

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

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**NO.** \_\_\_\_\_

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**RICHARD A. SPRAGUE, HON. RONALD D. CASTILLE AND  
HON. STEPHEN ZAPPALA, SR.,**

**Petitioners,**

**v.**

**PEDRO A. CORTÉS, SECRETARY OF THE COMMONWEALTH OF  
PENNSYLVANIA, IN HIS OFFICIAL CAPACITY,**

**Respondent.**

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**EMERGENCY APPLICATION FOR EXTRAORDINARY  
RELIEF PURSUANT TO 42 Pa.C.S. § 726 FOR THE EXERCISE OF  
EXTRAORDINARY JURISDICTION**

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1. Issues of immediate public importance compel Petitioners Richard A. Sprague, Esquire, Hon. Ronald D. Castille and Hon. Stephen Zappala, Sr. (collectively, “Petitioners”) to respectfully petition this Honorable Court to assume plenary jurisdiction, pursuant to 42 Pa.C.S. § 726, over the matter captioned in the Commonwealth Court of Pennsylvania as *Richard A. Sprague et. al. v. Pedro A. Cortés*.

2. Because Petitioners have a clear right to relief, and because swift resolution of this matter is critical to a fair election process, it is respectfully

submitted that this Application should be granted and that the matter should be decided on an expedited basis prior to August 8, 2016, the deadline by which Respondent Secretary of State Pedro A. Cortés, Esquire (“Respondent”) must advertise the proposed constitutional amendment at issue.

## **I. INTRODUCTION**

3. Democracy requires that voters be given the information necessary to make informed decisions on matters of critical importance, such as when voting to approve or reject the current proposal to amend the Pennsylvania Constitution to raise the constitutionally-mandated retirement age for the Commonwealth’s judicial officers.

4. This case concerns an attempted infringement by public officials on the right grounded in the Pennsylvania Constitution for members of the electorate to be informed on matters for which they cast their votes.

5. Respondent intends to present the voters of the Commonwealth with a ballot question that he has already acknowledged is so lacking in information about the proposed constitutional amendment to be voted on as to constitute a fraud on the electorate.

6. In order to prevent the Pennsylvania electorate from being presented in the November 2016 general election with this misleading and unconstitutional ballot question regarding a proposed amendment to the Pennsylvania Constitution

that would raise the constitutionally-mandated judicial retirement age from 70 to 75, this Court should assume plenary jurisdiction over Petitioners' challenge to the ballot question, declare the ballot question to be in violation of Pennsylvania law, and enjoin the Secretary of the Commonwealth from presenting the misleading ballot question to Pennsylvania voters.

## **II. PARTIES**

7. Richard A. Sprague, Esquire, is a resident and citizen of the Commonwealth of Pennsylvania, a member of the Pennsylvania Bar, a registered voter, a taxpayer of the Commonwealth of Pennsylvania, and he is eligible and intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

8. The Honorable Ronald D. Castille, former Chief Justice of the Pennsylvania Supreme Court, is a resident and citizen of the Commonwealth of Pennsylvania, a registered voter, a taxpayer of the Commonwealth of Pennsylvania, and he is eligible and intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

9. The Honorable Stephen Zappala, Sr., former Chief Justice of the Pennsylvania Supreme Court, is a resident and citizen of the Commonwealth of Pennsylvania, a registered voter, a taxpayer of the Commonwealth of

Pennsylvania, and he is eligible and intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

10. Pedro A. Cortés, Esquire is the Secretary of the Commonwealth of Pennsylvania, and in that capacity, he is responsible for determining and publishing the language that appears on statewide ballots concerning any proposed amendment to the Pennsylvania Constitution, including the proposed constitutional amendment that is the subject of this action.

### **III. FACTUAL OVERVIEW**

11. The facts underlying the matter captioned in the Commonwealth Court as *Richard A. Sprague et. al. v. Pedro A. Cortés* are set forth fully in the Complaint attached hereto as Appendix 1, which Petitioners incorporate by reference as through set forth fully herein and to which Petitioners respectfully direct the Court's attention.

12. In the interest of preserving judicial resources, Petitioners provide herein only a brief overview of the facts set forth in the attached Commonwealth Court Complaint, which justify the exercise of this Court's extraordinary jurisdiction under 42 Pa.C.S. § 726.

13. The Pennsylvania General Assembly proposes raising by 5 years the compulsory judicial retirement age set forth in Article V, §16(b) of the Pennsylvania Constitution.



14. Under the General Assembly's proposal, which must be presented to the qualified electorate and approved by a majority of those voting thereon, the Pennsylvania Constitution would be amended to permit Supreme Court justices and inferior judicial officers to remain in office until the last day of the calendar year in which they attain the age of 75, rather than the age of 70 as currently required under the Pennsylvania Constitution.

15. Respondent, who is charged under the Pennsylvania Election Code, 25 P.S. § 2621(c), with devising the "form and wording" of ballot questions regarding proposed constitutional amendments, developed for the April 2016 primary election a ballot question regarding the General Assembly's proposal to amend the Pennsylvania Constitution to raise the mandatory judicial retirement age from 70 to 75.

16. Respondent's ballot question read as follows:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?

(See Appx. 1, Ex. F.)

17. Shortly before the April 2016 primary election, however, the General Assembly passed a concurrent resolution directing Respondent to remove the

proposed constitutional amendment from the April 2016 primary election ballot and place on the November 2016 general election ballot a question which misleadingly omits that the proposed amendment would increase the current constitutionally-mandated retirement age, and instead suggests that the proposed amendment would result in the inaugural imposition of a mandatory retirement age for Supreme Court justices, judges and magisterial district judges of the Commonwealth.

18. Specifically, in H.R. 783, the General Assembly directed Respondent to present voters during the November 2016 general election with the following ballot question:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75?

(See Appx. 1, Ex. J.)<sup>1</sup>

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<sup>1</sup> A panel of the Commonwealth Court recently issued an Opinion upholding the process by which the General Assembly approved H.R. 783. (See Appx. 1, Ex. N.) ***The Commonwealth Court's July 6, 2016 Opinion is unrelated to and has no bearing on the present matter***, as it does not address the propriety of the language of the ballot question regarding the General Assembly's proposed amendment to Article V, Section 16(b). In its Opinion, however, the Commonwealth Court implicitly acknowledged that one cannot understand the effect and purpose of the proposed amendment without knowing the present law regarding judicial retirement. In order to give meaning to its statement that the proposed amendment would "amend section 16(b) of Article V of the Pennsylvania Constitution to provide that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75," the Commonwealth Court felt it necessary to include a footnote explaining that "Section 16(b) of Article V of the Pennsylvania Constitution currently provides that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the year in which they attain the age of 70." (See Appx. 1, Exhibit N at p. 3.)

19. While the ballot question devised by Respondent for the April 2016 primary election notified voters that the proposed constitutional amendment would raise the constitutionally-mandated retirement age for the Commonwealth's Supreme Court justices, judges and magisterial district judges by 5 years, the ballot question drafted by the General Assembly gives no indication that the Constitution currently contains a mandatory retirement age for Supreme Court justices, judges and magisterial district judges lower than that sought to be imposed by the proposed constitutional amendment.<sup>2</sup>

20. The General Assembly's ballot question gives the misimpression that voters are being asked to impose a mandatory judicial retirement age for the first time, rather than to raise the existing mandatory judicial retirement age.

21. For this reason, when a group of senators asked this Court to revise the ballot question Respondent drafted for the April 2016 primary election by striking the language advising that jurists of the Commonwealth are currently required under the Pennsylvania Constitution to retire at the age of 70, Respondent

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<sup>2</sup> The differences between the ballot question that the Secretary of the Commonwealth developed for the April 2016 primary election and the ballot question set forth by the General Assembly in H.R. 783 can be seen below, with the language the General Assembly removed from Secretary of the Commonwealth's ballot question stricken:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and ~~justices of the peace (known as magisterial district judges)~~ be retired on the last day of the calendar year in which they attain the age of 75 years, ~~instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?~~

submitted an opposition brief in this Court correctly arguing that the senators' proposed ballot language would mislead voters into believing that the proposed constitutional amendment would result in the inaugural imposition of a mandatory judicial retirement age, rather than a raising of the current compulsory retirement age by 5 years.

22. In an inexplicable about-face, however, Respondent has since adopted the very ballot language he previously advised this Court would amount to a fraud on the Pennsylvania electorate and has stated his intention to place that misleading ballot question before the electorate in the upcoming November 2016 general election.

23. Accordingly, on July 21, 2016, Petitioners filed a Complaint for Declaratory and Injunctive Relief requesting that the Commonwealth Court declare unlawful, and enjoin Respondent from presenting to the Pennsylvania electorate, the following ballot question:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?

(*See Appx. 1.*)

24. As set forth more fully in the Commonwealth Court Complaint attached hereto as Appendix 1, the ballot question developed by the General Assembly and adopted by Respondent is designed to exploit and garner "yes"

votes from the many voters who are in favor of a restricted mandatory judicial retirement age but are unaware that there is currently a lower judicial retirement age set forth in the Constitution.

25. Such a voter who is not well-versed in the Pennsylvania Constitution would understand the above-worded ballot question set forth by the General Assembly and adopted by Respondent to ask whether the Pennsylvania Constitution should be amended to institute a mandatory retirement age for Supreme Court justices, judges and magisterial district judges, and would be shocked to learn that they were in fact voting to raise the current constitutionally-mandated judicial retirement age by 5 years.

26. Indeed, Respondent himself argued to this Court that the ballot question is patently misleading because it does not advise voters that “the *existing* language in the Constitution would be *changed* to *75 instead of 70*” and that the ballot question “would likely leave the voter wondering what the current requirement is—or worse yet, leave the voter with the impression that there is no requirement at all.” (*See* Appx. 1, Ex. H at p. 17) (emphasis in original).

#### **IV. THIS COURT SHOULD EXERCISE EXTRAORDINARY JURISDICTION**

27. Pursuant to 42 Pa.C.S. § 726, this Court may assume plenary jurisdiction over any matter pending before any court of this Commonwealth

involving an issue of immediate public importance and “enter a final order or otherwise cause right and justice to be done.” 42 Pa.C.S. § 726.

28. This Court has consistently recognized the immediate public importance of issues related to the propriety of elections, as well as ballot questions, and the Court has assumed plenary jurisdiction over such controversies. *See, e.g., Stander v. Kelley*, 250 A.2d 474 (Pa. 1969); *Sprague v. Casey*, 550 A.2d 184 (Pa. 1988); *Cavanaugh v. Davis*, 440 A.2d 1380 (Pa. 1982); *Jackson v. Davis*, 493 A.2d 687 (1985).

29. It is respectfully submitted that the Court should likewise assume plenary jurisdiction over the matter pending in the Commonwealth Court of Pennsylvania captioned *Richard A. Sprague et. al. v. Pedro A. Cortés* because the matter involves issues of significant public importance affecting the operation of government throughout the Commonwealth.

30. The ballot question at issue will infringe on Petitioners’ and their fellow voters’ state constitutional right to vote on an amendment to the Pennsylvania Constitution, as well as their due process rights under the Pennsylvania Constitution.

31. Further, the resolution of this matter will have a substantial impact on the election and holder of every judicial office in the Commonwealth, thereby

directly, substantially, and immediately affecting Petitioners, the candidates for those offices, the electorate, and the Bar of this Commonwealth.

32. It is virtually certain that any order issued by the Commonwealth Court in this matter would be appealed to this Court. Consequently, Petitioners respectfully submit that this Court should assume immediate plenary jurisdiction over the matter in order to resolve it in advance of the November 8, 2016 general election.<sup>3</sup>

## V. CONCLUSION

33. Based on the foregoing Petition and the Commonwealth Court Complaint attached hereto as Appendix 1, Petitioners Richard A. Sprague, Esquire, Hon. Ronald D. Castille and Hon. Stephen Zappala, Sr. respectfully request that this Court exercise its authority under 42 Pa.C.S. § 726 and assume extraordinary jurisdiction over the matter captioned in the Commonwealth Court of Pennsylvania as *Richard A. Sprague et. al. v. Pedro A. Cortés*.

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<sup>3</sup> The Pennsylvania Constitution requires that after a proposed amendment to the Pennsylvania Constitution is “agreed to by a majority of the members elected to each House . . . the Secretary of the Commonwealth shall cause the same 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. In order to meet this constitutional requirement in advance of the November 8, 2016 general election, Respondent must advertise by ***no later than August 8, 2016*** the General Assembly’s proposal to amend the Pennsylvania Constitution by raising the constitutionally-mandated judicial retirement age from 70 to 75. (See Appx. 1, Ex. M.) The advertisement will include the ballot question for the November 2016 general election regarding the proposed constitutional amendment. Accordingly, Petitioners respectfully request that this Court assume plenary jurisdiction over the Commonwealth Court case captioned *Richard A. Sprague et. al. v. Pedro A. Cortés* as expeditiously as possible.

Respectfully submitted,

**SPRAGUE & SPRAGUE**

By: /s/Richard A. Sprague  
RICHARD A. SPRAGUE (I.D. #04266)  
BROOKE SPIGLER COHEN (I.D. #204648)  
JORDANN R. CONABOY (I.D. #319337)  
WILLIAM H. TRASK (I.D. # 318229)  
The Wellington Bldg., Suite 400  
135 S. 19<sup>th</sup> Street  
Philadelphia, Pennsylvania 19103  
(215) 561-7681

Date: July 21, 2016



**PROOF OF SERVICE**

I, Jordann R. Conaboy, Esquire, hereby certify that on this 21<sup>st</sup> day of July, 2016, I caused true and correct copies of the foregoing Emergency Application for Extraordinary Relief, with exhibits, to be served on the individuals listed below *via* hand delivery:

Pedro A. Cortés, Esquire  
Secretary of the Commonwealth  
**Office of the Secretary**  
302 North Office Building  
Harrisburg, PA 17120

Kathleen G. Kane, Esquire  
Bruce L. Castor, Jr., Esquire  
**Office of the Attorney General**  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Timothy F. Yates, Esquire  
**Pennsylvania Department of State**  
**Office of General Counsel**  
306 North Office Building  
Harrisburg, PA 17120

/s/ Jordann R. Conaboy  
Jordann R. Conaboy, Esquire

# Appendix 1

**SPRAGUE & SPRAGUE**

By: Richard A. Sprague, Esquire (I.D. No. 04266)  
Brooke Spigler Cohen, Esquire (I.D. No. 204648)  
Jordann R. Conaboy, Esquire (I.D. No. 319337)  
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(215) 561-7681

*Counsel for Plaintiffs Richard A. Sprague,  
Hon. Ronald D. Castille and Hon. Stephen Zappala, Sr.*

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**RICHARD A. SPRAGUE,**

And

**HON. RONALD D. CASTILLE,**

And,

**HON. STEPHEN ZAPPALA, SR.,**

Plaintiffs,

v.

**PEDRO A. CORTÉS, SECRETARY  
OF THE COMMONWEALTH OF  
PENNSYLVANIA, IN HIS OFFICIAL  
CAPACITY,**

Defendant.

**IN THE COMMONWEALTH  
COURT OF PENNSYLVANIA**

Case No. \_\_\_\_\_

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**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Bar Association, Lawyer Referral Service  
213 North Front Street, Harrisburg, PA 17101  
(717) 232-7536

**SPRAGUE & SPRAGUE**

By: Richard A. Sprague, Esquire (I.D. No. 04266)  
Brooke Spigler Cohen, Esquire (I.D. No. 204648)  
Jordann R. Conaboy, Esquire (I.D. No. 319337)  
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*Counsel for Plaintiffs Richard A. Sprague,  
Hon. Ronald D. Castille and Hon. Stephen Zappala, Sr.*

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**RICHARD A. SPRAGUE,**

And

**HON. RONALD D. CASTILLE,**

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Defendant.

**IN THE COMMONWEALTH  
COURT OF PENNSYLVANIA**

Case No. \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## **I. INTRODUCTION**

The Pennsylvania General Assembly proposes amending the Pennsylvania Constitution to raise the constitutionally-mandated judicial retirement age from 70 to 75. The Pennsylvania Constitution requires that the Secretary of the Commonwealth put the constitutional amendment proposed by the General Assembly to a statewide vote. In order to do so, the Secretary of the Commonwealth developed a very straightforward question for the April 2016 primary election ballot. The ballot question developed by the Secretary of the Commonwealth asked voters in simple terms whether the Pennsylvania Constitution should be amended to require that the Commonwealth's Supreme Court justices, judges and magisterial district judges "be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70."

