BAKER, WAGNER, FOLMER, BROWNE, DiSANTO, VOGEL, SCARNATI, WARD, CORMAN, BROOKS, WHITE, YUDICHAK, AUMENT, BLAKE, DINNIMAN, TARTAGLIONE and SCAVELLO

Short Title:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

Printer's No. (PN):

[1824*](#), [1564](#), [1402](#)

(* denotes Current Printer's Number)

Actions:

[PN 1402](#) Referred to JUDICIARY, Jan. 2, 2018

Reported as committed, [Jan. 30, 2018](#)

First consideration, Jan. 30, 2018

Second consideration, Jan. 31, 2018

Re-referred to APPROPRIATIONS, Jan. 31, 2018

Re-reported as committed, [March 19, 2018](#)

[PN 1564](#) Amended on third consideration, [March 20, 2018](#)

(Remarks see Senate Journal Page [202-203](#)), March 20, 2018

Third consideration and final passage, March 21, 2018 [\(50-0\)](#)

(Remarks see Senate Journal Page [219](#)), March 21, 2018

In the House

Referred to JUDICIARY, March 26, 2018

[PN 1824](#) Reported as amended, [June 5, 2018](#)

First consideration, June 5, 2018

Laid on the table, June 5, 2018

Removed from table, June 6, 2018

Second consideration, June 11, 2018

Re-referred to APPROPRIATIONS, June 11, 2018

Re-reported as committed, [June 20, 2018](#)

Third consideration and final passage, June 20, 2018 [\(197-0\)](#)

In the Senate

Referred to RULES AND EXECUTIVE NOMINATIONS, June 20, 2018

Re-reported on concurrence, as committed, [June 21, 2018](#)

Senate concurred in House amendments, June 21, 2018 ([48-0](#))

Signed in Senate, June 21, 2018

Signed in House, June 22, 2018

Filed in the Office of the Secretary of the Commonwealth, June 22, 2018

Pamphlet Laws Resolution No. 1

 [How to Read a Bill](#)

Attachment B

HOUSE BILL 276 REGULAR SESSION 2019-2020

History

Sponsors:

DELOZIER, BENNINGHOFF, BARRAR, BERNSTINE, BIZZARRO, BOBACK, CALTAGIRONE, COMITTA, COOK, CUTLER, T. DAVIS, DIGIROLAMO, ECKER, EVERETT, FARRY, FLYNN, FRITZ, GREGORY, HERSHEY, HICKERNELL, HILL-EVANS, KAUFFMAN, KEEFER, KLUNK, KORTZ, MALONEY, MATZIE, McNEILL, MIZGORSKI, MURT, NELSON, OBERLANDER, ORTITAY, PASHINSKI, PICKETT, RAVENSTAHL, READSHAW, RYAN, SAYLOR, SCHLOSSBERG, STRUZZI, TOEPEL, TOOIL, TOPPER, ZIMMERMAN, KINSEY, ROZZI, HELM, JONES, KAUFER, O'MARA, MOUL, GILLEN, DEASY, KIM and GLEIM

Short Title:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for rights of victims of crime.

Printer's No. (PN):

0284*

(* denotes Current Printer's Number)

Actions:

PN 0284 Referred to [JUDICIARY](#), Feb. 1, 2019
Reported as committed, [Feb. 21, 2019](#)
First consideration, Feb. 21, 2019
Laid on the table, Feb. 21, 2019
Removed from table, Feb. 21, 2019
Second consideration, March 11, 2019
Re-committed to [APPROPRIATIONS](#), March 11, 2019
(Remarks see House Journal Page [241-248](#)), March 11, 2019
Re-reported as committed, [April 8, 2019](#)
Third consideration and final passage, April 8, 2019 ([190-8](#))
(Remarks see House Journal Page [453-455](#)), April 8, 2019
In the Senate
Referred to [JUDICIARY](#), June 5, 2019
Reported as committed, [June 11, 2019](#)
First consideration, June 11, 2019
Second consideration, June 17, 2019
Re-referred to [APPROPRIATIONS](#), June 17, 2019
Re-reported as committed, [June 18, 2019](#)
Third consideration and final passage, June 19, 2019 ([50-0](#))
(Remarks see Senate Journal Page [668-669](#)), June 19, 2019

Signed in House, June 19, 2019

Signed in Senate, June 19, 2019

Filed in the Office of the Secretary of the Commonwealth, June 20, 2019

Pamphlet Laws Resolution No. 1

Passed Sessions of 2018 and 2019

 [How to Read a Bill](#)

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Ballot question on crime victim's rights amendment, Marsy's Law, in jeopardy

Updated: Oct 18, 2019 - 6:04 PM



1 of 3



HARRISBURG, Pa. - Pennsylvania voters will have more than just candidates to vote for in November's general election.

