

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

LEAGUE OF WOMEN VOTERS OF : No.4 MAP 2021
PENNSYLVANIA and LORRAINE :
HAW :

v. :

VERONICA DEGRAFFENREID, :
ACTING SECRETARY OF THE :
COMMONWEALTH :

APPEAL OF: SHAMEEKAH :
MOORE, MARTIN VICKLESS, :
KRISTIN JUNE IRWIN AND :
KELLY WILLIAMS :

**BRIEF OF AMICUS CURIAE
PENNSYLVANIA COALITION AGAINST RAPE
IN SUPPORT OF APPELLANTS
SHAMEEKAH MOORE, MARTIN VICKLESS, KRISTIN JUNE IRWIN
AND KELLY WILLIAMS**

Suzanne V. Estrella, Esq.
64631
Pennsylvania Coalition Against Rape
2101 N. Front Street
Governor’s Plaza North, Bldg #2
Harrisburg, PA 17110
717-728-9740 x161
sestrella@pcar.org

Konrad B. Jarzyna, Esq.
94200
Pennsylvania Coalition Against Rape
2101 N. Front Street
Governor’s Plaza North, Bldg #2
Harrisburg, PA 17110
717- 497- 3589 (mobile)

Attorneys for Amicus Curiae

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STATEMENT OF THE CASE

Pennsylvania Coalition Against Rape incorporates by reference the Statement of the Case entered by the Appellant in this case.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Pennsylvania Coalition Against Rape (PCAR) is a private nonprofit organization. Founded in 1975, PCAR is the oldest anti-sexual violence coalition in the country and is widely respected at both the state and national levels for its leadership to prevent sexual assault, abuse and harassment. PCAR has successfully worked as an agent of change--educating society about the severe and long-lasting impact of sexual assault, sexual abuse and sexual harassment, confronting victim-blaming attitudes, challenging injustice, and advocating for policies for victims of sexual abuse, sexual assault and sexual harassment to provide them with the justice, compassion, privacy and dignity they deserve. What we say and do matters. PCAR is committed to acknowledging the voices of survivors and partnering with them to ensure equal justice under the law. Therefore, PCAR offers this amicus brief in support of the Appellant in this case. PCAR verifies that this brief was primarily prepared by PCAR and no other person paid in part or in whole for the preparation of the amicus brief or authored in whole or in part the amicus brief.

SUMMARY OF ARGUMENT

Many states already have constitutional rights for crime victims. The need is apparent and crime victims in Pennsylvania deserve fair and respectful procedures as they interact with the criminal justice system. The crime victims' rights addressed by the proposed constitutional amendment relate to one core purpose and ensure one substantive change; the addition of crime victims' rights to the Constitution of Pennsylvania. The rights delineated in the proposed amendment are significantly similar to the statutory rights provided to crime victims in the Crime Victims Act. *See 18 P.S. § 11.201*. The elevation of crime victims' rights to a constitutional level will support the needs of crime victims by allowing them to safely pursue justice in a manner that is fair and equitable.

ARGUMENT

1. Victims of crime are entitled to due process and safety as they engage the criminal justice system.

The cultural climate surrounding victimization has seen a major shift in response to the public outcry against the injustices faced by victims of crime. While this is clearly a national issue, Pennsylvania has been in the forefront of the need for change and added protections for survivors of crime, particularly survivors of sexual abuse, assault and harassment. In 2016, the Governor launched the It's On Us Campaign to combat sexual assault in education settings, in 2018,

the Attorney General released the findings of a two year investigation of child sex abuse by Catholic Priest from six different Pennsylvania Dioceses, Statutes of Limitations reform remains a current crisis plaguing survivors and the community at large. Pennsylvanians are demanding change. Change that supports long standing principles of equality and justice is crucial for victims who engage the justice system seeking some form of relief.

The purpose of Marsy's Law is to elevate the rights of victims and secure for victims the same protections available for criminal defendants. The rights and protections present in the proposed amendment are substantively similar to the statutory rights provided in the current Crime Victim Bill of Rights, 18 P.S. § 11.201. The elevation of victims' rights to a constitutional level will balance the scales of justice and make our system safer for victims to engage. The proposed victim's rights do not alter nor undermine existing constitutional provisions.