When a group of senators asked the Supreme Court just over 5 months ago to revise this ballot question by striking the language advising that jurists of the Commonwealth are currently required under the Constitution to retire at the age of 70, the Defendant, Secretary of the Commonwealth Pedro A. Cortés, submitted an opposition brief correctly arguing that the senators' proposed ballot language would mislead voters into believing that the proposed constitutional amendment

would result in the inaugural imposition of a mandatory judicial retirement age, rather than a raising of the current compulsory retirement age by 5 years. In an inexplicable about-face, however, the Secretary has since adopted the very ballot language he told the Supreme Court would amount to a fraud on the Pennsylvania electorate.

Instead of asking whether voters wish to raise the judicial retirement age by 5 years, the ballot question that the Secretary of the Commonwealth intends to present to the electorate will, in accordance with directions from the General Assembly, simply ask voters in the next general election whether the Pennsylvania Constitution should be amended to require that the Commonwealth's jurists "be retired on the last day of the calendar year in which they attain the age of 75 years[.]" Unlike the ballot question that the Secretary of the Commonwealth developed for the April 2016 primary election—which asked voters whether they wished to amend the Constitution to require that the Commonwealth's judicial officers "be retired on the last day of the calendar year in which they attain the age of 75 years, *instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70*"—the question the General Assembly has directed the Secretary of the Commonwealth to place on the November 2016 general election ballot omits the fact that Supreme Court justices, judges and magisterial district judges of the Commonwealth are currently required

to retire at the age of 70. The ballot question developed by the General Assembly and adopted by the Secretary of the Commonwealth is misleadingly designed to garner “yes” votes from voters who are actually in favor of restricting the terms of Supreme Court justices, judges and magisterial district judges but are unaware that the proposed amendment will have the opposite effect.

The question of whether the Constitution should be amended to require that Supreme Court justices, judges and magisterial district judges “be retired on the last day of the calendar year in which they attain the age of 75 years” is designed to exploit the many voters who are unaware that the Pennsylvania Constitution currently requires state court jurists to retire at the age of 70. These voters will be misled to believe that they are being asked whether the Commonwealth should institute a constitutionally-mandated judicial retirement age where none exists. The Secretary of the Commonwealth should not be permitted to present voters with a deceitful ballot question that does not advise voters of the true nature of the General Assembly’s proposal to amend the Pennsylvania Constitution to *raise* the compulsory retirement age by 5 years.

## **II. THE PARTIES**

1. Richard A. Sprague, Esquire, is a resident and citizen of the Commonwealth of Pennsylvania, a member of the Pennsylvania Bar, a registered voter, a taxpayer of the Commonwealth of Pennsylvania, and he is eligible and



intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

2. The Honorable Ronald D. Castille, former Chief Justice of the Pennsylvania Supreme Court, is a resident and citizen of the Commonwealth of Pennsylvania, a registered voter, a taxpayer of the Commonwealth of Pennsylvania, and he is eligible and intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

3. The Honorable Stephen Zappala, Sr., former Chief Justice of the Pennsylvania Supreme Court, is a resident and citizen of the Commonwealth of Pennsylvania, a registered voter, a taxpayer of the Commonwealth of Pennsylvania, and he is eligible and intends to vote in the November 2016 general election in the Commonwealth of Pennsylvania.

4. Pedro A. Cortés, Esquire is the Secretary of the Commonwealth of Pennsylvania, and in that capacity, he is responsible for determining and publishing the language that appears on statewide ballots concerning any proposed amendment to the Pennsylvania Constitution, including the proposed constitutional amendment that is the subject of this action.

### **III. JURISDICTION**

5. This Court has original jurisdiction over the present action for declaratory and injunctive relief pursuant to 42 Pa. C. S. § 761, which vests this

Court with “original jurisdiction of all civil actions or proceedings . . . [a]gainst the Commonwealth government, including any officer thereof, acting in his official capacity.”<sup>1</sup>

#### **IV. BACKGROUND**

##### **Constitutionally-Mandated Judicial Retirement Ages**

6. The operative Pennsylvania Constitution is the fifth Constitution that has governed the Commonwealth since the United States declared its independence in 1776.

7. The four previous Pennsylvania Constitutions—adopted in 1776, 1790, 1838 and 1874, respectively—did not prescribe an age by which Supreme Court justices, judges and magisterial district judges of the Commonwealth were required to retire.

8. Following a Constitutional Convention held in 1967 and 1968, Pennsylvania voters adopted the presently-controlling Pennsylvania Constitution, which revised the judiciary article of the previous Constitution and set a mandatory retirement age for justices of the Pennsylvania Supreme Court, lower court judges and magisterial district judges.

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<sup>1</sup> In conjunction with the filing of this Complaint, Plaintiffs Richard A. Sprague, Esquire, Hon. Ronald D. Castille and Hon. Stephen Zappala Sr. filed an Emergency Application for Extraordinary Relief Pursuant to 42 Pa.C.S. § 726 for the Exercise of Extraordinary Jurisdiction requesting that the Pennsylvania Supreme Court assume plenary jurisdiction over the above-captioned matter.

9. Article V, Section 16(b) of the original 1968 Pennsylvania Constitution required all judicial officers of the Commonwealth to retire immediately upon attaining the age of 70. (*See Driscoll v. Corbett*, 69 A.3d 197, 200 (Pa. 2013)) (“Section 16(b), as adopted in 1968, stated: ‘Justices, judges and justices of the peace shall be retired upon attaining the age of seventy years.’”)

10. This constitutional requirement remained operative until 2001, when primary ballots across the Commonwealth of Pennsylvania contained the following question asking Pennsylvania voters if they wished to amend Article V, Section 16(b) of the original 1968 Pennsylvania Constitution: “Shall the Constitution of Pennsylvania be amended to provide that justices of the Supreme Court, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 70 years, rather than on the day they attain the age of 70?” (*See Staff Report of the General Assembly of the Commonwealth of Pennsylvania, Ballot Questions and Proposed Amendments to the Pennsylvania Constitution, A Compilation with Statistics from 1958 to 2006 at p. 53, a true and correct copy of which is attached hereto as Exhibit A.*)

11. 67.5% of the voters who answered the ballot question regarding the 2001 proposed constitutional amendment voted “yes.” As a result, Article V, Section 16(b) of the Pennsylvania Constitution was amended in 2001 to require that the Commonwealth’s judicial officers need not retire on the day that they

reach 70 years of age, but instead, on the last day of the calendar year in which they reach the age of 70. (*Id.*)

12. In the years following the 2001 amendment to Article V, Section 16(b), several members of the legislature introduced unsuccessful bills proposing to amend the Pennsylvania Constitution to either raise the mandatory judicial retirement age beyond 70 or to abolish the constitutional requirement that the Commonwealth’s judicial officers retire upon reaching a certain age. (*See, e.g.*, H.B. 2657, 2010 Reg. Sess. (Pa. 2010); H.B. 2129, 2012 Reg. Sess. (Pa. 2012).)

13. In 2013, several groups of Pennsylvania jurists “sought to renew the attack on Article V, Section 16(b) via multiple legal actions commenced in both federal and state courts.” *Driscoll v. Corbett*, 69 A.3d 197, 200 (2013).

14. The Pennsylvania Supreme Court joined the federal courts in rejecting these legal challenges to Article V, Section 16(b), noting in a 2013 decision that the only way to increase or eliminate the constitutionally-mandated judicial retirement age “is to pursue further amendment to the Pennsylvania Constitution.” *Id.* at 215.

### **Recent Efforts To Raise The Judicial Retirement Age**

15. Shortly after the Supreme Court confirmed the legality of Article V, Section 16(b)’s requirement that Pennsylvania judicial officers retire on the last day of the calendar year in which they attain the age of 70, the Pennsylvania House

of Representatives considered a resolution proposing to present the Pennsylvania electorate with a ballot question regarding whether the constitutionally-mandated judicial retirement age should be raised from 70 to 75.

16. Pursuant to Article XI, Section 1 of the Pennsylvania Constitution, in order for the resolution to result in a Constitutional amendment, it must be approved by a majority vote of both houses of the General Assembly in two consecutive sessions, as well as “submitted to the qualified electors of the State” and “approved by a majority of those voting thereon.” *See* Pa. Const. Art. XI, § 1.

17. The first affirmative vote by the General Assembly came on October 22, 2013, when the General Assembly passed H.B. 79, a joint resolution proposing to amend Article V, Section 16(b) to require that the Commonwealth’s jurists retire on the last day of the year in which they attain 75, rather than 70 as presently required by the Pennsylvania Constitution. (*See* H.B. 79, 2013 Reg. Sess. (Pa. 2013) and H.B. 79 legislative history, true and correct copies of which are attached hereto as Exhibits B and C.)

18. In accordance with the requirements of Article XI, Section 1 of the Pennsylvania Constitution and H.B. 79, following the General Assembly’s affirmative vote, the Secretary of the Commonwealth published notice of the proposed amendment through advertisements in newspapers throughout the Commonwealth. (*See* Pa. Const. Art. XI, § 1) (providing that once a proposed

amendment to the Pennsylvania Constitution is “agreed to by a majority of the members elected to each House . . . the Secretary of the Commonwealth shall cause the same 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.”)

19. During the next legislative session, on November 16, 2015, the General Assembly passed H.B. 90, a joint resolution identical to the preceding session’s H.B. 79, proposing to amend Article V, Section 16(b) to require that the Commonwealth’s jurists retire on the last day of the year in which they attain 75, rather than 70. (*See* H.B. 90, 2015 Reg. Sess. (Pa. 2015) and of H.B. 90 legislative history, true and correct copies of which are attached hereto as Exhibits D and E.)

20. Consistent with the requirements of the Election Code, 25 P.S. § 2621(c), H.B. 90 directed the Secretary of the Commonwealth to develop a ballot question concerning the General Assembly’s proposal to amend Article V, Section 16(b) and to submit that ballot question “to the qualified electors of this Commonwealth at the first primary, general or municipal election . . . which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.” (*See* Exhibit D) (*see also* 25 P.S. § 2621(c)) (“The Secretary of the Commonwealth shall exercise in the manner provided by this act all powers granted to him by this act, and shall perform all the duties imposed upon him by

this act, which shall include . . . the form and wording of constitutional amendments or other questions to be submitted to the electors of the State at large.”.)

21. As required by Article XI, Section 1 of the Pennsylvania Constitution and H.B. 90, the Secretary of the Commonwealth published notice of the proposed amendment in newspapers across the commonwealth along with a “plain English” statement prepared by the Attorney General explaining “the purpose, limitations and effects of the ballot question on the people of the Commonwealth.” *See* 25 Pa.C.S. § 2621.1.

22. The Secretary of the Commonwealth’s public notice explained that voters would be asked to approve or deny the General Assembly’s proposed amendment to Article V, Section 16(b) by answering “yes” or “no” to the following ballot question developed by the Secretary of the Commonwealth: “Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?” (*See* Public Notice by Secretary of the Commonwealth Pedro A. Cortés, a true and correct copy of which is attached hereto as Exhibit F.)

23. Election officials thereafter created ballots for the April 26, 2016 primary election containing the question the Secretary published in Newspapers across the Commonwealth regarding the General Assembly's proposal to amend the Pennsylvania Constitution to require that justices of the Supreme Court and inferior judicial officers retire on the last day of the year in which they attain the age of 75, instead of the last day of the year in which they attain the age of 70 as presently required under the Pennsylvania Constitution.

24. The Secretary of the Commonwealth developed the language of the April 2016 primary election ballot question concerning the General Assembly's proposal to amend Article V, Section 16(b) in accordance with Section 201 of the Pennsylvania Election Code, 25 P.S. § 2621(c), which vests the Secretary of the Commonwealth with authority over "the form and wording of constitutional amendments or other questions to be submitted to the State at large." 25 P.S. § 2621(c).

25. Consistent with the Election Code's delegation of authority over ballot questions to the Secretary of the Commonwealth, neither one of the bills the General Assembly passed proposing to change the constitutionally-mandated judicial retirement age from 70 to 75 (*i.e.*, neither H.B. 79 nor H.B. 90) set forth or even suggested language for a ballot question concerning the proposed amendment.



26. Around the time of the General Assembly's approval of the second joint resolution proposing to amend the Pennsylvania Constitution to require that the Commonwealth's judicial officers retire on the last day of the year in which they reach the age of 75, rather than 70 as the Constitution presently requires, the Pennsylvania Supreme Court became embroiled in a statewide controversy that gained national media attention and sparked well-known negative opinions among the Commonwealth's electorate about the Pennsylvania judiciary.

27. In August 2015, following former Pennsylvania Supreme Court Justice Joan Orié Melvin's May 1, 2013 resignation from judicial service, the Court of Judicial Discipline of the Commonwealth of Pennsylvania entered an Opinion and Order officially removing former Justice Orié Melvin from office and deeming her ineligible for future judicial service as a result of her four felony convictions for crimes including theft/diversion of services and criminal conspiracy. *See In re: Joan Orié Melvin Justice of the Supreme Court of Pennsylvania*, No. 7 JD 2012 (Aug. 14, 2015 Pa. Ct. of Judicial Discipline).

28. Later in 2015, Pennsylvania citizens, lawyers, politicians, and the Governor began calling for then-Justice Michael Eakin to resign from the Pennsylvania Supreme Court as a result of the public disclosure of racist and misogynistic emails the former Justice exchanged with members of the judiciary,

members of the Office of the Attorney General, and other individuals and state officials.

29. On March 24, 2016, the Court of Judicial Discipline of the Commonwealth of Pennsylvania issued an Opinion and Order acknowledging former Justice Eakin's resignation from the Pennsylvania Supreme Court; finding that the former Justice's use of a pseudonymous email address to exchange emails containing imagery of "sexism, racism, and bigotry" with officers of the court and state officials demonstrated the former Justice's "arrogance" and "seriously jeopardized the reputation of the judiciary"; and imposing a \$50,000 fine on former Justice Eakin. *See In re: J. Michael Eakin Justice of the Supreme Court of Pennsylvania*, No. 13 JD 2015 (Mar. 24, 2016 Pa. Ct. of Judicial Discipline).

30. Former Justice Orié Melvin's removal from the Pennsylvania Supreme Court and former Justice Eakin's resignation from the Court came shortly after former Justice Seamus McCaffery resigned his seat on the Pennsylvania Supreme Court as a result of an email scandal, similar to that in which former Justice Eakin was embroiled, involving the exchange of pornographic, misogynistic and racist emails.

31. During the same time period when criminal conduct and violations of the Code of Judicial Conduct and Pennsylvania Constitution caused former Justices Orié Melvin, Eakin and McCaffery to lose their seats on the Pennsylvania

Supreme Court, the media also reported on criminal convictions of, and scandals surrounding, lower state court judges and magisterial district judges.

32. Amidst the controversy surrounding the judiciary, which garnered mass media attention and cast doubt on the electorate's willingness to amend the Constitution to extend the limited tenure of Supreme Court justices, judges and magisterial district judges, a group of legislators sought to strike certain portions of the ballot question that the Secretary of the Commonwealth had developed for the April 2016 primary election regarding the General Assembly's proposed amendment to Article V, Section 16(b).

33. In particular, these legislators sought to strike from the ballot question developed by the Secretary of the Commonwealth any reference to the embattled Supreme Court as well as any indication that the proposed amendment would *raise* the constitutionally-mandated retirement age for Supreme Court justices, judges and magisterial district judges by five years.