They'll see a proposed amendment called Marsy's Law. It's a proposal that would provide constitutional protections for victims and only offer statutory protections.



LIVE

Related Headlines



Group hopes to highlight importance of victims' rights with Marsy's Law...



Local woman fighting for change to better protect victims of abuse across Pa.



Marsy's Law advocate visits Pittsburgh to stump for new law

>>LEARN MORE: Marsy's Law for Pennsylvania

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It's similar to Pennsylvania's Crime Victims Act, but advocates say it would give victims the same rights as those accused or convicted of a crime.

"What Marsy's Law is about is equaling the playing field between victims and criminals," said Laurie McDonald, of the Center for Victims.

It would give victims criminal case notifications, the right for victims to be heard and present at all court proceedings and further information about when perpetrators are released from prison.

>>RELATED: Group hopes to highlight importance of victims' rights with Marsy's Law in Pennsylvania

Pennsylvania is one of only 15 states that does not provide constitutional protections for victims and only offers statutory protections.

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State lawmakers in the House and Senate already passed the measure, sending it to the November ballot. It will become part of the state constitution if a majority of voters approve it.

>>RELATED: [Marsy's Law advocate visits Pittsburgh to stump for new law](#)

The issue has its detractors.

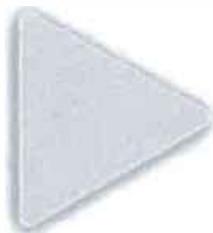
The American Civil Liberties Union and League of Women Voters filed a lawsuit to block the bill, saying it's unconstitutional since it would add too many factors in one amendment.

>>LEARN MORE: [ACLU on Marsy's Law in Pennsylvania](#)

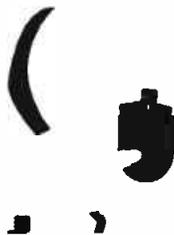
"We think that Marsy's Law is largely unnecessary. It duplicates many of the provisions that currently exist under our statute," said Elizabeth Randol, of the ACLU of Pennsylvania. "We're concerned about how that definition will affect the way that our legal system looks at the presumption of innocence."

The idea for Marsy's Law was created in 1983 and named after a woman named Marsy Nicholas, who was stalked and murdered by her ex-boyfriend.

Group hopes to highlight importance of victims' rights with Marsy's Law in Pennsylvania



Fetching questions...