While Marsy's Law will benefit all victims of crime it is imperative that the Court recognize the plethora of research that reveals specific crime victims; sexual assault survivors, fail to report crimes because of the history of inappropriate treatment, likelihood of not being believed and lack of respect from the criminal justice system. Rape continues to be the most unreported crime nationwide.¹ When

¹ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2016 (2017) and Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal Victimization*, 2018 (2019),

addressing civil legal options for crime victims, Pennsylvania Legislators acknowledged this alarming fact and stated, “*Rape is recognized as one of the most underreported crimes, and studies indicate that only one in three rapes is reported to law enforcement.*” 42 Pa.C.S. § 62A02(4) (2019). The International Association of Chiefs of Police has been quoted as stating that being believed and having someone to talk to are crucial elements of victim recovery.² Multiple states and service providers from varied disciplines have recognized the need for change in practices and procedures that directly impact victims of crime. The elements of dominance, power and control that are prevalent in rape crimes must not continue to spill into systems designed to protect survivors of these crimes. In Pennsylvania, Marsy’s Law addresses the need for change by empowering victims and guaranteeing respectful treatment, while also providing for meaningful interaction throughout the criminal justice process and due process rights that equal the rights of the accused.

See also, Sullivan, S. (2019 October, 2). 6 Reasons Why Abusers Like Larry Nassar Avoid Detection [Blog post]. Retrieved from <https://www.nsvrc.org/blogs/6-reasons-why-abusers-larry-nassar-avoid-detection>; National Sexual Violence Resource Center, About Sexual Assault, Retrieved from: <https://www.nsvrc.org/about-sexual-assault>.

² Michael Docle, [Sex-Crime Survivors Deserve to Protect Their Privacy](https://www.orlandosentinel.com/opinion/guest-commentary/os-op-sex-abuse-survivor-reporting-legislature-20210225-7hnk4dloqjgghn5rth5nuicjq-story.html), Orlando Sentinel (Feb. 25, 2021, 6:00AM), <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-sex-abuse-survivor-reporting-legislature-20210225-7hnk4dloqjgghn5rth5nuicjq-story.html><https://www.orlandosentinel.com/opinion/guest-commentary/os-op-sex-abuse-survivor-reporting-legislature-20210225-7hnk4dloqjgghn5rth5nuicjq-story.html>.

2. Marsy's Law ensures fundamental fairness for victims' of crime and addresses the single subject of victims' rights without infringing on the constitutional rights of the accused.

The amendment in question appeared on the ballot as follows:

“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?”³

The question as well as the proposed amendment itself addresses the single subject of victim's rights. The amendment, in its pertinent part, provides the following rights:

§ 9.1. Rights of victims of crime.

(a) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, as further provided and as defined by the General Assembly, which shall be protected in a manner no less vigorous than the rights afforded to the accused: to be treated with fairness and respect for the victim's safety, dignity and privacy; to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial

³ *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 January 6, 2021).

disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon; to be notified of all parole procedures, to participate in the parole process, to provide information to be considered before the parole of the offender, and to be notified of the parole of the offender; to reasonable protection from the accused or any person acting on behalf of the accused; to reasonable notice of any release or escape of the accused; to refuse an interview, deposition or other discovery request made by the accused or any person acting on behalf of the accused; full and timely restitution from the person or entity convicted for the unlawful conduct; full and timely restitution as determined by the court in a juvenile delinquency proceeding; to the prompt return of property when no longer needed as evidence; to proceedings free from unreasonable delay and a prompt and final conclusion of the case and any related post[-]conviction proceedings; to confer with the attorney for the government; and to be informed of all rights enumerated in this section.⁴

Each right proposed in the amendment is interrelated to secure rights for victims of crime. The rights ensure respect, safety and fairness for victims as they engage our complex justice system.

This Court, after noting that its decision in *Pennsylvania Prison Society v. Commonwealth*, 565 Pa. 526, 776 A.2d 971 (Pa. 2001), left no clear applicable standard, has adopted "subject matter test" to evaluate whether a constitutional amendment presents a single purpose and held constitutional amendments that are related to a single purpose can be presented as a single question. *Grimaud v. Commonwealth*, 581 Pa. 398, 865 A.2d 835, 841 (Pa. 2005). The constitutional

⁴ *Proposed Constitutional Amendment: Crime Victim Rights (Marsy's Law)*
<https://www.dos.pa.gov/VotingElections/CandidatesCommittees/RunningforOffice/Pages/Joint-Resolution-2019-1.aspx>

amendment in question passes this test because it addresses a single subject matter, crime victims' rights with a single purpose of providing the victims with certain constitutional rights intended, among other things, to protect their safety, privacy, and ability to be heard and informed. Moreover, the proposed changes are sufficiently interrelated because they each address different aspect of victims' rights relative to the criminal justice system. Consequently, the proposed changes do not violate Article XI, § 1 of the Pennsylvania Constitution by being presented on the ballot as a single question of whether the voters support the constitutional changes with respect to the rights of the crime victims in the Commonwealth of Pennsylvania.