34. On March 6, 2016, 8 days before then-Justice Eakin officially announced his resignation from the Pennsylvania Supreme Court, the Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman filed an "Emergency Application for Extraordinary Relief" asking the Supreme Court to "strike the following terms and phrases" from

the Secretary of the Commonwealth's ballot question regarding the General

Assembly's proposed amendment to Article V, Section 16(b):

Shall the Pennsylvania Constitution be amended to require that Justices ~~of the Supreme Court~~, judges and justices of the peace (~~known as magisterial district judges~~) be retired on the last day of the calendar year in which they attain the age of 75 years, ~~instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?~~

(See Emergency Application for Extraordinary Relief by Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman, a true and correct copy of which is attached hereto as Exhibit G.)<sup>2</sup>

35. These Senators' Emergency Application for Relief advanced three arguments in support of their request that the Supreme Court strike certain language from the ballot question devised by the Secretary of the Commonwealth. First, the Senators contended that the phrase "of the Supreme Court" after the word "Justices" would confuse voters into thinking the proposed amendment would apply to justices of the United States Supreme Court, and that the phrase "known as magisterial district judges" after the term "justices of the peace" would mislead voters into thinking "that the proposed amendment does not apply to judges of the

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<sup>2</sup> The Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman are hereinafter collectively referred to as the "Senators."

court of common pleas, the Superior Court, and the Commonwealth Court.” (*See* Exhibit G at pp. 1-2.) Second, the Senators argued that the “terms and phrases sought to be stricken are inconsistent with the proposed constitutional amendment . . .” (*Id.* at p. 2.) Finally, the Senators seeking to rewrite the ballot question devised by the Secretary of the Commonwealth argued that the phrase “instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70” was “nothing more than superfluous and gratuitous commentary,” and that a ballot question regarding a proposed constitutional amendment need not state “what the current state of the law may be at the time of the proposed amendment.” (*Id.*)

36. On March 11, 2016, the Secretary of the Commonwealth, the Pennsylvania Department of State, and the Office of the Attorney General filed an Answer in Opposition to the Emergency Application for Extraordinary Relief, pointing out that the Senators’ Application should be denied because the proposed ballot question advocated for therein “would deny Pennsylvania voters relevant information regarding the proposed constitutional amendment.” (*See* March 11, 2016 Answer of Secretary of the Commonwealth Pedro A. Cortés at p. 7, a true and correct copy of which is attached hereto as Exhibit H.)

37. In particular, the Secretary of the Commonwealth argued that “the phrase ‘instead of the current requirement that they be retired on the last day of the

calendar year in which they attain the age of 70’ should remain on the ballot question” because a ballot question that does not advise voters that “the *existing* language in the Constitution would be *changed* to 75 *instead of* 70 . . . would likely leave the voter wondering what the current requirement is—or worse yet, leave the voter with the impression that there is no requirement at all.” (*Id.* at p. 17) (emphasis in original).

38. The Secretary of the Commonwealth therefore explained to the Supreme Court in his Answer in Opposition to the Senators’ Application for Extraordinary relief that the Senators’ proposed ballot question would “deprive voters of relevant information on the ballot itself regarding the mandatory retirement age requirement as it currently exists in the Pennsylvania Constitution.” (*Id.* at p. 16.)

39. Shortly after opposing the Senators’ Application for Extraordinary Relief, however, the Secretary of the Commonwealth reversed course and agreed to present the voters of the Commonwealth with a ballot question that is nearly identical to the ballot question that the Secretary of the Commonwealth had argued 11 days earlier to the Supreme Court would mislead voters as to the true nature of the proposed amendment to Article V, Section 16(b) of the Pennsylvania Constitution.

40. On March 22, 2016, the Senators who filed the Emergency Application for Relief, the Secretary of the Commonwealth, the Pennsylvania Department of State, and the Office of the Attorney General filed a Joint Application for Extraordinary Relief requesting that the Supreme Court approve a stipulation providing that the Secretary of the Commonwealth would: (1) remove from the April 26, 2016 primary election ballots the question that the Secretary had initially developed concerning the General Assembly's proposal to amend the Constitution by raising the constitutionally-mandated judicial retirement age from 70 to 75, (2) direct the county boards of elections to do the same, and (3) place on the November 8, 2016 general election ballot the following question:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?

(See Joint Application for Extraordinary Relief dated March 22, 2016, a true and correct copy of which is attached hereto as Exhibit I.)

41. On March 23, 2016, the Supreme Court entered an Order denying the Senators' Emergency Application for Extraordinary Relief and the Joint Application seeking approval of the Stipulated Resolution and modified ballot

question. (*See In re Proposed Constitutional Amendment 1, Ballot Question*, No. 29 MM 2016 (Pa. Mar. 23, 2016)).<sup>3</sup>

42. Following the Supreme Court’s denial of the Joint Application seeking to change the ballot question that the Secretary of the Commonwealth had devised for the April 2016 primary election pursuant to the Secretary’s authority under Section 201 of Pennsylvania Election Code, 25 P.S. § 2621(c), groups of legislators introduced concurrent resolutions to remove the proposed Amendment from the April 2016 primary ballot, to place the proposed amendment on the November 2016 general election ballot, and to require the Secretary of the Commonwealth to adopt a ballot question drafted by the General Assembly.

43. On April 6, 2016, the House of Representatives approved one such concurrent resolution, H.R. 783, and the Senate approved the resolution on April 11, 2016. (*See H.R. 783 and H.R. 783 legislative history, true and correct copies of which are attached hereto as Exhibits J and K.*)

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<sup>3</sup> The ballot question agreed to in the Stipulation rejected by the Supreme Court, which the Secretary of the Commonwealth plans to present to voters in the November 2016 general election, is nearly identical to the ballot question the Senators asked the Supreme Court to adopt in their Petition for Extraordinary Relief. Notwithstanding the Senators’ attempt to strike from the ballot question any reference to the Supreme Court, however, the ballot question set forth in the proposed Stipulation, which is the same question the Secretary of the Commonwealth intends to place on the November 2016 general election ballot, includes the phrase “of the Supreme Court” after the word “justices.” In addition, the ballot question the Secretary of the Commonwealth intends to present to voters in the November 2016 general election, as set forth in the Stipulation the Supreme Court rejected, refers to the Commonwealth’s lowest-ranking judicial officers as “magisterial district judges,” while the Senators’ Petition for Extraordinary Relief requested that the Supreme Court revise the ballot question devised by the Secretary of the Commonwealth for the April 2016 primary election by referring to the lowest-ranking judicial officers of the Commonwealth as “justices of the peace.”



44. Because the General Assembly approved H.R. 783 just 15 days before the 2016 primary election, after absentee ballots had already been distributed and cast, the General Assembly recognized that it would be impossible for the Secretary of the Commonwealth to remove his previously-devised question from the statewide primary election ballots, as the voting machines and ballots across the Commonwealth had already been finalized.

45. Accordingly, H.R. 783 directed the Secretary of the Commonwealth to “disregard any vote” on the proposed amendment, and the Resolution instructed county boards of election that, “to the extent possible,” they were to remove from the April 2016 primary election ballots the following question devised by the Secretary of the Commonwealth:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?

*(See Exhibit J.)*

46. H.R. 783 also divested the Secretary of the Commonwealth of his authority over “the form and wording of constitutional amendments or other questions to be submitted to the State at large” and directed the Secretary to place on the November 8, 2016 general election ballot a question drafted by the General

Assembly, which misleadingly omits that the proposed amendment would increase the mandatory retirement age, and instead suggests that the proposed amendment would result in the inaugural imposition of a mandatory retirement age for Supreme Court justices, judges and magisterial district judges of the Commonwealth.

47. In particular, H.R. 783 directs the Secretary of the Commonwealth to place the proposed constitutional amendment “on the ballot for the general election on November 8, 2016, in the following form”:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75?

(See Exhibit J.)

48. The differences between the ballot question the Secretary of the Commonwealth developed for the April 2016 primary election and the ballot question set forth by the General Assembly in H.R. 783 can be seen below, with the language the General Assembly removed from Secretary of the Commonwealth’s ballot question stricken:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and ~~justices of the peace (known as~~ magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, ~~instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?~~

49. The key difference between the ballot questions developed by the Secretary of the Commonwealth and the General Assembly is that the ballot question devised by the Secretary of the Commonwealth notified voters that the proposed constitutional amendment would raise the constitutionally-mandated retirement age for Supreme Court justices, judges and magisterial district judges by 5 years, while the ballot question drafted by the General Assembly gives no indication that the Constitution currently contains a mandatory retirement age for Supreme Court justices, judges and magisterial district judges lower than that sought to be imposed by the proposed constitutional amendment. In other words, the language the General Assembly has ordered the Secretary of the Commonwealth to place on the ballot in the upcoming general election gives the misimpression that voters are being asked to impose a mandatory judicial retirement age for the first time, rather than to raise an existing mandatory judicial retirement age.

50. On April 14, 2016, three days after the General Assembly approved H.R. 783, a group of legislators asked the Commonwealth Court to preliminarily enjoin the Secretary of the Commonwealth from implementing H.R. 783 because of the alleged improper process through which the General Assembly passed the concurrent resolution purportedly contravening the Secretary of the Commonwealth's authority under Pennsylvania law.

51. Specifically, Senators Joy Costa, Daylin Leach, and Christine M. Tartaglione filed an Application for a Preliminary Injunction seeking to enjoin the Secretary of the Commonwealth from implementing H.R. 783 on the grounds that the concurrent resolution: (1) unconstitutionally directed the Secretary to infringe on the rights of voters who had already cast absentee ballots; (2) should have been presented to the Governor for his approval; and (3) compelled the Secretary of the Commonwealth to act contrary to his duties with respect to the legal process for voting on a constitutional amendment.

52. On April 20, 2016, the Commonwealth Court, by the Honorable P. Kevin Brobson, found that Senators Costa, Leach, and Tartaglione did not meet the high burden required to obtain preliminary injunctive relief and therefore declined to preliminarily enjoin H.R. 783 in advance of the April 2016 primary election.

53. Given that Judge Brobson's decision declining to preliminarily enjoin H.R. 783 came just 6 days before the April 26, 2016 primary election, it was impossible to remove from the primary ballots the question the Secretary of the Commonwealth devised concerning the General Assembly's proposal to raise the judicial retirement age from 70 to 75, as the final primary election ballots containing the Secretary of the Commonwealth's question had been created and distributed prior to Judge Brobson's decision.

54. Thus, although the Secretary of the Commonwealth was prohibited from conducting an official tally of the vote, the April 2016 primary election ballots across the Commonwealth contained the following question developed by the Secretary of the Commonwealth:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?

55. According to the Pennsylvania Department of State, 2,395,250 Pennsylvania Citizens answered the ballot question, with 50.99% voting “no” and 49.01% voting “yes.” (See Pennsylvania Department of State, Tuesday, April 26, 2016 Official Returns, a true and correct copy of which is attached hereto as Exhibit L.)

56. Pursuant to H.R. 783, the electorate’s vote at the April 2016 primary election against amending the Constitution to require that judicial officers “be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70” was invalidated and had no legal effect.

57. Instead, the Secretary of the Commonwealth intends to place on the November 2016 general election ballot the following question set forth by the General Assembly in H.R. 783:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75?

(*See* Affidavit of Jonathan Marks, Commissioner Bureau of Commissions, Elections and Legislation, Department of State, a true and correct copy of which is attached hereto as Exhibit M.)

58. On July 6, 2016, a panel of the Commonwealth Court, in an Opinion authored by Judge Brobson, held that the General Assembly acted within its authority by passing the portions of H.R. 783 withdrawing the proposed constitutional amendment to Article V, Section 16(b) from the April 2016 primary election ballot and placing the proposed amendment on the November 2016 general election ballot. (*See* Commonwealth Court Opinion dated July 6, 2016, a true and correct copy of which is attached hereto as Exhibit N.)

59. The Commonwealth Court's July 6, 2016 Opinion upholding the process by which the General Assembly passed H.R. 783 does not address the propriety of the language of the ballot question regarding the General Assembly's proposed amendment to Article V, Section 16(b).

60. The Commonwealth Court, however, implicitly acknowledges in the Opinion that one cannot understand the effect and purpose of the proposed amendment without knowing the present law regarding judicial retirement. In order to give meaning to its statement that the proposed amendment would “amend section 16(b) of Article V of the Pennsylvania Constitution to provide that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75,” the Commonwealth Court felt it necessary to include a footnote explaining that “Section 16(b) of Article V of the Pennsylvania Constitution currently provides that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the year in which they attain the age of 70.” (*See* Exhibit N at p. 3.)

61. The Commonwealth Court also accurately described the true nature and effect of the proposed constitutional amendment, which is not merely to impose a constitutionally-mandated judicial retirement age, but rather to “*raise* the judicial retirement age to 75.” (*Id.* at. p. 4, n. 4) (emphasis added).

**The Ballot Question Regarding The Proposed Constitutional Amendment Is Misleading And Does Not Give Voters Notice Of The Actual And Intended Purpose Of The Proposed Amendment**

62. In a democracy, it is indisputable that voters are required to have the information necessary to make the best decisions on matters of critical importance

such as a constitutional amendment regarding the retirement age of state judicial officers.

63. The Pennsylvania Constitution currently requires that the Commonwealth's jurists retire on December 31 of the year in which they attain the age of 70.

64. The General Assembly proposes a constitutional amendment raising this mandatory retirement age by 5 years, from 70 to 75.

65. Under the General Assembly's proposal, Supreme Court justices, judges and magisterial district judges of the Commonwealth would be required to retire on the last day of the year in which they attain the age of 75, rather than the last day of the year they turn 70, as currently required under Article V, Section 16(b) of the Pennsylvania Constitution.

66. Before the General Assembly's proposal can result in an amendment to the Constitution, it must be presented to the qualified electorate and approved by a majority vote. Pa. Const. Art. XI, § 1.

67. In order to satisfy the constitutional requirement that the General Assembly's proposed constitutional amendment be presented to the electorate for a vote, the Secretary of the Commonwealth must present the electorate with a ballot question that advises "voters of the true meaning and ramifications of [the proposed] constitutional amendment on which they are asked to vote." 26 Am.



Jur. 2d Elections § 287 (2015); *accord*, *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969); *Weiner v. Sec’y of Comm.*, 558 A.2d 185, 188 (Pa. Commw. Ct. 1989).

68. Thus, the ballot question concerning the General Assembly’s proposed amendment to Article V, Section 16(b) must ask whether voters wish to **raise** the judicial retirement age from 70 to 75, not merely whether voters are in favor of a constitutionally-mandated judicial retirement age of 75.

69. Despite previously arguing before the Supreme Court that voters will be misled by a ballot question that does not advise of the current constitutionally-mandated judicial retirement age, the Secretary of the Commonwealth has stated his intention to adopt the ballot question set forth by the General Assembly in H.R. 783, which omits any reference to the current compulsory retirement age for the Commonwealth’s jurists, and to place that question before the electorate in the November 2016 general election. (*See* Exhibit M.)

70. The question the Secretary of the Commonwealth plans to put on the November 2016 general election ballot in accordance with H.R. 783 asks only whether voters wish to amend the constitution to require that Supreme Court justices, judges and magisterial district judges retire at a certain age, not whether the constitutionally-mandated retirement age should be raised by 5 years.

71. This ballot question is inconsistent with past ballot questions concerning proposed amendments that **change** the wording of provisions of the

Pennsylvania Constitution, which—like the ballot question the Secretary devised for the April 2016 primary election regarding the General Assembly’s proposed amendment to Article V, Section 16(b)—advised voters of the state of the Constitution at the time of the vote and the impact of the proposed amendment.

For example:

- a. When the General Assembly proposed amending the Constitution to state, “In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to [~~meet the witnesses face to face~~] **be confronted with the witnesses against him,**” the ballot question on the proposed amendment stated: “Shall the Pennsylvania Constitution be amended to provide (1) that a person accused of a crime has the right to be ‘confronted with the witnesses against him,’ **instead of the right to ‘meet the witnesses face to face[?]**” *See Bergdoll v. Kane*, 694 A.2d 1155, 1158 (Pa. 1997).
- b. When the General Assembly proposed amending the Constitution to specify that a justice’s or judge’s retirement must occur on December 31<sup>st</sup> of the year the jurist turns 70, rather than immediately upon reaching the age of 70, the ballot question on the proposed amendment stated: “Shall the Constitution of Pennsylvania be amended to provide that justices of the Supreme Court, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 70 years, **rather than on the day they**

**attain the age of 70?”** (See Exhibit A at p. 53) (emphasis added).<sup>4</sup>

- c. When the General Assembly proposed amending the Constitutional rights of absentee voters, the ballot question on the proposed amendment stated: “Shall the Pennsylvania Constitution be amended to require the enactment of legislation permitting absentee voting by qualified electors who at the time of an election may be absent from the municipality where they reside because their duties, occupation or business require them to be elsewhere, **which would change the current law permitting absentee voting by such qualified electors only when they are absent from the entire county where they reside?”** (*Id.* at p. 51) (emphasis added).
- d. When the General Assembly proposed amending the Constitution to add seats on the Superior Court, the ballot question on the proposed amendment stated: “Shall Article V, section 3, and section 13, subsection b, and the Schedule to Article V, section 11 of the Pennsylvania Constitution be amended **to permit an increase in the number of judges of the Superior Court from its present number of seven**, make changes to initial terms of additional judges and further provide for the selection of the president judge of the Superior Court?” (*Id.* at p. 34) (emphasis added).<sup>5</sup>

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<sup>4</sup> In asking the Supreme Court for permission to rewrite the ballot question that the Secretary of the Commonwealth drafted for the April 2016 primary election regarding the General Assembly’s proposal to raise the Constitutionally-mandated judicial retirement age, the Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman inaccurately represented to the Supreme Court that “[p]ast ballot questions in this Commonwealth have been historically limited to what the new law would be if amended, not what the current state of the law may be at the time of the proposed amendment.” (See Exhibit G at p. 2.)