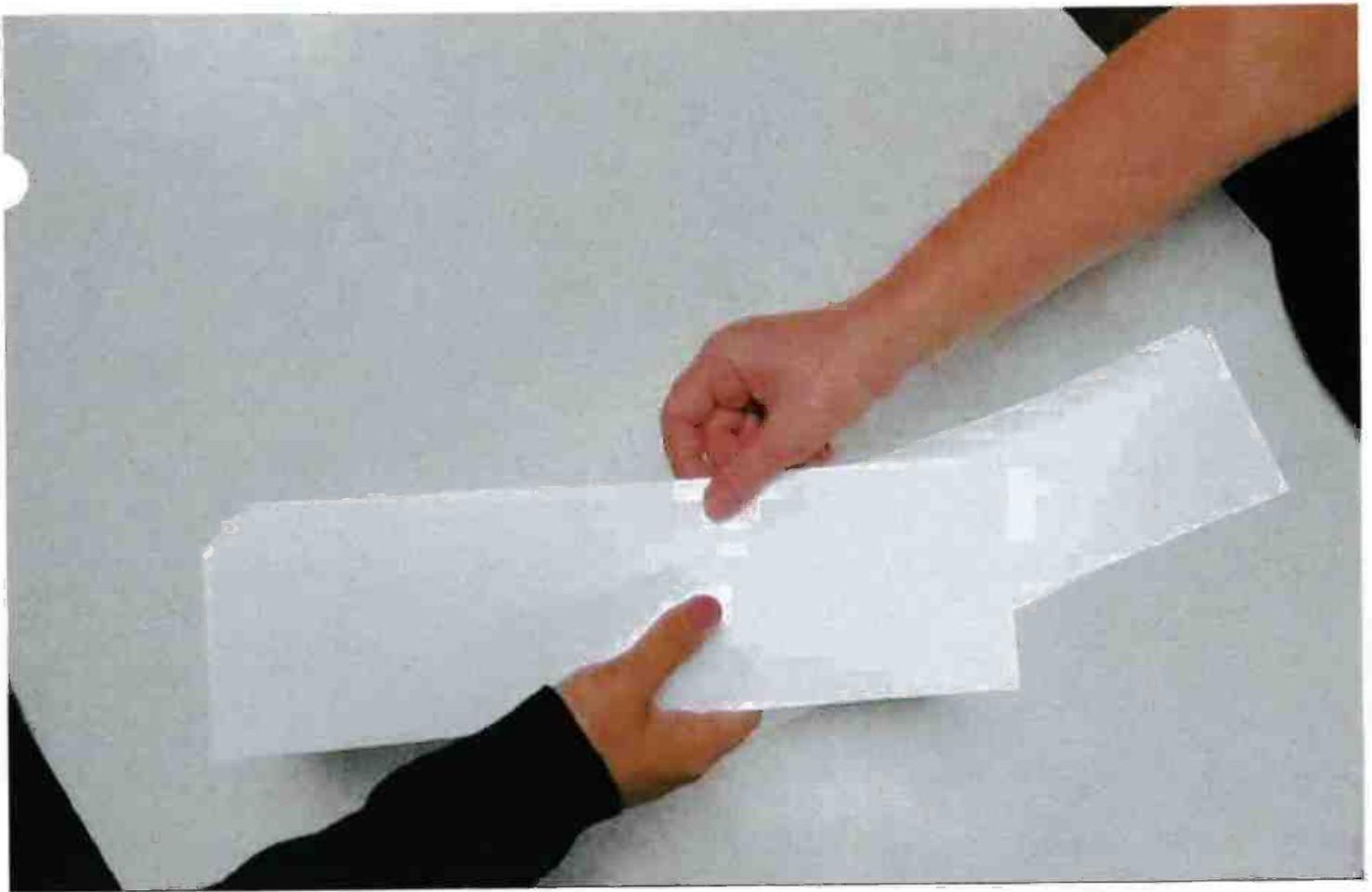


Photo by Ben Hasty | The Eagle

MONDAY NOVEMBER 4, 2019 08:57 PM

Marsy's Law, explained: What you need to know about the crime victims' rights measure on the November 5 ballot

A majority 'yes' vote would amend the state constitution.

WRITTEN BY JOSEPH HAINTHALER

Editor's note: This story was updated on November 4, 2019.

So, it now looks like local elections officials will tally votes for and against the victims' rights amendment that will appear on ballots statewide Tuesday but the Department of State will not be permitted to certify a statewide tally, at least for now.

The state **Supreme Court voted 4-3 Monday**

(<https://www.readingeagle.com/article/20191104/AP/311049505>), a day before Election Day, to agree with a Commonwealth Court judge who ordered that votes on the amendment, known as Marsy's Law, not be counted.

What's the question?

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?

What's going on with the legal challenge?

On Oct. 30, Commonwealth Court Judge Ellen Ceisler granted a **preliminary injunction** (<https://www.readingeagle.com/news/article/pennsylvanians-votes-on-victims-rights-measure-next-week-will-not-count>), saying votes on the Marsy's Law question should not be counted.

A few days later and just five days before Election Day, Pennsylvania Secretary of State Kathy Boockvar **urged the Supreme Court to lift the injunction** (<https://www.readingeagle.com/article/20191031/AP/310319629>), saying it will suppress voter turnout and "foment irreparable uncertainty" among voters.

In a **4-3 ruling Monday** (<https://www.readingeagle.com/article/20191104/AP/311049505>), the state's highest court agreed with Ceisler but said there's nothing stopping voters from making their feelings on the amendment known at the ballot box.

How did it get on the ballot?

It passed both chambers of the Pennsylvania General Assembly in two consecutive sessions, the requirement for a constitutional amendment to be presented to voters for approval.

What will it take for it to be approved?

A majority, or 50% plus one, of those voting on the question must vote yes on Nov. 5 for the amendment to be added to the Pennsylvania Constitution.

Would anyone have any rights under the amendment in a case of murder?

Yes.

The amendment defines a victim as both a person against whom the criminal act was committed and any person who was directly harmed by the crime, such as a close family member. The accused or any person a court decides is not acting in the best interest of a victim cannot be considered a victim under the amendment.

Who's Marsy?

Marsalee "Marsy" Nicholas, a University of California Santa Barbara student, who was stalked and killed by her ex-boyfriend in 1983. Just a week after Marsy was murdered, her mother and brother walked into a grocery store after visiting her grave and were confronted by the accused murderer. Marsy's family had no idea that he'd been released on bail.

The ex-boyfriend was later convicted and died in prison while serving his sentence.

Who's for adding it to the Pennsylvania Constitution?

Jennifer R. Storm, Pennsylvania's victim advocate, is a strong supporter of the amendment, as is state Rep. Sheryl Delozier, a Cumberland County Republican and the prime sponsor of the legislation that got the question on this year's Nov. 5 ballot.

The Pennsylvania District Attorneys Association backed the amendment under the association's then-president, Berks County District Attorney John T. Adams.

What are the basic arguments for and against the proposed amendment?