Other than deciding whether the proposed changes can be presented on the ballot as a single question, this Court must also determine if the changes would facially and substantially affect multiple constitutional rights. Presented with this issue in *Grimaud*, the Court stated that:

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. Indeed, it is hard to imagine an amendment that would not have some arguable effect on another provision; clearly the framers knew amendments would occur and provided a means for that to happen. The question is whether the single ballot question patently affects other constitutional provisions, not whether it implicitly has such an effect (...).

Id. at 842. Therefore, instead of focusing on hypothetical situations in which constitutional provisions may be implicitly affected by the proposed changes at issue, we must focus on whether they patently and facially affect other parts of the Constitution.

The proposed constitutional amendment does not remove any established constitutional rights. Specifically, the proposed amendment does not remove one's right to be presumed innocent until proven guilty, one's ability to confront witnesses, the right to bail, the Governor's power to commute sentences and grant pardons or this Court's power to prescribe general rules governing practice, procedure and the conduct of all courts. All those rights will remain intact and unaffected by the language of the proposed amendment.

For example, in this case, the lower court stated that "the Proposed Amendment would facially allow a victim or any other person directly impacted by a crime to refuse an interview, deposition, or other discovery request made on behalf of a criminal defendant." *League of Women Voters of Pa. v. Boockvar*, 2021 Pa. Commw. Unpub. LEXIS 19, at 22 (2021). The statement is factual, but presents no imposition on other parts of the Constitution for criminal defendants. In fact, a defendant's "right to be confronted with the witnesses against him" or "to have compulsory process for obtaining witnesses in his favor," as set forth in Article I, § 9 of the Pennsylvania Constitution, will not be affected by the proposed

change. The change does not allow out-of-court statements made by a victim to be admissible during a trial without the victim testifying and being subject to cross-examination. Any testimony from a victim that may be favorable to a defendant can be elicited during the cross-examination, as it is done in the courtrooms on daily basis. Further, any recorded statements made by a victim that are in the Commonwealth's possession will still need to be turned over to the defendant under the applicable discovery rules. *See Pa.R.C.P. 573*. Most importantly, none of the constitutional provisions in question provide the defendants with the right to depose and/or interview victims. In many cases, early in the proceedings, the defendants are ordered not to have any contact with the victim as a condition of their bail. Such condition does not suggest that the defendant is presumed to be guilty, that he cannot confront witnesses, or that he cannot call witnesses favorable to his case. Just like the amendment in question, a bail condition is a mechanism used to protect safety of a victim/witness until the case is adjudicated while the defendant's constitutional protections remain in full force and effect. The proposed amendment will also not alter the defendants' bail rights.

According to the Pennsylvania Constitution:

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the

privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

Pa. Const. Art. I, § 14. Having “the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused,” as stated in the proposed amendment, in no way facially affects this provision. Concern with safety of any person, including victims, and the community is already expressed in its language and the proposed change reinforces, rather than alters, said concern. Most importantly, this particular proposed change will not affect bail setting procedures or the considerations taken into account by the lower courts in bail related decisions.

In a similar fashion, the proposed amendment will not alter the Governor’s power to commute sentences and grant pardons or this Court’s power to prescribe general rules governing practice, procedure and the conduct of all courts. With respect to pardons, under the proposed change, a victim of a crime would have a right to be heard in a pardon proceeding. A right to be heard does not give one power to change any provisions of Article IV, § 14. The proposed change does not require that a victim’s testimony be given extra consideration, that it should be a determining factor in the board’s decision, or that it prevents the board from functioning in accordance with its constitutional mandate. In other words, the subject change does not patently or facially affect the pardoning power under the

Constitution. Pardoning power and pardon related procedures will remain the same and the proposed amendment will not affect the rights of those convicted of a crime.

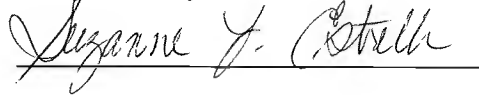
Lastly, this Court's Article V power to prescribe general rules governing practice, procedure and the conduct of all courts will also not be affected by the proposed amendment. The Court, in setting new rules and procedures, may have to take into consideration the proposed changes should they become the law of the Commonwealth, as it does with any other changes in our continuously evolving legal landscape. Indeed, such rules must be consistent with the Constitution. *See* Pa. Const. Art. V, § 10(c). However, the proposed changes will not infringe on this Court's authority and ability to make new rules and to oversee the conduct of all courts. Not a single Section of Article V is being facially or patently changed by the proposed amendment. In fact, the changes will not even implicitly affect the provisions of Article V and the Court will be able to manage the Commonwealth's judiciary in the same manner as it did prior to the implementation of the proposed amendment.