<sup>5</sup> There is a very important distinction between the knowledge a voter must have in order to understand the actual and intended purpose of a constitutional amendment that adds a whole new provision to the Pennsylvania Constitution and an amendment that changes the wording of an existing provision of the Constitution. While a ballot question may only need to apprise a voter of proposed new constitutional language when a proposed amendment will add an entirely new

72. As the Secretary of the Commonwealth explained to the Supreme Court in opposing the Senators’ Emergency Application for Extraordinary Relief seeking to revise the ballot question that the Secretary had devised for the April 2016 primary election, where a proposed amendment would change current language of the Constitution—rather than merely add new language—voters must be apprised of the current state of the Constitution in order to understand the character and purpose of the proposed amendment and the issue on which they are voting. (See Exhibit H at pp. 16-20.)

73. The Pennsylvania Supreme Court, consistent with federal courts and state high courts across the country, has held that a ballot question regarding a proposed constitutional amendment must identify the manner in which the Constitution will be amended and show the “character and purpose” of the proposed amendment “without misleading or deceiving voters.” 29 C.J.S. *Elections* § 170; accord, *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969); *Oncken v. Ewing*, 8 A.2d 402, 403 (Pa. 1939) (“It may be proper and necessary for a court to nullify an election . . . [if] the form of the ballot is so lacking in conformity with the law and so confusing that the voters cannot *intelligently* express their intentions . . . .”); *Charleston Cty. Sch. Dist. v. Charleston Cty.*

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provision to the Pennsylvania Constitution, a voter cannot understand the actual and intended purpose of a proposed constitutional amendment that will change an existing provision of the Constitution unless the ballot question on the proposed amendment informs the voter of the state of the Constitution at the time of the vote on the proposed amendment.

*Election Comm'n*, 519 S.E.2d 567, 573 (S.C. 1999) (“The summarized question must explain the measure ‘plainly, fairly, and in such words that the average voter may understand its character and purpose’”) (internal citations omitted); *Concrete, Inc. v. Rheaume Builders*, 132 A.2d 133, 135 (N.H. 1957) (A ballot question regarding a proposed constitutional amendment must give an “ordinary person a clear idea of what he is voting for or against”); *Wadhams v. Bd. of Cty. Comm’rs*, 567 So. 2d 414, 417 (Fla. 1990) (“What the law requires is that the **ballot** be fair and advise the voter sufficiently to enable him **intelligently** to cast his ballot”) (emphasis in original); *Burton v. Georgia*, 953 F.2d 1266, 1269 (11th Cir. 1992) (Ballot language should not be so “misleading that voters cannot recognize the subject of the amendment at issue[,]” as such ballot language results in voters being “deceived, in a concrete and fundamental way, about ‘what they are voting for or against’”); *Cartagena v. Calderon*, 150 F. Supp. 2d 338, 344 (D.P.R. 2001).

74. As the Pennsylvania Supreme Court has explained:

The Constitution is the fundamental law of our Commonwealth, and in matters relating to alterations or changes in its provisions, the courts must exercise the most rigid care to preserve to the people the right assured to them by this instrument. ***No method of amendment can be tolerated which does not provide the electorate adequate opportunity to be fully advised of proposed changes.***

*Com. ex. rel. Schnader v. Beamish*, 164 A. 615, 616-617 (Pa. 1932) (emphasis added).

75. Thus, “the first and most important question” in determining whether a ballot question regarding a proposed amendment passes constitutional muster is, “[d]oes the question as stated on the ballot fairly, accurately and clearly apprise the voter of the question or issue to be voted on?” *See Weiner v. Sec’y of Comm.*, 558 A.2d 185, 188 (Pa. Commw. Ct. 1989) (quoting *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969)).

76. With respect to the ballot question at issue in this case, this question must be answered in the negative.

77. The pertinent issue to be voted on is very straightforward: whether the constitutionally-mandated judicial retirement age should be raised by 5 years.

78. The “true meaning and ramification” of the proposed amendment is that it would allow Supreme Court justices, judges and magisterial district judges to serve an additional 5 years, retiring on the last day of the year in which they attain the age of 75, rather than 70 as presently required under the Pennsylvania Constitution. *See* 26 Am. Jur. 2d Elections § 287 (2015).

79. But the ballot question the Secretary of the Commonwealth intends to put on the November 2016 general election ballot will not give voters “fair notice . . . of the character and purpose of the [proposed] amendment” because the ballot question will not give voters notice that they are being asked to raise the constitutionally-mandated judicial retirement age by 5 years. *Id.*

80. Instead, the ballot question set forth by the General Assembly in H.R. 783, which the Secretary of the Commonwealth intends to adopt, asks whether a judicial retirement age of 75 should be imposed, not whether the current judicial retirement age of 70 should be increased by 5 years.

81. The ballot question is misleadingly designed to garner “yes” votes from voters who are unaware that there is currently a judicial retirement age set forth in the Pennsylvania Constitution but who are in favor of a restricted mandatory judicial retirement age.

82. A voter who is in favor of restricting the tenure of Supreme Court justices, judges and magisterial district judges but who is unaware that the Pennsylvania Constitution currently requires Supreme Court justices, judges and magisterial district judges to retire at the age of 70 (as many voters likely are), would respond “yes” to the ballot question “Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?”

83. Indeed, such a voter who is not well-versed in the Pennsylvania Constitution would understand the above-worded ballot question set forth by the General Assembly and adopted by the Secretary of the Commonwealth to ask whether the Pennsylvania Constitution should be amended to institute a mandatory

retirement age for Supreme Court justices, judges and magisterial district judges and would be shocked to learn that they were in fact voting to raise the current constitutionally-mandated judicial retirement age by 5 years.

**COUNT I**  
**Declaratory and Injunctive Relief**

84. Plaintiffs incorporate the paragraphs above as though fully set forth herein.

85. Plaintiffs' right to vote on a ballot question setting forth the true nature of the General Assembly's proposed amendment to Article V, Section 16(b) is direct, substantial and immediate.

86. The ballot question set forth in H.R. 783 presents a real, actual controversy that implicates constitutional concerns.

87. The relief Plaintiffs request is narrowly tailored to abate the injuries Plaintiffs and their fellow voters will suffer if the Secretary of the Commonwealth is not enjoined from presenting them with the ballot question set forth by the General Assembly in H.R. 783.

88. The ballot question regarding the General Assembly's proposed amendment to Article V, Section 16(b), as drafted by the General Assembly and adopted by the Secretary of the Commonwealth, fails to accurately and clearly apprise Plaintiffs and their fellow voters of the question to be voted on—*i.e.*,



whether the constitutionally-mandated judicial retirement age should be raised by 5 years.

89. Article XI, Section I of the Pennsylvania Constitution guarantees the right of the Plaintiffs and the qualified electors of this Commonwealth to approve any proposed constitutional amendment.

90. The ballot question regarding the General Assembly's proposed amendment to Article V, Section 16(b) is so misleading and non-reflective of the proposed amendment that if the Secretary of the Commonwealth is permitted to place it on the November 2016 general election ballot, Plaintiffs and their fellow citizens comprising the qualified electors of this Commonwealth will be effectively stripped of the right guaranteed by Article XI, Section 1 of the Pennsylvania Constitution to approve the proposed amendment to the Constitution.

91. The misleading nature of the ballot question regarding the General Assembly's proposed amendment to Article V, Section 16(b), as drafted by the General Assembly and adopted by the Secretary of the Commonwealth, would also infringe on Plaintiffs' and the Pennsylvania electorate's due process rights under the Pennsylvania Constitution.

92. The deprivation of State constitutional rights that Plaintiffs will suffer if this Court fails to enjoin the Secretary of the Commonwealth from presenting the electorate with the misleading ballot question set forth by the General Assembly in

H.R. 783 and adopted by the Secretary of the Commonwealth cannot be compensated in damages.

93. The narrowly-tailored relief Plaintiffs request will prevent Plaintiffs and all other qualified Pennsylvania voters from being deprived of their constitutional right to intelligently vote on the General Assembly's proposed amendment to Article V, Section 16(b) of the Pennsylvania Constitution.

94. Greater injury will result from refusing, rather than granting, the relief requested, as Plaintiffs merely request that the Secretary of the Commonwealth be required in accordance with Pennsylvania law to present the electorate with a ballot question that accurately and clearly apprises voters that they are being asked to vote on the General Assembly's proposal to amend the Constitution to raise the mandatory judicial retirement age from 70 to 75, such as the ballot question the Secretary of the Commonwealth drafted for the April 2016 primary election.

95. Permitting the ballot question with the present language, which fails to advise voters of the true meaning and ramification of the proposed amendment, will result in the irreparable and permanent deprivation of the Plaintiffs' and the Pennsylvania electorate's right to vote on the proposed Constitutional amendment.

96. Plaintiffs' right to relief is clear.

97. The balance of equities favors Plaintiffs' request for injunctive and declaratory relief.

**WHEREFORE**, Plaintiffs respectfully that this Court enter an Order: (1) declaring unlawful the ballot question set forth by the General Assembly in H.R. 783 and adopted by the Secretary of the Commonwealth; (2) enjoining the Secretary of the Commonwealth from placing on the November 2016 general election ballot the question set forth in H.R. 783 and approved by the Secretary; and (3) directing the Secretary of the Commonwealth to present the proposed constitutional amendment to the qualified voters of the Commonwealth of Pennsylvania in a form that advises voters of the true nature of the proposed amendment, which is to amend the Pennsylvania Constitution to raise the compulsory retirement age from 70 to 75.

Respectfully submitted,

**SPRAGUE & SPRAGUE**

By: /s/ Richard A. Sprague  
RICHARD A. SPRAGUE (I.D. #04266)  
BROOKE SPIGLER COHEN (I.D. #204648)  
JORDANN R. CONABOY (I.D. #319337)  
WILLIAM H. TRASK (I.D. # 318229)  
The Wellington Bldg., Suite 400  
135 S. 19<sup>th</sup> Street  
Philadelphia, Pennsylvania 19103  
(215) 561-7681

**VERIFICATION**

I, Richard A. Sprague, Esquire, Plaintiff in the foregoing Complaint for Declaratory and Injunctive Relief, herby verify that the facts in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements in the foregoing Complaint are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: July 21, 2016

/s/ Richard A. Sprague  
Richard A. Sprague, Esquire

**VERIFICATION**

I, Hon. Ronald D. Castille, Plaintiff in the foregoing Complaint for Declaratory and Injunctive Relief, hereby verify that the facts in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements in the foregoing Complaint are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: July 21, 2016

/s/ Ronald D. Castille  
Hon. Ronald D. Castille

**VERIFICATION**

I, Hon. Stephen Zappala, Sr., Plaintiff in the foregoing Complaint for Declaratory and Injunctive Relief, herby verify that the facts in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements in the foregoing Complaint are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: July 21, 2016

/s/ Stephen Zappala, Sr.  
Hon. Stephen Zappala, Sr.

**PROOF OF SERVICE**

I, Jordann R. Conaboy, Esquire, hereby certify that on this 21<sup>st</sup> day of July, 2016, I caused true and correct copies of the foregoing Complaint for Declaratory and Injunctive Relief, with exhibits, to be served on the individuals listed below *via* hand delivery:

Pedro A. Cortés, Esquire  
Secretary of the Commonwealth  
**Office of the Secretary**  
302 North Office Building  
Harrisburg, PA 17120

Kathleen G. Kane, Esquire  
Bruce L. Castor, Jr., Esquire  
**Office of the Attorney General**  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120

Timothy F. Yates, Esquire  
**Pennsylvania Department of State**  
**Office of General Counsel**  
306 North Office Building  
Harrisburg, PA 17120

/s/ Jordann R. Conaboy \_\_\_\_\_  
Jordann R. Conaboy, Esquire

# Exhibit A



**BALLOT QUESTIONS AND  
PROPOSED AMENDMENTS  
TO THE  
PENNSYLVANIA CONSTITUTION**

**A Compilation with Statistics from 1958 to 2006**

**MAY 2007**



Staff Report  
General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
108 Finance Building  
Harrisburg, Pennsylvania 17120

The release of this report should not be construed as an indication that the members of the Executive Committee of the Joint State Government Commission endorse all of the report's findings, recommendations or conclusions.

**JOINT STATE GOVERNMENT COMMISSION  
ROOM 108 FINANCE BUILDING  
HARRISBURG PA 17120-0018**

**717-787-4397  
FAX 717-787-7020**

**E-mail: [jntst02@legis.state.pa.us](mailto:jntst02@legis.state.pa.us)  
Website: <http://jsg.legis.state.pa.us>**

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The Joint State Government Commission was created by act of July 1, 1937 (P.L.2460, No.459) as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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# JOINT STATE GOVERNMENT COMMISSION

Senator Roger A. Madigan, Chair

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## EXECUTIVE COMMITTEE

### Senate Members

Joseph B. Scarnati, III  
President Pro Tempore

Dominic F. Pileggi  
Majority Leader

Robert J. Mellow  
Minority Leader

Jane Clare Orie  
Majority Whip

Michael A. O'Pake  
Minority Whip

Michael L. Waugh  
Chair, Majority Caucus

Jay Costa Jr.  
Chair, Minority Caucus

### House Members

Dennis M. O'Brien  
Speaker

H. William DeWeese  
Majority Leader

Samuel H. Smith  
Minority Leader

Keith R. McCall  
Majority Whip

David G. Argall  
Minority Whip

Mark B. Cohen  
Chair, Majority Caucus

Sandra Major  
Chair, Minority Caucus

## MEMBER EX-OFFICIO

Senator Roger A. Madigan, Commission Chair

---

David L. Hostetter, Executive Director

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# INDEX

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## BORROWING

Agricultural Conservation Easements .....	42
Economic Redevelopment .....	39
Environmental Initiatives (Including Open Space and Farmland Preservation, Watershed Protection and Acid Mine Drainage Remediation).....	57
Volunteer Fire and Emergency Services .....	31, 35, 45, 54
Flood Control.....	35
Nursing Homes and Personal Care Boarding Homes .....	28, 38
Persian Gulf Veterans .....	47, 58
Prison Facilities .....	45
State Capital Projects.....	18
State Parks, Conservation and Recreation .....	9, 48
Vietnam Veterans.....	20, 22, 27
Water and Sewage Treatments.....	16, 43, 46, 56

## GOVERNOR

Pardons.....	50
Senate Confirmation ("Interim Appointments").....	29
Succession of Terms.....	6, 14

## JUDICIARY

Bail .....	52
Civil Case Verdicts .....	23
Commonwealth Right to Trial by Jury .....	52
Disposal of Business .....	10
Education and Training of Justices .....	12
Initiation of Criminal Proceedings.....	27
Judicial Conduct Board .....	47
Mandatory Retirement.....	53
Retention Elections .....	34
Statewide Selection of Judges .....	21

JUDICIARY—(continued)

Terms for Appointed Judges .....	33
Superior Court.....	34
Unified Court System .....	19
Voluntary Confession .....	40
Witness Confrontation .....	49, 55

LEGISLATIVE

Appointments to a Civil Office .....	24
Disaster Relief.....	32
Interim Seat of Government .....	8
Meetings.....	4
Reapportionment.....	18, 36, 53
Retirement or Pension Systems.....	36
Special Sessions.....	13

LOCAL GOVERNMENT

Borrowing Capacity .....	11
Competitive Bidding .....	14
County Officers Salary .....	24
Optional Form of Government.....	19
Real Estate Tax Rates .....	44
Refunds Without an Appropriation .....	6
Succession of Terms (County Treasurer).....	7

TAXATION

Agricultural Reserves .....	26
Aviation Fuel Excise Taxes .....	37
Disabled Veterans .....	7
Exemptions .....	18
Flood and Storm Damage .....	25, 30
Forest Reserves .....	3
Homestead Property .....	50
Occupational Privilege Taxes.....	10
Pennsylvania Disabled Veterans.....	32
Real Property Tax Provisions.....	40
School Districts .....	4

## MISCELLANEOUS

Absentee Voting .....	15, 41, 51
Appointment of Public Officers .....	11
Attorney General Election .....	33
Civil Rights .....	13
Clean Air and Pure Water .....	23
College Loans .....	8
Constitutional Amendment Process .....	15
Constitutional Convention .....	9, 13
Disabled Veterans' Spouses' Benefits .....	41
Private Corporations .....	12
Public Employer Dispute Settlements .....	17
Qualified Voters in Prior District .....	5
Railroads and Canals .....	15
Secretary of Internal Affairs .....	6
Sexual Discrimination .....	23





## **INTRODUCTION**

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The Constitution of the Commonwealth of Pennsylvania provides that questions must be submitted to the voters for approval before two things may occur: the incurring of public debt and the amendment of the Constitution.