Supporters say that while the Crime Victims Act of 1998 is on the books, victims of crimes whose rights are not respected have no recourse.

"When a victim's rights are violated, they can't do anything at all," Storm has said. "To have a right without a remedy is almost like not having a right at all."

If their rights were added to the state constitution, victims would have the ability, for example, to demand a new sentencing hearing if they had not been heard by the judge before their victimizer was sentenced.

The rights of victims must be elevated to constitutional status, backers say, because they are too often ignored under the current law.

The Pennsylvania District Attorneys Association says opponents are wrong to call the proposed amendment a dangerous expansion of rights.

"This is about the enforcement of existing rights and providing a remedy when the rights are not adhered to," according to Greg Rowe, director of legislation and policy for the PDAA.

Opponents, including the American Civil Liberties Union of Pennsylvania and the Pennsylvania Association of Criminal Defense Lawyers, say adding the new language to the constitution could put defendants' rights in jeopardy by undermining the presumption of innocence. After all, in some cases, the fact that a crime was committed at all is

in dispute, something a judge seemingly must overlook to grant rights to victims such as "proceedings free from delay" and the "opportunity to take part in public proceedings."

Criminal defendants' rights have to be protected because they are at risk of their life, liberty or property at the hands of the state. Adding a third party's interests to the mix could put the right to a fair trial at risk, opponents say. And judges will sometimes have to weigh the competing rights of defendants and victims without guidance from the amendment as to how to do so.

"It's a mismatch to how our Bill of Rights is constructed," said Elizabeth Randol, legislative director of the ACLU of Pennsylvania.

And that construction, according to Michael R. Dimino Sr., a constitutional law professor at Widener University Commonwealth Law School, was "to preserve liberty" by limiting government's power. Crime victims' rights, on the other hand, require more, not less action from government actors such as prosecutors and judges.

Would the constitutional amendment place any significant limits on the rights of crime victims?

Yes. The amendment includes language that forbids lawsuits against public officials who violate a victim's rights, meaning a prosecutor or judge could not be held financially liable for violating a victim's rights under the proposed amendment.

Do other states include crime victims' rights in their constitutions?

Yes. At least 11 other states have such language in their state charters.

In 2008: California led the way, with voters approving a constitutional amendment adding a crime victims bill of rights to the state's constitution.

In 2014: Illinois voters passed a constitutional amendment guaranteeing victims rights.

In 2016: North Dakota and South Dakota voters added such language to their constitutions, with South Dakota amending its by voter referendum last year to better protect victims' privacy rights.

In 2017: Ohio voters added crime victims rights to their constitution.

In 2018: Voters in Florida, Georgia, Kentucky, Nevada, North Carolina and Oklahoma passed ballot measures, adding crime victims' rights to their state constitutions.

That's a lot of states. Is there an organization behind this effort nationwide?

Yes. It's called Marsy's Law for All, founded and funded by Henry T. Nicholas III, Marsy Nicholas' brother, who went on to become a cofounder of tech giant Broadcom and a billionaire as a result.

"Marsy's Law for All," according to Ballotpedia, "was founded to enact Marsy's Law in all 50 states and as an amendment to the U.S. Constitution."

Have the group's efforts failed anywhere?

Yes, at least twice, on technicalities.

Montana voters approved adding a crime victims rights amendment to their state constitution in 2016 but it was struck down about a year later by the state's Supreme Court. It ruled, 5-2, that because the measure called for many changes to the state constitution, it should have been presented to voters in separate questions, rather than the single question put before them on the 2016 ballot.

Kentucky's Supreme Court in June ruled unanimously that the Marsy's Law amendment passed in that state in November 2018 was presented to voters in an unconstitutional manner. Its full text, the ruling said, should have been placed on the ballot for voters to consider, rather than a brief description saying it would require that victims be treated with "dignity and respect."

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Dr. Henry T. Nicholas III holds a photo of his sister Marsy, who was killed in 1983 by an ex-boyfriend, during the Orange County Victims' Rights March and Rally, Friday, April 26, 2013, in Santa Ana, Calif.

Bob Hartman/AP Images for Marsy'sLawForAll.org

POLITICS & POLICY

OCTOBER 28, 2019 | 7:42 AM

UPDATED: NOVEMBER 5, 2019 | 8:40 AM

Marsy's Law explained

What you need to know about the victims' rights amendment on the Nov. 5 ballot

Katie Meyer

This is an evolving story. We will continue to update this post with the latest information.

NOV. 4 UPDATE: The Pennsylvania Supreme Court confirmed the Commonwealth Court judge's ruling. **Votes cast on the proposed victims' rights amendment this Election Day will not be certified by the state until courts decide whether the victims' rights proposal is constitutional.** <

OCT. 31 UPDATE: State attorneys appealed to Pennsylvania's Supreme Court in an attempt to get the injunction overturned.