CONCLUSION

In light of the foregoing, Pennsylvania Coalition Against Rape, respectfully submits that the proposed amendment was properly submitted to the Pennsylvania voters, that it is constitutional, and the votes cast thereon were valid. Further,

Amici respectfully requests this Honorable Court reverse the ruling of the Commonwealth Court of Pennsylvania issued in this matter along with its January 7, 2021 Order.

Respectfully submitted,



Suzanne V. Estrella, Esq.
64631
Pennsylvania Coalition Against Rape
2101 N. Front Street
Governor's Plaza North, Bldg #2
Harrisburg, PA 17110
717-728-9740 x161
sestrella@pcar.org

Konrad B. Jarzyna
92400
Pennsylvania Coalition Against Rape
2101 N. Front Street
Governor's Plaza North, Bldg #2
Harrisburg, PA 17110
717- 497- 3589 (mobile)

CERTIFICATES OF COMPLIANCE

I certify that this filing complies with the provisions of *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.

I certify that this filing complies with the word count limits of Rule 531 of the Pennsylvania Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I hereby certify that the Amicus Curiae Brief of Pennsylvania Coalition Against Rape was served electronically on the parties indicated below this 2nd day of March, 2021.

Served: Andrew Chapman Christy
Service Method: eService
Email: achristy@aclupa.org
Address: 1624 Huntingdon Road
Abington, PA 19001
Phone: 609-502-0767
Representing: Appellee League of Women Voters of Pennsylvania and Lorraine Haw

Served: Caleb Curtis Enerson
Service Method: eService
Email: cenerson@attorneygeneral.gov
Address: PA Office of Attorney General
15th Floor Strawberry Sq.
Harrisburg, PA 17120
Phone: 717-705-5774
Representing: Appellee Veronica Degraffenreid

Served: Craige Castiglia
Service Method: eService
Email: craig.castiglia@dechert.com
Address: Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Phone: 484-686-2985
Representing: Appellee League of Women Voters of Pennsylvania and Lorraine Haw

Served: David Pittinsky
Service Method: eService
Email: pittinsky@ballardspahr.com
Address: 1735 Market St., 51st Floor
Philadelphia, PA 19103
Phone: 215-864-8117
Representing: Appellant Shameekah Moore, Martin Vickless, Kristin June Irwin and Kelly Williams

Served: Joshua D. Shapiro
Service Method: eService
Email: jshapiro@attorneygeneral.gov
Address: 1600 Strawberry Square
Harrisburg, PA 17120
Phone: 717-787-3391
Representing: Appellee Veronica Degraffenreid

Served: Mary Catherine Roper
Service Method: eService
Email: mroper@aclupa.org
Address: P.O. Box 60173
Philadelphia, PA 19102
Phone: 215-592-1513
Representing: Appellee League of Women Voters of Pennsylvania and Lorraine Haw

Served: Michael E. Gehring
Service Method: eService
Email: mike@steveharveylaw.com
Address: 7054 Sherwood Road
Philadelphia, PA 19151
Phone: 610-648-9300
Representing: Appellee Ronald L. Greenblatt

Served: Michael Hugh McGinley
Service Method: eService
Email: michael.mcginley@dechert.com
Address: Cira Centre
2929 Arch Street

Philadelphia, PA 19104
Phone: 215-994-2463
Representing: Appellee League of Women Voters of Pennsylvania and
Lorraine Haw

Served: Nicole Jeanne Boland
Service Method: eService
Email: nboland@attorneygeneral.gov
Address: Office of Attorney General
15th Floor, Strawberry Sq.
Harrisburg, PA 17120

Phone: 717-783-3146
Representing: Appellee Veronica Degraffenreid

Served: Scot Russel Withers
Service Method: eService
Email: swithers@lambmcerlane.com
Address: 24 East Market Street
P.O. Box 565
West Chester, PA 19381

Phone: 610-430-0800
Representing: Appellant Shameekah Moore, Martin Vickless, Kristin June
Irwin, and Kelly Williams

Served: Stephen G. Harvey
Service Method: eService
Email: steve@steveharveylaw.com
Address: 1880 JFK Blvd.
Philadelphia, PA 19103

Phone: 215-438-6600
Representing: Ronald L. Greenblatt

Served: Steven Edward Bizar
Service Method: eService
Email: steven.bizar@dechert.com
Address: 50 S. 16th Street, Ste. 3200
Philadelphia, PA 19102