Section 7(a)(3) of Article VIII provides that "[d]ebt may be incurred without limit for purposes specifically itemized in the law authorizing such debt, if the question whether the debt shall be incurred has been submitted to the electors and approved by a majority of those voting on the question."

Section 1 of Article XI describes the procedure by which amendments to the Constitution must be submitted to the electorate.

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, and the Secretary of the Commonwealth shall cause the same 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; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such

manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

The questions submitted to the voters of the Commonwealth of Pennsylvania from 1958 through 2005 and the results of the vote for each question are presented in the following pages. Where a "question summary" is provided, the exact language of the question could not be found. Voter registration data is also provided at the end of each date's entries.

**NOVEMBER 4, 1958**

**Question**

**Summary:** Proposed amendment to Article IX, section 1 of the Constitution.

Set up standards and qualifications for private forest reserves and make special provision for taxation thereof.

**Result:** Approved

**Vote:** Yes: 816,160 No: 502,943

**Percentage of total voter registration:** 15.1% 9.3%

<b>Voter registration:</b>	Democrat	2,554,007	47.3%
	Republican	2,771,613	51.4
	Other	<u>71,787</u>	<u>1.3</u>
	<b>Total</b>	<b>5,397,407</b>	<b>100.0%</b>

**NOVEMBER 3, 1959**

**Question 1**

**Summary:** Proposed amendment to Article II, section 4 of the Constitution.

Legislature shall meet each year the first Tuesday in January and in even years handle fiscal matters.

**Result:** Approved

**Vote:** Yes: 632,422 No: 568,800

**Percentage of total voter registration:** 12.0% 10.8%

**Question 2**

**Summary:** Proposed amendment to Article IX, section 8 of the Constitution.

School district debts not to exceed 15 percent of assessed valuation of taxable property.

**Result:** Defeated

**Vote:** Yes: 513,987 No: 719,923

**Percentage of total voter registration:** 9.8% 13.7%

**NOVEMBER 3, 1959—(continued)**

**Question 3**

**Summary:** Proposed amendment to Article VIII, section 1 of the Constitution.

If a qualified voter moves within the state within 60 days of an election he may vote in old district.

**Result:** Approved

**Vote:** Yes: 956,138 No: 292,019

**Percentage of total voter registration:** 18.1% 5.5%

<b>Voter registration:</b>	Democrat	2,566,629	48.7%
	Republican	2,636,525	50.1
	Other	<u>65,288</u>	<u>1.2</u>
	Total	5,268,442	100.0%

**NOVEMBER 7, 1961**

**Question 1**

Summary: Proposed amendment to Article III, section 16 of the Constitution.

Refunds of taxes and fees may be paid out of fund without an appropriation.

Result: Approved

Vote: Yes: 1,108,506 No: 449,778

Percentage of total voter registration: 19.8% 8.0%

**Question 2**

Summary: Proposed amendment to Article IV, section 3 of the Constitution.

Governor able to succeed self.

Result: Defeated

Vote: Yes: 762,569 No: 847,869

Percentage of total voter registration: 13.6% 15.1%

**Question 3**

Summary: Proposed amendment to Article IV, section 21 of the Constitution.

Secretary of Internal Affairs to take office in January.

Result: Approved

Vote: Yes: 1,110,470 No: 400,402

Percentage of total voter registration: 19.8% 7.1%

**NOVEMBER 7, 1961--(continued)**

**Question 4**

Summary: Proposed amendment to Article IX, section 1 of the Constitution.

Tax exemption for certain disabled veterans.

Result: Approved

Vote: Yes: 1,122,261 No: 453,280

Percentage of total voter registration: 20.0% 8.1%

**Question 5**

Summary: Proposed amendment to Article XIV, section 1 of the Constitution.

County treasurer able to succeed self.

Result: Defeated

Vote: Yes: 674,099 No: 884,130

Percentage of total voter registration: 12.0% 15.8%

Voter registration:	Democrat	2,841,144	50.7%
	Republican	2,685,505	47.9
	Other	<u>76,189</u>	<u>1.4</u>
	Total	5,602,838	100.0%

**NOVEMBER 5, 1963**

**Question 1**

**Summary:** Proposed amendment to Article III, section 18 (renumbered Article III, section 29) of the Constitution.

Loans for higher education but not if attending theological schools.

**Result:** Approved

**Vote:** Yes: 1,348,908 No: 868,003

**Percentage of total voter registration:** 24.7% 15.9%

**Question 2**

**Summary:** Proposed amendment to Article III, section 35 of the Constitution.

General Assembly may provide emergency interim seats of government in case of disaster.

**Result:** Approved

**Vote:** Yes: 1,280,036 No: 831,335

**Percentage of total voter registration:** 23.4% 15.2%



**NOVEMBER 5, 1963—(continued)**

**Question 3**

Summary: Proposed amendment to Article IX, section 24 of the Constitution.

Commonwealth to create a debt of \$70 million for the acquisition of land for State parks, reservoirs, conservation, recreation, historical preservation purposes.

Result: Approved

Vote:	Yes: 1,149,263	No: 1,036,154
Percentage of total voter registration:	21.0%	19.0%

**Question 4**

Summary: Proposed Constitutional Convention.

Result: Defeated

Vote:	Yes: 1,106,388	No: 1,148,060
Percentage of total voter registration:	20.2%	21.0%

Voter registration:	Democrat	2,739,416	50.1%
	Republican	2,656,403	48.6
	Other	<u>70,899</u>	<u>1.3</u>
	Total	5,466,718	100.0%

**NOVEMBER 2, 1965**

**Question 1**

Summary: Proposed amendment to Article V, section 15 of the Constitution.

The General Assembly may allow the Chief Justice of the Supreme Court to assign former judges temporarily in courts for the disposal of business.

Result: Approved

Vote: Yes: 1,041,821 No: 351,737

Percentage of total voter registration: 18.7% 6.3%

**Question 2**

Summary: Proposed amendment to Article IX, section 1 of the Constitution.

To exempt persons earning less than \$1,000 per year from paying occupation privilege taxes.

Result: Approved

Vote: Yes: 1,141,176 No: 292,700

Percentage of total voter registration: 20.5% 5.3%

Voter registration:	Democrat	2,795,257	50.3%
	Republican	2,685,258	48.3
	Other	<u>80,075</u>	<u>1.4</u>
	Total	5,560,590	100.0%

**MAY 17, 1966**

**Question 1**

**Summary:** Proposed amendment to Article IX, section 8.

To permit an increase in the borrowing capacity of any county, city, borough, township, school district, other municipality or incorporated district, except Philadelphia.

**Result:** Approved

**Vote:** Yes: 610,465 No: 600,434

**Percentage of total voter registration:** 11.2% 11.0%

**Question 2**

**Summary:** Proposed combination of Articles VI, VII and XII of the Constitution.

To consolidate into a single amendment the appointment of public officers whose selection is not provided for by the Constitution.

**Result:** Approved

**Vote:** Yes: 788,662 No: 430,679

**Percentage of total voter registration:** 14.5% 7.9%

<b>Voter registration:</b>	Democrat	2,735,241	50.2%
	Republican	2,641,285	48.4
	Other	<u>76,790</u>	<u>1.4</u>
	<b>Total</b>	<b>5,453,316</b>	<b>100.0%</b>

**NOVEMBER 8, 1966**

**Question 1**

Summary: Proposed repeal of Article XVI of the Constitution.

To move from one article to another the section of the Constitution on private corporations.

Result: Approved

Vote: Yes: 1,212,790 No: 636,925

Percentage of total voter registration: 22.0% 11.5%

**Question 2**

Summary: Authorizing the General Assembly to require the completion of a course of training and education by newly elected justices of the peace and aldermen who have not been admitted to practice law in the Commonwealth.

Result: Approved

Vote: Yes: 1,153,759 No: 853,200

Percentage of total voter registration: 20.9% 15.5%

Voter registration:	Democrat	2,759,524	50.0%
	Republican	2,678,934	48.5
	Other	<u>80,543</u>	<u>1.5</u>
	Total	5,519,001	100.0%

**MAY 16, 1967**

**Question 1**

Summary: Proposed Constitutional Convention to rewrite four sections of the Constitution. (1) Judiciary, (2) Local Government, (3) State Finance, (4) Reapportionment.

Result: Approved

Vote: Yes: 1,140,931 No: 703,576

Percentage of total voter registration: 21.8% 13.5%

**Question 2**

Summary: Prohibit discrimination or denial of any person of his civil rights.

Result: Approved

Vote: Yes: 1,232,575 No: 638,365

Percentage of total voter registration: 23.6% 12.2%

**Question 3**

Summary: To provide that each Legislature be a continuing body for two years and to empower the Legislature to call itself into special session.

Result: Approved

Vote: Yes: 1,249,914 No: 600,157

Percentage of total voter registration: 23.9% 11.5%

**MAY 16, 1967—(continued)**

**Question 4**

**Summary:** Streamline legislative process of competitive bidding for State purchases where possible.

**Result:** Approved

**Vote:** Yes: 1,233,709 No: 621,381

**Percentage of total voter registration:** 23.6% 11.9%

**Question 5**

**Summary:** Governor and Lieutenant Governor to be elected jointly. State Treasurer may not run for Auditor General. These four officers may succeed themselves once. Eliminate Secretary of Internal Affairs as an elective office.

**Result:** Approved

**Vote:** Yes: 1,221,773 No: 628,011

**Percentage of total voter registration:** 23.4% 12.0%

**MAY 16, 1967—(continued)**

**Question 6**

**Summary:** Ninety-day residence required to vote. Require Legislature to enact absentee voters law.

**Result:** Approved

**Vote:** Yes: 1,227,214 No: 638,361

**Percentage of total voter registration:** 23.5% 12.2%

**Question 7**

**Summary:** To amend the Constitution in time of an emergency. (1) two-thirds approval by each House, (2) publicizing full text in newspapers throughout the State, (3) approval of the voters, in statewide election at least one month after passage by General Assembly.

**Result:** Approved

**Vote:** Yes: 1,198,076 No: 626,711

**Percentage of total voter registration:** 22.9% 12.0%

**Question 8**

**Summary:** Repeal all 12 sections dealing with railroads and canals.

**Result:** Approved

**Vote:** Yes: 1,221,907 No: 629,067

**Percentage of total voter registration:** 23.4% 12.0%

**MAY 16, 1967**—(continued)

**Question 9**

**Summary:** State government to borrow \$500 million to fight stream and water pollution to help communities to build sewage treatment plants, to develop and equip Project 70 recreational areas. Help restore mining areas.

**Result:** Approved

**Vote:** Yes: 1,163,779 No: 677,808

**Percentage of total voter registration:** 22.3% 13.0%

<b>Voter registration:</b>	Democrat	2,574,479	49.2%
	Republican	2,581,987	49.4
	Other	<u>72,512</u>	<u>1.4</u>
	<b>Total</b>	<b>5,228,978</b>	<b>100.0%</b>



**NOVEMBER 7, 1967**

**Question**

**Summary:** The General Assembly is authorized to amend Article III, section 31, to enact law providing that findings of panels selected for settlement of disputes between policemen, firemen and public employers shall be binding and must be complied with by all parties.

**Result:** Approved

**Vote:** Yes: 1,396,312 No: 409,534

**Percentage of total voter registration:** 26.2% 7.7%

<b>Voter registration:</b>	Democrat	2,618,723	9.2%
	Republican	2,628,225	49.4
	Other	<u>76,166</u>	<u>1.4</u>
	<b>Total</b>	<b>5,323,114</b>	<b>100.0%</b>

**APRIL 23, 1968**

**Question 1**

**Summary:** Mandated decennial reapportionment of the Legislature.

**Result:** Approved

**Vote:** Yes: 1,063,603 No: 583,091

**Percentage of total voter registration:** 20.4% 11.2%

**Question 2**

**Summary:** Debt limit for State capital projects. Forbid borrowing for operating deficiencies.

**Result:** Approved

**Vote:** Yes: 1,022,706 No: 614,110

**Percentage of total voter registration:** 19.6% 11.8%

**Question 3**

**Summary:** Provide for certain tax exemptions.

**Result:** Approved

**Vote:** Yes: 882,116 No: 763,745

**Percentage of total voter registration:** 16.9% 14.6%

**APRIL 23, 1968—(continued)**

**Question 4**

Summary: Local government allowed optional form of government.

Result: Approved

Vote: Yes: 986,855 No: 633,323

Percentage of total voter registration: 18.9% 12.1%

**Question 5**

Summary: Judiciary--a unified court system under the administration of the State Supreme court.

Result: Approved

Vote: Yes: 910,855 No: 729,845

Percentage of total voter registration: 17.4% 14.0%

Voter registration:	Democrat	2,549,821	48.8%
	Republican	2,595,062	49.7
	Other	<u>75,995</u>	<u>1.5</u>
	Total	5,220,878	100.0%

**NOVEMBER 5, 1968**

Question: Shall debt be incurred in the amount of twenty-eight million dollars (\$28,000,000) to provide compensation to veterans in accordance with the Vietnam Conflict Veterans' Compensation Act No. 183 of 1968?

Result: Approved

Vote: Yes: 2,077,634 No: 640,627

Percentage of total voter registration: 37.1% 11.4%

Voter registration:	Democrat	2,715,507	48.5%
	Republican	2,775,456	49.6
	Other	<u>108,401</u>	<u>1.9</u>
	Total	5,599,364	100.0%

**MAY 20, 1969**

**Question**

**Summary:** Selection procedure for statewide election of judges.

**Result:** Defeated

**Vote:** Yes: 624,453 No: 643,960

**Percentage of total voter registration:** 11.5% 11.8%

<b>Voter registration:</b>	Democrat	2,640,071	48.5%
	Republican	2,701,929	49.6
	Other	<u>104,554</u>	<u>1.9</u>
	Total	5,446,554	100.0%

**MAY 19, 1970**

Question: Shall debt be incurred in the amount of twenty-seven million dollars (\$27,000,000) to extend the provisions of the Vietnam Conflict Veterans' Compensation Act of 1968 to provide compensation to veterans for time spent in military hospitals, outside of the Vietnam Theatre of Operations, as a result of service-connected wounds, diseases or injuries sustained in the Vietnam Theatre of Operations and for additional funds to insure payment other than hospitalization?

Result: Approved

Vote: Yes: 775,346 No: 233,175

Percentage of total voter registration: 14.4% 4.3%

Voter registration:	Democrat	2,602,941	48.5%
	Republican	2,659,592	49.5
	Other	<u>105,186</u>	<u>2.0</u>
	Total	5,367,719	100.0%

**MAY 18, 1971**

Question 1: Shall Article I, section 6 of the Constitution be amended to permit a verdict, in a civil case, to be rendered by no less than five-sixths of the jury?

Result: Approved

Vote: Yes: 833,283 No: 423,606

Percentage of total voter registration: 15.8% 8.0%

Question 2: Shall Article I of the Constitution be amended by adding a new section prohibiting any denial or abridgment of rights because of an individual's sex?