OCT. 30 UPDATE: A judge's ruling issued on Oct. 30 put the proposal's status in limbo until a legal challenge is resolved.

When Pennsylvanians go to the polls on November 5th, they'll see a question on the ballot alongside the candidates for Superior and Commonwealth Court judges. It reads:

"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?"

That question is about Marsy's Law, a proposed victims' rights amendment to the state constitution that—per Pennsylvania's amendment process—was approved by the legislature two sessions in a row. The final step to ratification is a statewide referendum.

Marsy's Law is named for [Marsalee Nicholas <https://www.themarshallproject.org/2018/05/22/nicholas-law>](https://www.themarshallproject.org/2018/05/22/nicholas-law), a California college student who was killed by an ex-

that led them to champion additional rights and protections for victims and their families.

California adopted a version of the Marsy's Law amendment in 2008, and many states have considered it since. Versions of the original language have so far made it into 12 state constitutions, [according to Ballotpedia < https://ballotpedia.org/Marsy%27s Law crime victim rights >](https://ballotpedia.org/Marsy%27s_Law_crime_victim_rights) . However, supreme courts in two of those states—[Montana < https://www.greatfallsribune.com/story/news/2017/11/01/montana-supreme-court-marsys-law-initiative-unconstitutional-victims-rights/822077001/ >](https://www.greatfallsribune.com/story/news/2017/11/01/montana-supreme-court-marsys-law-initiative-unconstitutional-victims-rights/822077001/) and [Kentucky < https://www.wdrb.com/in-depth/kentucky-supreme-court-voids-marsy-s-law-constitutional-amendment/article_4cf0162c-8de9-11e9-a34c-731e04236be7.html >](https://www.wdrb.com/in-depth/kentucky-supreme-court-voids-marsy-s-law-constitutional-amendment/article_4cf0162c-8de9-11e9-a34c-731e04236be7.html) —have since found the amendment unconstitutional.

Pennsylvania's legislature passed the proposed amendment by wide margins, but it still faces organized opposition. In particular, the American Civil Liberties Union believes that Marsy's Law is too vague and could set up conflicting rights between crime victims and the accused. A lawsuit filed by the group on behalf of the League of Women Voters and an individual Pennsylvanian succeeded, as of Oct. 30, in [blocking election officials from tabulating the results < https://papost.org/2019/10/30/in-unprecedented-move-judge-blocks-marsys-law-ballots-from-being-counted/ >](https://papost.org/2019/10/30/in-unprecedented-move-judge-blocks-marsys-law-ballots-from-being-counted/) on Election Day until constitutionality issues are resolved.

The state appealed that decision on Oct. 31, [arguing the injunction would suppress voter turnout and "foment irreparable uncertainty" among voters. <](#)

[Pennsylvania's Supreme Court on Nov. 4 upheld the earlier order < https://www.witf.org/2019/11/04/state-supreme-court-confirms-marsys-law-votes-wont-be-certified/>](https://www.witf.org/2019/11/04/state-supreme-court-confirms-marsys-law-votes-wont-be-certified/) barring the state from counting and certifying votes on Marsy's Law until courts decide whether the victims' rights proposal is constitutional.

What would Marsy's Law do?

Pennsylvania's version would essentially shift a package of existing victims' rights laws from the state's legal code to the constitution, plus a few additional provisions.

[The commonwealth's Victims' Bill of Rights < https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1998&sessInd=0&smthLwInd=0&act=111&chpt=2>](https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1998&sessInd=0&smthLwInd=0&act=111&chpt=2) was adopted in 1998. It gives alleged victims over a dozen different privileges they can invoke while they're navigating the criminal justice system, including the right to be informed of developments in their case, the right to almost always be present during court proceedings, the right to submit a victim impact statement to the court, and the right to be notified if the perpetrator of a crime against them is released from prison.

Jennifer Riley, who directs the commonwealth's chapter of the advocacy group [Marsy's Law for All < https://www.marsyslaw.us/>](https://www.marsyslaw.us/), said she thinks it's important to move those rights to the constitution because it would allow victims to influence their case in a way a simple law cannot.

she said, adding that under current law there is “basically no meaningful way for them to assert their rights in court.”

Riley said that if, for instance, a victim isn't given a chance to make an impact statement at sentencing, Marsy's Law would allow them to motion a judge to re-do that part of the proceeding. The judge would then decide whether to grant the request.

That might make the court process take a little longer, Riley acknowledged, but it wouldn't change the outcome.

Marsy's Law promises victims a few things that aren't in the existing Victims' Bill of Rights—significantly, the right for a victim to refuse discovery requests from “the accused or any person acting on behalf of the accused.”