Phone: 215-665-8700
Representing: Appellee League of Women Voters of Pennsylvania and
Lorraine Haw

Served: Tiffany Ellen Engsell
Service Method: eService
Email: tiffany.engsell@dechert.com
Address: 2929 Arch Street
Philadelphia, PA 19104
Phone: 215-994-2907
Representing: Appellee League of Women Voters of Pennsylvania and
Lorraine Haw

Served: William R. Christman III
Service Method: eService
Email: bchristman@lambmcerlane.com
Address: 1654 Hemlock Circle
Downingtown, PA 19335
Phone: 717-669-8419
Representing: Appellant Shameekah Moore, Martin Vickless, Kristin June
Irwin, and Kelly Williams

Served: Abby Nicole Trovinger
Service Method: eService
Email: atrovinger@pa.gov
Address: 1920 Technology Parkway
Mechanicsburg, PA 17050
Phone: 717-728-7763
Representing: Amicus Curiae, Office of Victim Advocate

Served: Douglas Edwards Roberts
Service Method: eService
Email: der@pietragallo.com
Address: 1818 Market Street, Ste. 3402
Philadelphia, PA 19103
Phone: 215-988-1431
Representing: Amicus Curiae, National Association of Criminal Defense
Lawyers

Served: James Guthrie Mann
Service Method: eService
Email: jmann@pahousegop.com
Address: B-6 Main Capitol

Phone: P.O. Box 202228
Harrisburg, PA 17120
717-783-1510
Representing: Amicus Curiae, Republican Caucus of the Pennsylvania
House of Representatives

Served: Jill S. Vecchio
Service Method: eService
Email: jvecchio@pahousegop.com
Address: B-6 Main Capitol
P.O. Box 202228
Harrisburg, PA 17120

Phone: 717-260-6532
Representing: Amicus Curiae, Republican Caucus of the Pennsylvania
House of Representatives

Served: Kevin F. McCarthy
Service Method: eService
Email: kmccarthy@da.allegheny.pa.us
Address: 436 Grant Street, 4th Floor
Pittsburgh, PA 15219

Phone: 412-350-4377
Representing: Amicus Curiae, Pennsylvania District Attorney's
Association

Served: Lauren A. Wimmer
Service Method: eService
Email: lauren@lawimmer.com
Address: 505 South Street
Philadelphia, PA 19147

Phone: 215-712-1212
Representing: Amicus Curiae, Pennsylvania Association of Criminal
Defense Lawyers

Served: Lisa Ann Mathewson
Service Method: eService
Email: lam@mathewson-law.com
Address: 123 S. Broad Street, Ste. 810
Philadelphia, PA 19109

Phone: 215-399-9592

Representing: Amicus Curiae, National Association of Criminal Defense Lawyers

Served: Melissa B. Melewsky

Service Method: eService

Email: melissam@pa-news.org

Address: 3899 North Front Street
Harrisburg, PA 17110

Phone: 717-703-3048

Representing: Amicus Curiae, Pennsylvania NewsMedia Association

Served: Peter D. Goldberger

Service Method: eService

Email: peter.goldberger@verizon.net

Address: 50 Rittenhouse Place
Ardmore, PA 19003

Phone: 610-649-8200

Representing: Amicus Curiae, Pennsylvania Association of Criminal Defense Lawyers

Served: Peter E. Kratsa

Service Method: eService

Email: pkratsa@macelree.com

Address: 17 West Miner Street
West Chester, PA 19382

Phone: 610-436-0100

Representing: Amicus Curiae, Pennsylvania Association of Criminal Defense Lawyers

Served: Raymond J. Tonkin

Service Method: eService

Email: rtonkin@pikepa.org

Address: 506 Broad Street
Milford, PA 18337

Phone: 570-296-3482

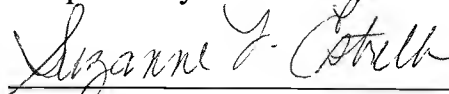
Representing: Amicus Curiae, Pennsylvania District Attorney's Association

Served: Rodney A. Corey

Service Method: eService

Email: rcorey@pahousegop.com
Address: B-6 Main Capital
P.O. Box 202228
Harrisburg, PA 17120
Phone: 717-783-1510
Representing: Amicus Curiae, Republican Caucus of the Pennsylvania
House of Representatives

Respectfully submitted,



Suzanne V. Estrella

PA No. 64631

Konrad B. Jarzyna

PA No. 92400

Pennsylvania Coalition Against Rape

2101 N. Front Street

Governor's Plaza North, Bldg #2

Harrisburg, PA 17110

(717) 901-6784