Result: Approved

Vote: Yes: 783,441 No: 464,882

Percentage of total voter registration: 14.9% 8.8%

Question 3: Shall Article I of the Constitution be amended by adding a new section guaranteeing the people's right to clean air and pure water and the preservation and conservation, by the Commonwealth, of the State's natural resources for the people's benefit?

Result: Approved

Vote: Yes: 1,021,342 No: 259,979

Percentage of total voter registration: 19.4% 4.9%

**MAY 18, 1971—(continued)**

Question 4: Shall Article III, section 27 of the Constitution be amended to permit the salary or emoluments during the term of a county officer to be increased or decreased only in the event a change in county classification requires it?

Result: Defeated

Vote: Yes: 567,472 No: 656,603

Percentage of total voter registration: 10.8% 12.5%

Question 5: Shall Article II, section 6 of the Constitution be amended to permit any Senator or Representative to resign and to be appointed to a civil office during the time for which he was elected so long as the civil office was not created nor its emoluments increased during the time for which he was elected and to provide for immediate forfeiture of the elective office for any person holding an office other than one so permitted?

Result: Defeated

Vote: Yes: 487,976 No: 741,458

Percentage of total voter registration: 9.3% 14.1%

Voter registration:	Democrat	2,647,326	50.3%
	Republican	2,511,939	47.7
	Other	<u>106,656</u>	<u>2.0</u>
	Total	5,265,921	100.0%



**NOVEMBER 7, 1972**

Question: Shall Article VIII of the Constitution of the Commonwealth of Pennsylvania be amended to give the General Assembly authority to provide tax rebates, credits, exemptions, grants-in-aid, State supplementations or special provisions for individuals, corporations, associations or nonprofit institutions, including nonpublic schools (whether sectarian or nonsectarian) to alleviate the danger, damage, suffering or hardship faced as a result of storms or floods of September 1971 and June 1972?

Result: Approved

Vote: Yes: 1,711,509 No: 686,792

Percentage of total voter registration: 29.1% 11.7%

Voter registration:	Democrat	2,993,092	51.0%
	Republican	2,697,694	45.9
	Other	<u>181,116</u>	<u>3.1</u>
	Total	5,871,902	100.0%

**MAY 15, 1973**

Question: Shall Article VIII, section 2 of the Constitution of the Commonwealth be amended to permit legislation for establishing standards, qualifications and special tax provisions for agriculture reserves and lands devoted to agriculture use?

Result: Approved

Vote: Yes: 803,173 No: 325,952

Percentage of total voter registration: 14.1% 5.7%

Voter registration:	Democrat	2,597,933	45.7%
	Republican	2,914,398	51.3
	Other	<u>170,970</u>	<u>3.0</u>
	Total	5,683,301	100.0%

**NOVEMBER 6, 1973**

Question 1: Shall the aggregate debt of the Commonwealth to carry out the purposes of the Vietnam Conflict Veterans' Compensation Act be increased from fifty-five million dollars (\$55,000,000) to sixty-five million dollars (\$65,000,000)?

Result: Approved

Vote: Yes: 1,143,147 No: 557,820

Percentage of total voter registration: 20.0% 9.7%

Question 2: Shall Article I, section 10 of the Constitution of the Commonwealth be amended so that each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings by information, without the necessity for an indictment by a grand jury?

Result: Approved

Vote: Yes: 897,295 No: 552,797

Percentage of total voter registration: 15.7% 9.7%

Voter registration:	Democrat	2,947,632	51.5%
	Republican	2,605,925	45.5
	Other	<u>173,005</u>	<u>3.0</u>
	Total	5,726,562	100.0%

**MAY 21, 1974**

Question: Do you favor the incurrence of indebtedness by the Commonwealth of \$100,000,000 for use through loans to provide for repairs, reconstruction and rehabilitation of nursing homes necessary to insure compliance with State and Federal safety standards?

Result: Approved

Vote: Yes: 924,566 No: 301,918

Percentage of total voter registration: 16.9% 5.5%

Voter registration:	Democrat	2,838,593	51.9%
	Republican	2,472,260	45.2
	Other	<u>158,550</u>	<u>2.9</u>
	Total	5,469,403	100.0%

**MAY 20, 1975**

Question: Shall Article IV, sections 8 and 9, and Article V, section 13 of the Pennsylvania Constitution be amended so that all nominations by the Governor to vacancies in offices requiring Senate confirmation, regardless of when the vacancies occur, become subject to majority or two-thirds consent of the Senate as provided by law, and subject to Senate action within twenty-five legislative days after submission or the nominee shall take office as if the Senate had consented?

Result: Approved

Vote:	Yes: 937,249	No: 209,026
Percentage of total voter registration:	18.2%	4.1%
Voter registration:	Democrat 2,753,512	53.6%
	Republican 2,256,714	43.9
	Other <u>129,292</u>	<u>2.5</u>
	Total 5,139,518	100.0%

**NOVEMBER 4, 1975**

Question: Shall Article VIII, section 17 of the Pennsylvania Constitution be amended so that the General Assembly may provide for tax rebates, credits, exemptions, grants-in-aid, State supplementations, or otherwise provide special provisions for individuals, corporations, associations or nonprofit institutions, including nonpublic schools (whether sectarian or nonsectarian) in order to alleviate the danger, damage, suffering or hardship caused by great storms or floods of 1974 or 1975?

Result: Approved. The emergency amendment provisions of the Constitution were followed by the State.

Vote: Yes: 1,241,622 No: 594,254

Percentage of total voter registration: 23.6% 11.3%

Voter registration:	Democrat	2,838,046	54.0%
	Republican	2,281,188	43.4
	Other	<u>136,770</u>	<u>2.6</u>
	Total	5,256,004	100.0%

**NOVEMBER 2, 1976**

**Question**

**Summary:** Commonwealth indebtedness of \$10,000,000 for loans to volunteer fire companies and ambulance service companies.

**Result:** Approved

**Vote:** Yes: 1,408,284 No: 537,692

**Percentage of total voter registration:** 24.5% 9.4%

<b>Voter registration:</b>	Democrat	3,152,450	54.8%
	Republican	2,387,297	41.5
	Other	<u>210,013</u>	<u>3.7</u>
	Total	5,749,660	100.0%

**NOVEMBER 8, 1977**

Question 1: Shall Article VIII, section 2(c) of the Pennsylvania Constitution be amended to provide that the exemption from certain real property taxes already applied to certain disabled veterans be extended to all those citizens and residents of Pennsylvania who have served the United States in any war or armed conflict and who have been declared to have a one hundred percent service-connected disability by the United States Veterans Administration?

Result: Approved

Vote:	Yes: 1,189,626	No: 360,211
Percentage of total voter registration:	21.0%	6.4%

Question 2: Shall Article VIII, section 17 of the Pennsylvania Constitution be amended to provide that special emergency legislation may be enacted by a vote of two-thirds of the General Assembly to make appropriations limited to monies required for Federal emergency or major disaster relief and shall this provision apply retroactively to 1976 or 1977?

Result: Approved

Vote:	Yes: 1,066,563	No: 428,388
Percentage of total voter registration:	18.8%	7.6%

Voter registration:	Democrat	3,134,943	55.3%
	Republican	2,324,884	41.0
	Other	<u>212,703</u>	<u>3.7</u>
	Total	5,672,530	100.0%



**MAY 16, 1978**

**Question 1**

Summary: Provides for the election of the Attorney General and provides for his qualifications.

Result: Approved

Vote: Yes: 1,017,830 No: 206,528

Percentage of total voter registration: 18.2% 3.7%

Question 2: Shall Article V of the Pennsylvania Constitution be amended to provide that persons appointed to fill vacancies in the office of justice, judge or justice of the peace shall serve for a term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs or for the remainder of the unexpired term whichever is less?

Result: Approved

Vote: Yes: 1,000,662 No: 192,059

Percentage of total voter registration: 17.9% 3.4%

Voter registration:	Democrat	3,101,172	55.5%
	Republican	2,276,892	40.7
	Other	<u>212,064</u>	<u>3.8</u>
	Total	5,590,128	100.0%

**NOVEMBER 6, 1979**

Question 1: Shall Article V, section 3, and section 13, subsection b, and the Schedule to Article V, section 11 of the Pennsylvania Constitution be amended to permit an increase in the number of judges of the Superior Court from its present number of seven, make changes relating to initial terms of additional judges and further provide for the selection of the president judge of the Superior Court?

Result: Approved

Vote: Yes: 793,474 No: 703,736

Percentage of total voter registration: 14.6% 13.0%

Question 2

Summary: Provides for the procedures for retention elections to be extended to apply to justices of the peace.

Result: Defeated

Vote: Yes: 730,122 No: 754,755

Percentage of total voter registration: 13.4% 13.9%

Voter registration:	Democrat	2,997,490	55.2%
	Republican	2,209,798	40.7
	Other	<u>222,372</u>	<u>4.1</u>
	Total	5,429,660	100.0%

**NOVEMBER 3, 1981**

Question 1: Do you favor the incurring of indebtedness by the Commonwealth of \$300,000,000 for use as loans to repair, construct, reconstruct, rehabilitate, extend and improve water supply systems, or to repair, reconstruct or rehabilitate flood control facilities, dams and port facilities in order to improve the health, safety and economic well-being of the people of the Commonwealth?

Result: Approved

Vote: Yes: 1,054,329 No: 588,669

Percentage of total voter registration: 18.5% 10.3%

Question 2: Do you favor the incurring of indebtedness of \$15,000,000 for loans to volunteer fire companies, volunteer ambulance services and volunteer rescue squads for the purpose of establishing or modernizing facilities to house firefighting apparatus equipment, ambulances, and rescue vehicles, and for purchasing firefighting apparatus equipment, ambulances, and rescue vehicles, protective and communications equipment, and any other accessory equipment necessary for the proper performance of such organizations' duties?

Result: Approved

Vote: Yes: 1,188,191 No: 462,950

Percentage of total voter registration: 20.9% 8.1%

**NOVEMBER 3, 1981—(continued)**

Question 3: Shall Article II, section 17 of the Pennsylvania Constitution be amended to provide that a Legislative Reapportionment Commission be constituted in each year following the year of the Federal Decennial Census; and that the majority and minority leaders of the General Assembly, who constitute four of the five members, be certified to the elections officer of the Commonwealth no later than 60 days following the official reporting of the Federal Census as required by Federal law?

Result: Approved

Vote: Yes: 823,948 No: 625,700

Percentage of total voter registration: 14.5% 11.0%

Question 4: Shall Article III, section 26 of the Pennsylvania Constitution be amended to permit the General Assembly to legislate that increases in retirement benefits or pensions payable to members of a retirement or pension system of the Commonwealth, its political subdivisions, agencies or instrumentalities, be extended to beneficiaries who are spouses of members of such system, provided that such increases are certified to be actuarially sound?

Result: Defeated

Vote: Yes: 618,857 No: 928,699

Percentage of total voter registration: 10.9% 16.3%

**NOVEMBER 3, 1981--(continued)**

Question 5: Shall Article VIII, section 11 of the Pennsylvania Constitution be amended to provide that net proceeds from aviation fuel excise taxes be appropriated by the General Assembly to State agencies or political subdivisions to be used solely for purposes related to air navigation including, but not limited to, construction, operation and maintenance of air navigational facilities; property tax reimbursement; and further providing that these proceeds shall not be diverted by transfer or otherwise to any other purpose?

Result: Approved

Vote: Yes: 762,491 No: 714,434

Percentage of total voter registration: 13.4% 12.6%

Voter registration:	Democrat	3,023,334	53.1%
	Republican	2,364,713	41.6
	Other	<u>301,137</u>	<u>5.3</u>
	Total	5,689,184	100.0%

**NOVEMBER 2, 1982**

Question: Do you favor the use of up to \$50,000,000 previously authorized for nursing homes to also be used for loans to repair, reconstruct and rehabilitate personal care boarding homes?

Result: Approved

Vote: Yes: 1,371,930 No: 774,178

Percentage of total voter registration: 24.1% 13.6%

Voter registration:	Democrat	3,035,523	53.2%
	Republican	2,357,448	41.4
	Other	<u>309,586</u>	<u>5.4</u>
	Total	5,702,557	100.0%

**APRIL 10, 1984**

Question: Do you favor incurring indebtedness by the Commonwealth of \$190,000,000 to promote economic redevelopment throughout Pennsylvania through job producing programs; grants and loans for industrial and small business development; acquisition of equipment for vocational programs in secondary schools, community colleges and engineering degree-granting schools; agricultural development; and the acquisition, rehabilitation or development of facilities for community services and public recreation purposes subject to implementation by law?

Result: Approved

Vote: Yes: 726,742 No: 417,351

Percentage of total voter registration: 12.8% 7.4%

Voter registration:	Democrat	3,176,515	56.1%
	Republican	2,230,588	39.4
	Other	<u>254,341</u>	<u>4.5</u>
	Total	5,661,444	100.0%

**NOVEMBER 6, 1984**

Question 1: Shall Article VIII, section 2(b) of the Pennsylvania Constitution be amended to permit the General Assembly to establish standards and qualifications by which local taxing authorities in first and second class counties may make uniform special real property tax provisions applicable to taxpayers who are longtime owner-occupants of residences in areas where real property values have risen markedly due to the refurbishing or renovating of other deteriorating residences or the construction of new residences?

Result: Approved

Vote: Yes: 1,499,771 No: 1,132,296

Percentage of total voter registration: 24.2% 18.3%

Question 2: Shall Article I, section 9 of the Pennsylvania Constitution be amended to provide that the use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself?

Result: Approved

Vote: Yes: 1,542,142 No: 1,076,343

Percentage of total voter registration: 24.9% 17.4%

Voter registration:	Democrat	3,380,675	54.6%
	Republican	2,487,552	40.2
	Other	<u>325,475</u>	<u>5.2</u>
	Total	6,193,702	100.0%



**NOVEMBER 5, 1985**

Question 1: Shall Article VII, section 14 of the Pennsylvania Constitution relating to Absentee Voting be amended to require the General Assembly to provide by general law, a method of voting for those electors who will not attend a polling place because of the observance of a religious holiday or who, in the case of a county employee, cannot vote because of election day duties?

Result: Approved

Vote: Yes: 912,845 No: 434,516  
Percentage of total voter registration: 15.1% 7.2%

Question 2: Shall Article VIII, section 2(c) of the Pennsylvania Constitution be amended to provide that an unmarried surviving spouse upon the death of a veteran who as a result of military service was blind, paraplegic, a double or quadruple amputee or had a 100% permanent disability be exempt from the payment of all real property taxes upon their residence provided that the State Veteran's Commission determines that such spouse is in need of an exemption?

Result: Approved

Vote: Yes: 1,075,121 No: 290,795  
Percentage of total voter registration: 17.8% 4.8%

Voter registration:	Democrat	3,271,365	54.3%
	Republican	2,453,667	40.7
	Other	<u>304,358</u>	<u>5.0</u>
	Total	6,029,390	100.0%

**NOVEMBER 3, 1987**

Question: Do you favor the incurring of indebtedness by the Commonwealth of \$100,000,000 for the purchase of agricultural conservation easements for the preservation of agricultural land either for a period of 25 years or in perpetuity?

Result: Approved

Vote: Yes: 1,172,483 No: 575,330

Percentage of total voter registration: 21.8% 10.7%

Voter registration:	Democrat	2,861,251	53.1%
	Republican	2,297,088	42.6
	Other	<u>229,857</u>	<u>4.3</u>
	Total	5,388,196	100.0%

**APRIL 26, 1988**

Question: Do you favor the incurring of indebtedness by the Commonwealth of \$300,000,000 for use as loans to acquire, repair, construct, reconstruct, rehabilitate, extend, expand and improve water supply and sewage treatment systems?

Result: Approved

Vote: Yes: 888,120 No: 276,735

Percentage of total voter registration: 16.6% 5.2%

Voter registration:	Democrat	2,848,528	53.2%
	Republican	2,279,849	42.6
	Other	<u>225,933</u>	<u>4.2</u>
	Total	5,354,310	100.0%

**MAY 16, 1989**

Question: Shall Article VIII, section 2(b) of the Pennsylvania Constitution be amended to allow for legislation which would require or permit local government units to reduce residential real estate tax rates to the extent of additional revenues obtained from personal income taxes, while keeping all other changes in real estate tax rates uniform?