In the pre-trial process, part of a defense lawyer's job is to collect information that might exonerate the accused person or allow them to plea for a lighter sentence. Often, they must turn to the victim to get information if they can't get it from police or other sources.

In many states, a victim may have to sit for a deposition during pre-trial discovery. But it's not required in criminal cases under Pennsylvania common law, so defense lawyers generally ask a judge to issue an order for the information they want. The judge then decides whether it's relevant, and if it is, a victim is ordered to provide it.

Riley and other Marsy's Law defenders say the amendment wouldn't affect how criminal cases are tried in Pennsylvania

the provision anyway as a safeguard.

"If it were excluded from the rights enumerated in Marsy's Law, it would almost be presumptive that the defense could require a victim to participate in pre-trial discovery," she said. "It would be conspicuously absent."

Marsy's law would also give victims the right to receive restitution, which is already accepted law in Pennsylvania though not included in the bill of rights. The amendment would give victims the assurance that proceedings are "free from unreasonable delay." Riley said it would be up to a judge to determine whether a delay—say, a request by a defendant to call additional witnesses or review new evidence—is unreasonable.

Why are some people against Marsy's Law?

Along with the American Civil Liberties Union, the League of Women Voters and many defense attorneys oppose Marsy's Law.

The ACLU filed a lawsuit on October 10 challenging the proposed amendment on technical grounds. Specifically, the group argues that the Marsy's Law ballot question makes too many changes at once, a violation of an existing provision in the constitution. The suit asks for a preliminary injunction, **granted by a judge on Oct. 30** < <https://papost.org/2019/10/30/in-unprecedented-move-judge-blocks-marsys-law-ballots-from-being-counted/>>, that blocks the proposal from taking effect until the courts rule on the questions raised by the ACLU.

[judge-will-make-the-first-decision-soon/>](#), argues that Marsy's Law violates [Article XI < https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&t1=00&div=0&chpt=11>](#) of the state constitution, which says if the legislature wants to submit two or more amendments to the constitution, those changes "shall be voted upon separately" in the subsequent referendum. The ACLU says Marsy's Law may only change the language in one part of the constitution, but it affects, by their attorneys' count, 3 articles, 8 sections and a schedule.

Marsy's Law backers say the different elements included in the proposal are united under the goal of preserving victims' rights, and so it is constitutional.

Constitutionality aside, the amendment is certainly wide-ranging. Ellen Ceisler, the commonwealth court judge who heard arguments in the Marsy's Law case, remarked to the attorneys that she believed the "scope and sweep of this amendment is far beyond anything we've seen before."

Underlying the ALCU's challenge on technical grounds is a more fundamental issue: Attorneys for the groups involved in the suit believe judges could interpret Marsy's Law in ways that would make it harder for people accused of crimes to be proven innocent.

Philadelphia defense attorney Ronald Greenblatt testified at the Oct. 23 hearing and said one of his many concerns is that pre-trial discovery procedures could change.

trial process of asking a judge to order victims to turn over important information.

But he said he's worried if the victim has a constitutional right to refuse to comply with defense discovery motions, at least some judges won't issue orders to compel it.

"It would result in innocent people being convicted," he said.

Marsy's Law backers maintain that sort of scenario would never happen.

"There is absolutely nothing to support that claim," Riley said. "It's not interpreted that way in other states that have constitutional rights for crime victims."

What does the lawsuit mean for you?

On November 5th, voters can cast ballots for Marsy's Law and any other elections as they normally would. Counties will collect and count votes as usual, and send tallies to the Department of State. However, under the commonwealth court's preliminary injunction — [which was upheld by the state Supreme Court < https://www.witf.org/2019/11/04/state-supreme-court-confirms-marsys-law-votes-wont-be-certified/>](https://www.witf.org/2019/11/04/state-supreme-court-confirms-marsys-law-votes-wont-be-certified/) — the Department of State will not formally tabulate or certify the Marsy's Law vote until the legal process plays out.

If you have any questions about Marsy's Law, feel free to send us a note through [the Listening Post < https://papost.org/tag/listening-post/>](https://papost.org/tag/listening-post/), and we'll do our best to answer it.

LINKS

- [Marsy's Law will be on the Nov. ballot, but courts could decide its fate < https://papost.org/2019/10/24/marsys-law-will-be-on-the-nov-ballot-but-courts-could-decide-its-fate/>](https://papost.org/2019/10/24/marsys-law-will-be-on-the-nov-ballot-but-courts-could-decide-its-fate/)

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Court rules victim rights referendum votes won't be counted

Lawsuit against 'Marsy's Law' amendment in Pennsylvania has not been resolved

AP

Updated: 1:19 PM EST Nov 5, 2019

MARK SCOLFARO Associated Press

HARRISBURG, Pa. — Pennsylvania's highest court ruled on the eve of balloting Monday that state elections officials will not count or certify the results of a voter referendum on a victims' rights constitutional amendment.

The divided Supreme Court upheld a lower court decision and directed the Department of State not to tabulate or certify the votes that will be cast Tuesday in Pennsylvania's 67 counties for and against the proposal.



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The 4-3 majority's brief order said it does not stop anyone from [voting on the ballot measure](#).

In a dissent joined by two others, Chief Justice Thomas Saylor said he was concerned about "significant potential to foster uncertainty" that the court's action may generate among state voters.

"I also believe that the requirement for a challenger to prove a likelihood of success on the merits should be elevated in the context of an attack on presumptively valid actions by the Legislature," Saylor said.

The ballot question's fate had been in limbo since last week, when Commonwealth Court Judge Ellen Ceisler issued an injunction that was requested by the state League of Women Voters and a voter, the plaintiffs who [sued to challenge the proposal](#).

Ceisler ruled her prohibition on tallying and certifying the votes should remain in place until [the underlying lawsuit against the so-called "Marsy's Law" amendment](#) is resolved, including any appeals.

The Associated Press will tabulate the vote for this referendum but will not declare a winner. The Department of State said earlier Monday that its website with election returns is expected to show statewide totals on Tuesday night, although they would be unofficial.

The amendment would enshrine into the state constitution rights that include notifications and being allowed to attend and weigh in during plea hearings, sentencings and parole proceedings. It also would ensure a prompt and final conclusion of cases and post-conviction proceedings, as well as a right to full restitution.

Ceisler said that the amendment would have immediate, profound and irreversible consequences for the rights of accused and the criminal justice system. She also said that the ballot question did not fully inform voters of what the proposal will do, and that the amendment improperly combined several elements that should be voted separately.

The practical effect of the amendment, if approved, has been disputed, with the attorney general's office arguing that the Legislature has to pass legislation to implement changes.

"Should the voters even pass this amendment, since the amendment is not self-executing, any legal challenges will be resolved well before the General Assembly can pass legislation implementing it," wrote state lawyers for the defendant, acting Secretary of State Kathy Boockvar, in a brief filed Friday. "That is why this court has universally held that preliminary injunctions are not appropriate in this context."

They warned that the injunction would suppress voter turnout, put the integrity of the election in jeopardy, and sow confusion and uncertainty.

The plaintiffs argued the judge's injunction was appropriate, saying it was crafted to allow the vote to proceed but prevent the result from taking effect.

"The proposed amendment makes reference to implementing legislation, but does not state that no part of the amendment may take effect until that legislation is passed," wrote lawyers for the League of Women Voters and Lorraine Haw, a voter.

They argued there was no evidence that Ceisler's injunction would cause anyone not to vote or result in any other type of harm.



'Marsy's Law': Question to appear on Nov. ballot about an amendment centered on crime victims' rights

Court to weigh challenge to victim rights amendment proposal



Pennsylvania Supreme Court Rules Marsy's Law Victim Rights Referendum Votes Won't Be Counted

The 4-3 majority's brief order said it does not stop anyone from voting on the Marsy's Law ballot measure Tuesday

By Mark Scolforo

Published Nov 5, 2019 at 9:40 AM



Actor Kelsey Grammer has been appearing in a political ad but not because he is on the ballot. He is pushing for a crime victim amendment called Marsy's Law in Pennsylvania. NBC10's Steven Fisher has the details on what you should know about the law before voting on your ballot. (Published Monday, Nov. 4, 2019)

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What Voters Need to Know About Marsy's Law Before Tuesday

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WHAT TO KNOW

- A divided Pennsylvania Supreme Court upheld a lower court decision on certifying the results of the "Marsy's Law" voter referendum.
- There is a legal challenge against the victims' rights constitutional amendment.
- The 4-3 majority's brief order said it does not stop anyone from voting on the Marsy's Law ballot measure.

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- Some, not all
- No, I leave them all up
- Other

In a dissent joined by two others, Chief Justice Thomas Saylor said he was concerned about "significant potential to foster uncertainty" that the court's action may generate among state voters.



Pennsylvania and New Jersey voters head to the polls Tuesday for local and statewide elections. Issues include the races for Philly mayor and city council. (Published Tuesday, Nov. 5, 2019)

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- [5 Races to Watch on Election Day In the Philadelphia Region](#)

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- [Judge Says Pa. Can't Tally Marsy's Law Amendment Votes](#)

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- **Victim's Rights Amendment Tops Pa. Ballot This Year**

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- **Judge to Rule on Marsy's Law Referendum Vote Counting in Pa.**

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Pennsylvania Supreme Court rules Marsy's Law votes won't be counted

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Court rules Marsy's Law votes won't be counted: as seen on Action News Mornings, November 5, 2019.