Result: Defeated

Vote:	Yes: 514,317	No: 1,538,732
Percentage of total voter registration:	8.9%	26.5%

Voter registration:	Democrat	3,050,692	52.6%
	Republican	2,469,761	42.6
	Other	<u>275,744</u>	<u>4.8</u>
	Total	5,796,197	100.0%

**NOVEMBER 6, 1990**

Question 1: Do you favor the incurring of indebtedness by the Commonwealth of \$200,000,000 to repair, expand, construct, reconstruct and rehabilitate county prisons or multicounty regional prison facilities or fund capital needs to create or expand county alternative sentencing or treatment programs?

Result: Approved

Vote: Yes: 1,346,264 No: 955,384

Percentage of total voter registration: 23.8% 16.9%

Question 2: Do you favor the incurring of indebtedness of \$25,000,000 for loans to volunteer fire companies, volunteer ambulance services and volunteer rescue squads for the purpose of establishing or modernizing facilities to house firefighting apparatus equipment, ambulances and rescue vehicles, and for purchasing firefighting apparatus equipment, ambulances and rescue vehicles, protective and communications equipment, and any other accessory equipment necessary for the proper performance of such organizations' duties?

Result: Approved

Vote: Yes: 1,854,826 No: 486,896

Percentage of total voter registration: 32.8% 8.6%

Voter registration:	Democrat	2,907,156	51.4%
	Republican	2,476,222	43.7
	Other	<u>275,811</u>	<u>4.9</u>
	Total	5,659,189	100.0%

**APRIL 28, 1992**

Question: Do you favor the incurring of indebtedness by the Commonwealth of \$350,000,000 for use as loans to acquire, repair, construct, reconstruct, rehabilitate, extend, expand and improve water supply, storm water control and sewage treatment systems?

Result: Approved

Vote: Yes: 866,552 No: 457,881

Percentage of total voter registration: 16.3% 8.6%

Voter registration:	Democrat	2,710,389	50.9%
	Republican	2,362,748	44.4
	Other	<u>249,919</u>	<u>4.7</u>
	Total	5,323,056	100.0%

**MAY 18, 1993**

Question 1: Shall Article V of the Pennsylvania Constitution be amended to establish a judicial conduct board to investigate complaints of judicial misconduct, to establish a court of judicial discipline to adjudicate charges of judicial misconduct, to abolish the judicial inquiry and review board, and, except as provided by law, to bar payment of compensation, including retirement benefits, to justices, judges, and justices of the peace suspended, removed, or barred from judicial office for serious misconduct?

Result: Approved

Vote: Yes: 1,018,318 No: 208,187

Percentage of total voter registration: 17.3% 3.5%

Question 2: Do you favor the incurring of indebtedness by the Commonwealth of up to \$25,000,000 for payment of compensation for service in the Persian Gulf Conflict, including \$1,500,000 for the cost of designing and constructing a patriotic monument or memorial in appreciation of Pennsylvania's veterans?

Result: Defeated

Vote: Yes: 429,728 No: 821,415

Percentage of total voter registration: 7.3% 13.9%

Voter registration:	Democrat	3,010,606	51.0%
	Republican	2,515,836	42.6
	Other	<u>375,559</u>	<u>6.4</u>
	Total	5,902,001	100.0%

**NOVEMBER 2, 1993**

Question: Do you favor the incurring of indebtedness by the Commonwealth in the amount of \$50,000,000 to provide for the funding of nature preserves and wildlife habitats, and for improvements to and expansion of state parks, community parks and recreation facilities, historic sites, zoos and public libraries?

Result: Approved

Vote: Yes: 1,023,834 No: 576,169  
Percentage of total voter registration: 17.3% 9.7%

Voter registration:	Democrat	3,007,927	50.8%
	Republican	2,527,456	42.7
	Other	<u>383,488</u>	<u>6.5</u>
	Total	5,918,871	100.0%



**NOVEMBER 7, 1995**

Question: Shall [Article I, section 9 of]\* the Pennsylvania Constitution be amended to provide (1) that a person accused of a crime has the right to be "confronted with the witnesses against him," instead of the right to "meet the witnesses face to face," and (2) that the General Assembly may enact laws regarding the manner by which children may testify in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television?

Result: Approved. However, because the ballot question contained two amendments, the Pennsylvania Supreme Court later determined this question to be unconstitutional.<sup>1</sup> Article XI, Section 1 provides that "[w]hen two or more amendments shall be submitted they shall be voted upon separately." These issues reached the voters again on November 4, 2003 in the proper form of two separate ballot questions. See page 55.

Vote:	Yes: 1,176,652	No: 400,727
Percentage of total voter registration:	19.1%	6.5%
Voter registration:	Democrat 3,070,170	49.8%
	Republican 2,660,447	43.1
	Other <u>436,099</u>	<u>7.1</u>
	Total 6,166,716	100.0%

\* The bracketed language is included for clarity and was not part of the ballot question.

<sup>1</sup> *Bergdoll v. Kane*, 731 A.2d 1261 (Pa. 1999) (*aff'g* the opinion of the Commonwealth Court at 694 A.2d 1155 (Pa. Commw. Ct. 1997)).

**NOVEMBER 4, 1997**

Question 1: Shall [Article VIII, section 2 of]\* the Pennsylvania Constitution be amended to permit the enactment of legislation authorizing local taxing authorities to exclude from taxation an amount based on the assessed value of homestead property, with the limitations that the exclusions shall not exceed one-half of the of the median assessed value of all homestead property within the taxing jurisdiction and that the taxing authority may not increase the millage rate of its tax on real property to pay for these exclusions?

Result: Approved

Vote: Yes: 1,240,406 No: 778,105

Percentage of total voter registration: 17.6% 11.0%

Question 2: Shall [Article IV, section 9 of]\* the Pennsylvania Constitution be amended to require a unanimous recommendation of the board of pardons before the Governor can pardon or commute the sentence of an individual sentenced in a criminal case to death or life imprisonment, to require only a majority vote of the Senate to approve the Governor's appointments to the board, and to substitute a crime victim for an attorney and a corrections expert for a penologist as board members?

Result: Approved

Vote: Yes: 1,182,067 No: 811,701

Percentage of total voter registration: 16.8% 11.5%

\* The bracketed language is included for clarity and was not part of the ballot question.

**NOVEMBER 4, 1997 --(continued)**

Question 3: Shall [Article VII, section 14 of]\* the Pennsylvania Constitution be amended to require the enactment of legislation permitting absentee voting by qualified electors who at the time of an election may be absent from the municipality where they reside because their duties, occupation or business require them to be elsewhere, which would change the current law permitting absentee voting by such qualified electors only when they are absent from the entire county where they reside?

Result: Approved

Vote: Yes: 1,301,638 No: 686,518

Percentage of total voter registration: 18.4% 9.7%

Voter registration:	Democrat	3,441,798	48.8%
	Republican	2,998,083	42.5
	Other	<u>617,188</u>	<u>8.7</u>
	Total	7,057,069	100.0%

\* The bracketed language is included for clarity and was not part of the ballot question.

**NOVEMBER 3, 1998**

Question 1: Shall {Article I, section 14 of}\* the Pennsylvania Constitution be amended to disallow bail when the proof is evident or presumption great that the accused committed an offense for which the maximum penalty is life imprisonment or that no condition or combination of conditions other than imprisonment of the accused will reasonably assure the safety of any person and the community?

Result: Approved

Vote: Yes: 1,620,567 No: 601,463

Percentage of total voter registration: 22.3% 8.3%

Question 2: Shall {Article I, section 6 of}\* the Pennsylvania Constitution be amended to provide that the Commonwealth shall have the same right to trial by jury in criminal cases as does the accused?

Result: Approved

Vote: Yes: 1,496,894 No: 684,204

Percentage of total voter registration: 20.6% 9.4%

Voter registration:	Democrat	3,514,970	48.4%
	Republican	3,072,299	42.3
	Other	<u>671,553</u>	<u>9.3</u>
	Total	7,258,822	100.0%

\* The bracketed language is included for clarity and was not part of the ballot question.

**MAY 15, 2001**

Question 1: Shall {Article II, section 17 of}\* the Constitution of Pennsylvania be amended with regard to legislative reapportionment to provide that when a reapportionment plan, upon attaining the force of law, contains a state Senate district which does not include the residence from which an incumbent Senator was elected, an election for the office of Senator for that district shall be held at the next general election irrespective of when an election for the district is otherwise scheduled?

Result: Approved

Vote:	Yes: 556,964	No: 362,210
Percentage of total voter registration:	7.2%	4.7%

Question 2: Shall {Article V, section 16 of}\* the Constitution of Pennsylvania be amended to provide that justices of the Supreme Court, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 70 years, rather than on the day they attain the age of 70?

Result: Approved

Vote:	Yes: 656,270	No: 314,978
Percentage of total voter registration:	8.5%	4.1%

Voter registration:	Democrat	3,701,242	48.1%
	Republican	3,208,297	41.7
	Other	<u>788,932</u>	<u>10.2</u>
	Total	7,698,471	100.0%

\* The bracketed language is included for clarity and was not part of the ballot question.

**NOVEMBER 5, 2002**

**Question:** Do you favor the incurring of indebtedness of up to \$100,000,000 for the purpose of establishing a program that utilizes capital and other related methods to enhance and improve the delivery of volunteer fire and volunteer emergency services in this Commonwealth as hereafter authorized by statute?

**Result:** Approved

**Vote:** Yes: 1,833,795 No: 691,319

**Percentage of total voter registration:** 23.4% 8.8%

<b>Voter registration:</b>	Democrat	3,768,316	48.1%
	Republican	3,235,172	41.3
	Other	<u>832,287</u>	10.6
	Total	7,835,775	100.0%

**NOVEMBER 4, 2003**

Question 1: Shall {Article I, section 9 of}\* the Pennsylvania Constitution be amended to provide that a person accused of a crime has the right to be "confronted with the witnesses against him," instead of the right to "meet the witnesses face to face"?

Result: Approved

Vote: Yes: 1,239,356 No: 578,031

Percentage of total voter registration: 16.1% 7.5%

Question 2: Shall {Article V, section 10(c) of}\* the Pennsylvania Constitution be amended to provide that the General Assembly may enact laws regarding the manner by which children may testify in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television?

Result: Approved

Vote: Yes: 1,494,261 No: 360,283

Percentage of total voter registration: 19.4% 4.7%

Voter registration:	Democrat	3,628,043	47.2%
	Republican	3,239,104	42.1
	Other	<u>821,148</u>	<u>10.7</u>
	Total	7,688,295	100.0%

\* The bracketed language is included for clarity and was not part of the ballot question.

**APRIL 27, 2004**

Question: Do you favor the incurring of indebtedness by the Commonwealth in the amount of \$250,000,000 for use as grants and loans for construction, expansion or improvement of water and wastewater infrastructure, including water supply and sewage treatment systems?

Result: Approved

Vote: Yes: 725,970 No: 426,043

Percentage of total voter registration: 9.3% 5.5%

Voter registration:	Democrat	3,706,122	47.6%
	Republican	3,230,496	41.6
	Other	<u>843,964</u>	<u>10.8</u>
	Total	7,780,582	100.0%



**MAY 17, 2005**

**Question:** Do you favor authorizing the Commonwealth to borrow up to \$625,000,000, for the maintenance and protection of the environment, open space and farmland preservation, watershed protection, abandoned mine reclamation, acid mine drainage remediation and other environmental initiatives?

**Result:** Approved

**Vote:** Yes: 725,308 No: 472,290

**Percentage of total voter registration:** 9.0% 5.9%

<b>Voter registration:</b>	Democrat	3,836,701	47.6%
	Republican	3,294,568	40.8
	Other	<u>934,267</u>	<u>11.6</u>
	<b>Total</b>	<b>8,065,536</b>	<b>100.0%</b>

**NOVEMBER 7, 2006**

Question: Do you favor indebtedness by the Commonwealth of up to \$20,000,000 for the payment of compensation for service in the Persian Gulf Conflict of 1990-1991?

Result: Approved

Vote: Yes: 2,074,692 No: 1,317,051

Percentage of total voter registration: 25.4% 16.1%

Voter registration:	Democrat	3,900,685	47.7%
	Republican	3,300,894	40.3
	Other	<u>981,297</u>	<u>12.0</u>
	Total	8,182,876	100.0%

# Exhibit B

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 79 Session of 2013

INTRODUCED BY HARPER, MCGEEHAN, QUINN, KRIEGER, DEAN, BOBACK,  
GOODMAN, GODSHALL, LONGIETTI, GILLEN, EVERETT, MOUL,  
DENLINGER AND PEIFER, JANUARY 10, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 10, 2013

A JOINT RESOLUTION

1 Proposing an amendment to the Constitution of the Commonwealth  
2 of Pennsylvania, further providing for compensation and  
3 retirement of justices, judges and justices of the peace.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby resolves as follows:

6 Section 1. The following amendment to the Constitution of  
7 Pennsylvania is proposed in accordance with Article XI:

8 That section 16(b) of Article V be amended to read:

9 § 16. Compensation and retirement of justices, judges and  
10 justices of the peace.

11 \* \* \*

12 (b) Justices, judges and justices of the peace shall be  
13 retired on the last day of the calendar year in which they  
14 attain the age of [70] 75 years. Former and retired justices,  
15 judges and justices of the peace shall receive such compensation  
16 as shall be provided by law. Except as provided by law, no  
17 salary, retirement benefit or other compensation, present or  
18 deferred, shall be paid to any justice, judge or justice of the

1 peace who, under section 18 or under Article VI, is suspended,  
2 removed or barred from holding judicial office for conviction of  
3 a felony or misconduct in office or conduct which prejudices the  
4 proper administration of justice or brings the judicial office  
5 into disrepute.

6 \* \* \*

7 Section 2. (a) Upon the first passage by the General  
8 Assembly of this proposed constitutional amendment, the  
9 Secretary of the Commonwealth shall proceed immediately to  
10 comply with the advertising requirements of section 1 of Article  
11 XI of the Constitution of Pennsylvania and shall transmit the  
12 required advertisements to two newspapers in every county in  
13 which such newspapers are published in sufficient time after  
14 passage of this proposed constitutional amendment.

15 (b) Upon the second passage by the General Assembly of this  
16 proposed constitutional amendment, the Secretary of the  
17 Commonwealth shall proceed immediately to comply with the  
18 advertising requirements of section 1 of Article XI of the  
19 Constitution of Pennsylvania and shall transmit the required  
20 advertisements to two newspapers in every county in which such  
21 newspapers are published in sufficient time after passage of  
22 this proposed constitutional amendment. The Secretary of the  
23 Commonwealth shall submit this proposed constitutional amendment  
24 to the qualified electors of this Commonwealth at the first  
25 primary, general or municipal election which meets the  
26 requirements of and is in conformance with section 1 of Article  
27 XI of the Constitution of Pennsylvania and which occurs at least  
28 three months after the proposed constitutional amendment is  
29 passed by the General Assembly.

# Exhibit C

[Home](#) / [Bill and Amendments](#) / [Bill Information](#)

## Bill Information - History

### House Bill 79; Regular Session 2013-2014

**Sponsors:** [HARPER](#), [McGEEHAN](#), [QUINN](#), [KRIEGER](#), [DEAN](#), [BOBACK](#), [GOODMAN](#), [GODSHALL](#), [LONGIETTI](#), [GILLEN](#), [EVERETT](#), [MOUL](#), [DENLINGER](#), [PEIFER](#), [FREEMAN](#), [MILNE](#), [MURT](#), [KORTZ](#), [WATSON](#), [BARBIN](#) and [CALTAGIRONE](#)

**Printer's No.(PN):** [58\\*](#)

**Short Title:** A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for compensation and retirement of justices, judges and justices of the peace.