By MARK SCOLFORO

Tuesday, November 5, 2019 6:23AM

HARRISBURG, Pa. -- Pennsylvania's highest court ruled on the eve of balloting Monday that state elections officials will not count or certify the results of a voter referendum on a victims'

rights constitutional amendment.

Polls in Pennsylvania open 7 a.m. to 8 p.m. [Find your polling place here](#)

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- [2019 Voter Guide from the Philadelphia Citizen](#)

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The plaintiffs argued the judge's injunction was appropriate, saying it was crafted to allow the vote to proceed but prevent the result from taking effect.

"The proposed amendment makes reference to implementing legislation, but does not state that no part of the amendment may take effect until that legislation is passed," wrote lawyers for the League of Women Voters and Lorraine Haw, a voter.

They argued there was no evidence that Ceisler's injunction would cause anyone not to vote or result in any other type of harm.

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[Natasha Lindstrom](#)

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The Pennsylvania Supreme Court's chambers in the Pennsylvania State Capitol.

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Pennsylvanians still have the right to cast a vote Tuesday on the proposed Marsy's Law related to victim rights - but officials won't be counting and sharing the results of votes on that particular measure, the state's highest court affirmed in a split ruling Monday.

The Pennsylvania Supreme Court, on a 4-3 split, denied an emergency petition seeking to overturn last week's decision by a Commonwealth Court judge to bar officials from certifying votes on the controversial, multimillion-dollar backed referendum.

Among other things, Marsy's Law would require that crime victims be notified of an offender's release and given standing in court for proceedings including bail hearings, parole and trials. While many of those issues are part of the Pennsylvania Crime Victim's Act of 1998, advocates said the proposed amendment would give victims standing to demand that those rights are upheld.

Lawyers from the American Civil Liberties Union of Pennsylvania argued that the proposed measure — which enumerates a variety of rights — failed to meet the state constitutional requirement that limits amendments to a single issue.

The case advanced to the Supreme Court after Pennsylvania Attorney General Josh Shapiro appealed Commonwealth Court Judge Ellen Ceisler's injunction. Shapiro contended that the referendum met constitutional muster and argued that barring a vote count could suppress balloting on the referendum and hurt voter turnout.

"Neither this order, nor the order of the Commonwealth Court, deprives any voter of the right to cast a ballot on the proposed 'Victim's Rights' amendment at issue in this litigation at the upcoming Nov. 5, 2019 General Election," Monday's Supreme Court order said.

Chief Justice Saylor filed a dissenting statement signed by Justices Kevin Dougherty and Sallie Updyke Mundy.

Saylor wrote that he had "difficulty comprehending why the Commonwealth Court would bar a mere tabulation of duly-cast votes of the electorate." He suggested that votes at least be tabulated even if not directly linked to the passage of the law.

Shapiro slammed the decision, which he said does a disservice to the electorate as well as victims of crime.

"I respectfully disagree with the court's majority ruling," Shapiro said Monday night in a statement. "The courts in this matter had a very clear opportunity — let the votes be counted; let the voters' voices be heard. I can't help but feel the courts have quieted the voices of the people of this Commonwealth and failed crime victims."

Marsy's Law has percolated through the General Assembly for two years. It passed the Legislature by large margins in two consecutive sessions and was on track to become law with voter approval.

Pennsylvania State Victim Advocate Jennifer Storm said the amendment would give victims standing in court to assert their right to be heard and notified of proceedings. She equated it to balancing the scales for victims.

Civil rights advocates, however, said they feared the proposed changes could trample on the rights of those accused of crimes prior to any conviction.

The measure is part of a national campaign that California tech billionaire Henry J. Nicholas III is underwriting to codify victims' rights in every state constitution, with the goal of eventually amending the U.S. Constitution.

Nicholas established the Marsy's Law for All Foundation in memory of his sister, Marsalee Nicholas. As a California college student, she was murdered in 1983 by a former boyfriend. Nicholas began his push for victims' rights after his mother encountered Marsalee's murderer in a grocery store a week after her daughter was killed. She did not know he had been released on bond.

In what one expert in state constitutional law called an unprecedented campaign for an amendment, Marsy's Law for Pennsylvania has blanketed airwaves across the state with a 30-second ad featuring Emmy Award-winning actor Kelsey Grammer.

According to campaign finance reports, the Marsy's Law Foundation spent more than \$100 million in 12 states over the past 11 years since passing the first crime victims' rights amendment in California in 2008.

Voters in 11 states have passed similar amendments. Courts in Montana and Kentucky later overturned the measure in those states.

Campaign finance records in Pennsylvania show the Marsy's Law Foundation committed \$6.4 million — both in cash and through in-kind contributions — to the campaign here as of Oct. 23.

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