**Actions:**

[PN 0058](#) Referred to JUDICIARY, Jan. 10, 2013  
 Reported as committed, [May 14, 2013](#)  
 First consideration, May 14, 2013  
 Laid on the table, May 14, 2013  
 Removed from table, June 20, 2013  
 Second consideration, June 24, 2013  
 Re-committed to APPROPRIATIONS, June 24, 2013  
 Re-reported as committed, [June 25, 2013](#)  
 Third consideration and final passage, June 28, 2013 ([157-44](#))  
 In the Senate  
 Referred to JUDICIARY, June 30, 2013  
 Reported as committed, [Oct. 1, 2013](#)  
 First consideration, Oct. 1, 2013  
 Second consideration, Oct. 2, 2013  
 Third consideration and final passage, Oct. 15, 2013 ([44-6](#))  
 (Remarks see Senate Journal Page [1028-1029](#)), Oct. 15, 2013  
 Signed in House, Oct. 16, 2013  
 Signed in Senate, Oct. 21, 2013  
 Filed in the Office of the Secretary of the Commonwealth, Oct. 22, 2013  
 Pamphlet Laws Resolution No. 3

\* denotes current Printer's Number

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# Exhibit D



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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 90

Session of  
2015

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INTRODUCED BY HARPER, CALTAGIRONE, BARBIN, BOBACK, CARROLL,  
COHEN, DIAMOND, FREEMAN, GILLEN, GODSHALL, GOODMAN, GRELL,  
GROVE, KRIEGER, LONGIETTI, MURT, PETRI, SCHLOSSBERG, WATSON  
AND GIBBONS, JANUARY 21, 2015

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REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 2015

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A JOINT RESOLUTION

1 Proposing an amendment to the Constitution of the Commonwealth  
2 of Pennsylvania, further providing for compensation and  
3 retirement of justices, judges and justices of the peace.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby resolves as follows:

6 Section 1. The following amendment to the Constitution of  
7 Pennsylvania is proposed in accordance with Article XI:

8 That section 16(b) of Article V be amended to read:

9 § 16. Compensation and retirement of justices, judges and  
10 justices of the peace.

11 \* \* \*

12 (b) Justices, judges and justices of the peace shall be  
13 retired on the last day of the calendar year in which they  
14 attain the age of [70] 75 years. Former and retired justices,  
15 judges and justices of the peace shall receive such compensation  
16 as shall be provided by law. Except as provided by law, no

1 salary, retirement benefit or other compensation, present or  
2 deferred, shall be paid to any justice, judge or justice of the  
3 peace who, under section 18 or under Article VI, is suspended,  
4 removed or barred from holding judicial office for conviction of  
5 a felony or misconduct in office or conduct which prejudices the  
6 proper administration of justice or brings the judicial office  
7 into disrepute.

8 \* \* \*

9 Section 2. (a) Upon the first passage by the General  
10 Assembly of this proposed constitutional amendment, the  
11 Secretary of the Commonwealth shall proceed immediately to  
12 comply with the advertising requirements of section 1 of Article  
13 XI of the Constitution of Pennsylvania and shall transmit the  
14 required advertisements to two newspapers in every county in  
15 which such newspapers are published in sufficient time after  
16 passage of this proposed constitutional amendment.

17 (b) Upon the second passage by the General Assembly of this  
18 proposed constitutional amendment, the Secretary of the  
19 Commonwealth shall proceed immediately to comply with the  
20 advertising requirements of section 1 of Article XI of the  
21 Constitution of Pennsylvania and shall transmit the required  
22 advertisements to two newspapers in every county in which such  
23 newspapers are published in sufficient time after passage of  
24 this proposed constitutional amendment. The Secretary of the  
25 Commonwealth shall submit this proposed constitutional amendment  
26 to the qualified electors of this Commonwealth at the first  
27 primary, general or municipal election which meets the  
28 requirements of and is in conformance with section 1 of Article  
29 XI of the Constitution of Pennsylvania and which occurs at least  
30 three months after the proposed constitutional amendment is

1 passed by the General Assembly.

# Exhibit E

[Home](#) / [Bill and Amendments](#) / [Bill Information](#)

## Bill Information - History

### House Bill 90; Regular Session 2015-2016

**Sponsors:** [HARPER](#), [CALTAGIRONE](#), [BARBIN](#), [BOBACK](#), [CARROLL](#), [COHEN](#), [DIAMOND](#), [FREEMAN](#), [GILLEN](#), [GODSHALL](#), [GOODMAN](#), [GRELL](#), [GROVE](#), [KRIEGER](#), [LONGIETTI](#), [MURT](#), [PETRI](#), [SCHLOSSBERG](#), [WATSON](#), [GIBBONS](#) and [DAVIS](#)

**Printer's No.(PN):** [251\\*](#) , [80](#)

**Short Title:** A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for compensation and retirement of justices, judges and justices of the peace.

**Actions:**

[PN 0080](#) Referred to [JUDICIARY](#), Jan. 21, 2015

[PN 0251](#) Corrective Reprint, Printer's No. 251, Jan. 28, 2015

Reported as committed, [Feb. 3, 2015](#)

First consideration, Feb. 3, 2015

Laid on the table, Feb. 3, 2015

Removed from table, Feb. 4, 2015

Second consideration, Feb. 9, 2015

Re-committed to [APPROPRIATIONS](#), Feb. 9, 2015

Re-reported as committed, [Feb. 10, 2015](#)

Third consideration and final passage, Feb. 10, 2015 ([154-44](#))

(Remarks see House Journal Page [157](#)), Feb. 10, 2015

In the Senate

Referred to [JUDICIARY](#), Feb. 13, 2015

Reported as committed, [Feb. 17, 2015](#)

First consideration, Feb. 17, 2015

Laid on the table, April 15, 2015

Removed from table, April 15, 2015

Laid on the table, June 1, 2015

Removed from table, June 1, 2015

Laid on the table, June 24, 2015

Removed from table, June 24, 2015

Re-referred to [APPROPRIATIONS](#), June 30, 2015

Re-reported as committed, [Oct. 27, 2015](#)

Second consideration, Oct. 28, 2015

Third consideration and final passage, Nov. 16, 2015 ([36-13](#))

(Remarks see Senate Journal Page [1190](#)), Nov. 16, 2015

Signed in House, Nov. 17, 2015

Signed in Senate, Nov. 17, 2015

Filed in the Office of the Secretary of the Commonwealth, Nov. 17, 2015

Pamphlet Laws Resolution No. 1

\* denotes current Printer's Number

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# Exhibit F

**PROPOSED AMENDMENTS TO THE CONSTITUTION OF PENNSYLVANIA**

The following are true and correct copies of joint resolutions of the General Assembly of Pennsylvania proposing two amendments to the Constitution of Pennsylvania. Consistent with the procedures prescribed by Article XI, Section 1 of the Constitution, the General Assembly first proposed the amendments during the 2013 session and approved them for a second time during the 2015 session of the legislature. As required by Article XI, Section 1 of the Constitution and statutory law, the Secretary of the Commonwealth has caused the proposed amendments to be published here.

Pursuant to law, the Secretary of the Commonwealth will submit the proposed amendments to the electors of Pennsylvania in the form of two ballot questions at the General Primary to be held on April 26, 2016. If a ballot question is approved by a majority of electors voting on it, the corresponding amendment becomes part of the Constitution.

Those parts of the joint resolutions that appear in **bold print** are the words of the Constitution that are proposed by the General Assembly for addition or deletion. If an amendment were approved, the words **underlined** would be added to the Constitution and the words in brackets (e.g., [Constitution]) would be deleted. The unbolded words would remain unchanged in the Constitution.

Following the proposed amendments is the text of the questions that will be placed on the ballot. Below each question is a "Plain English Statement" prepared by the Office of Attorney General, and published as required by law, indicating the purpose, limitations and effects of the ballot question upon the people of this Commonwealth.

Anyone who needs help reading this advertisement or who needs the text of the proposed amendments in an alternative format may call or write the Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, Room 210 North Office Building, Harrisburg, PA 17120, (717) 787-5280, ra-BCEL@pa.gov.

Pedro A. Cortés, Secretary of the Commonwealth

**JOINT RESOLUTION 2015-1**

Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for compensation and retirement of justices, judges and justices of the peace.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That section 16(b) of Article V be amended to read:

§ 16. Compensation and retirement of justices, judges and justices of the peace.

\*\*\*

(b) Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of **70** ~~75~~ years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. Except as provided by law, no salary, retirement benefit or other compensation, present or deferred, shall be paid to any justice, judge or justice of the peace who, under section 18 or under Article VI, is suspended, removed or barred from holding judicial office for conviction of a felony or misconduct in office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute.

\*\*\*

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.

**PROPOSED CONSTITUTIONAL AMENDMENT 1**  
**AMENDING THE MANDATORY JUDICIAL**  
**RETIREMENT AGE**

**Ballot Question**

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?

**Plain English Statement of the Office of**  
**Attorney General**

The purpose of the ballot question is to amend the Pennsylvania Constitution to require that justices, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years.

Presently, the Pennsylvania Constitution provides that justices, judges and justices of the peace be retired on the last day of the calendar year in which they attain the age of 70 years. Justices of the peace are currently referred to as magisterial district judges.

If the ballot question were to be approved, justices, judges and magisterial district judges would be retired on the last day of the calendar year in which they attain the age of 75 years rather than the last day of the calendar year in which they attain the age of 70 years.

This amendment to the mandatory retirement age would be applicable to all judges and justices in the Commonwealth, including the justices of the Pennsylvania Supreme Court, judges of the Commonwealth Court, Superior Court, county courts of common pleas, community courts, municipal courts in the City of Philadelphia, and magisterial district judges.

The ballot question is limited in that it would not amend any other provisions of the Pennsylvania Constitution related to the qualification, election, tenure, or compensation of the justices, judges or magisterial district judges.

The effect of the ballot question would be to allow all justices, judges, and magisterial district judges to remain in office until the last day of the calendar year in which they attain the age of 75 years. This would permit all justices, judges, and magisterial district judges to serve an additional five years beyond the current required retirement age.

**JOINT RESOLUTION 2015-2**

Proposing integrated amendments to the Constitution of the Commonwealth of Pennsylvania, eliminating the Traffic Court of Philadelphia.

The General Assembly of the Commonwealth of Pennsylvania hereby resolves as follows:

Section 1. The following integrated amendments to the Constitution of Pennsylvania are proposed in accordance with Article XI.

(1) That section 1 of Article V be amended to read:

§ 1. Unified judicial system.

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal ~~and traffic~~ courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

(2) That the heading and subsection (c) of section 6 of Article V be amended to read:

§ 6. Community courts; Philadelphia Municipal Court ~~and Traffic Court~~.

\*\*\*

(c) In the City of Philadelphia there shall be a municipal court ~~and a traffic court~~. The number of judges and the jurisdiction ~~of each~~ shall be as provided by law. ~~These courts~~ **This court** shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

(3) That subsection (d) of section 10 of Article V be amended to read:

§ 10. Judicial administration

\*\*\*

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts, **except that the president judge of the traffic court in the City of Philadelphia shall be appointed by the Governor**. A Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

\*\*\*

(4) That subsection (b) of section 12 of Article V be amended to read:

§ 12. Qualifications of justices, judges and justices of the peace.

\*\*\*

(b) **[Judges of the traffic court in the City of Philadelphia and justices]** Justices of the peace shall be members of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office. Such courses and examinations shall be as provided by law.

(5) That subsection (a) of section 15 of Article V be amended to read:

§ 15. Tenure of justices, judges and justices of the peace.

(a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court ~~and traffic court~~ in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

\*\*\*

Section 2. (a) Upon the first passage by the General Assembly of these proposed constitutional amendments, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of these proposed constitutional amendments.

(b) Upon the second passage by the General Assembly of these proposed constitutional amendments, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of these proposed constitutional amendments. The Secretary of the Commonwealth shall submit the proposed constitutional amendments under section 1 of this resolution to the qualified electors of this Commonwealth as a single ballot question at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendments are passed by the General Assembly.

**PROPOSED CONSTITUTIONAL AMENDMENT 2**  
**ABOLITION OF THE PHILADELPHIA TRAFFIC COURT**

**Ballot Question**

Shall the Pennsylvania Constitution be amended to abolish the Philadelphia Traffic Court?

**Plain English Statement of the Office of Attorney General**

The purpose of the ballot question is to amend the Pennsylvania Constitution to abolish the Traffic Court in the City of Philadelphia.

Presently, the Pennsylvania Constitution provides for the Traffic Court in the City of Philadelphia as part of the unified judicial system. If the ballot question were to be approved, the Traffic Court in the City of Philadelphia would be abolished by removing all references to the Traffic Court and the judges of the Traffic Court in the City of Philadelphia from the Pennsylvania Constitution.

Legislation enacted in 2013 transferred the functions performed by the Traffic Court to the Philadelphia Municipal Court. As a result, violations of the Vehicle Code previously adjudicated by the Traffic Court are presently being adjudicated by the Philadelphia Municipal Court. The proposed amendment would officially abolish the Traffic Court by removing all references to the Traffic Court and its judges from the Pennsylvania Constitution.

This ballot question is limited to whether the Traffic Court in the City of Philadelphia should be abolished. The ballot question would not amend any other provisions of the Pennsylvania Constitution beyond the removal of all references to the Traffic Court and its judges.

The effect of the ballot question would be to abolish the Traffic Court in the City of Philadelphia. As discussed above, legislation enacted in 2013 transferred the functions of the Traffic Court to the Philadelphia Municipal Court. This amendment would officially abolish the Traffic Court by removing all references to the Traffic Court and its judges from the Pennsylvania Constitution.



# Exhibit G

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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No. 29 MM 2016

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IN RE:

PROPOSED CONSTITUTIONAL AMENDMENT 1  
BALLOT QUESTION

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**EMERGENCY APPLICATION FOR EXTRAORDINARY RELIEF  
BY PENNSYLVANIA SENATE MAJORITY CAUCUS,  
SENATE PRESIDENT PRO TEMPORE JOE SCARNATI, AND  
SENATE MAJORITY LEADER JAKE CORMAN**

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Caucus, Senate President Pro Tempore  
Joe Scarnati, and Senate Majority Leader  
Jake Corman*

**TABLE OF CONTENTS**

**I. INTRODUCTION.....1**

**II. JURISDICTIONAL STATEMENT .....3**

**III. CONCISE STATEMENT OF FACTS.....4**

**IV. ISSUE SOUGHT TO BE REVIEWED .....6**

**V. JUSTIFICATION FOR INVOKING COURT’S PLENARY POWERS .....6**

**VI. CONCLUSION AND RELIEF SOUGHT.....11**

**Exhibit A Ballot Question and Plain English Statement**

**Exhibit B HB 79 (2013-2014 Regular Session)**

**Exhibit C HB 90 (2015-2016 Regular Session)**

## TABLE OF AUTHORITIES

### **Cases**

<i>Com. v. Tharp</i> , 754 A.2d 1251 (Pa. 2000).....	10
<i>Driscoll v. Corbett</i> , 69 A.3d 197 (Pa. 2013).....	3, 4
<i>Grimaud v. Com.</i> , 865 A.2d 835 (Pa. 2005).....	10
<i>Pennsylvania Prison Soc. v. Com.</i> , 776 A.2d 971 (Pa. 2001).....	10
<i>Stander v. Kelley</i> , 250 A.2d 474 (Pa. 1969).....	10

### **Statutes**

25 P.S. § 2621.1 .....	5
25 P.S. § 2755 .....	5
25 P.S. § 3010 .....	5, 8
42 Pa.C.S. § 502.....	3

### **Joint Resolutions**

HB 79 (2013-2014 Regular Session).....	4, 5, 8, 11
HB 90 (2015-2016 Regular Session).....	4, 5, 8, 11

### **Rules**

Pa.R.A.P. 3309.....	3
---------------------	---

### **Constitutional Provisions**

Pa. Const. Art. V, §§ 2(a), 10(a).....	3
Pa. Const. Art. V, § 16(b) .....	4
Pa. Const. Art. XI, § 1.....	4, 11

### **Other Authorities**

Pete Williams and Elizabeth Chuck, <i>Supreme Court Justice Antonin Scalia Has Died at Age 79</i> , NBCNews.com (Feb. 14, 2016) .....	7
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## I. INTRODUCTION

The Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman (collectively, the “Senate”) ask this Court to exercise its plenary powers, on an expedited basis, over an electoral issue of immediate public importance regarding the forthcoming April 26, 2016 primary election. Specifically, this Court should immediately invoke its plenary jurisdiction and strike the following terms and phrases from the Ballot Question for Proposed Constitutional Amendment 1:

~~Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years[.], instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?~~

The above terms and phrases must be stricken from the Ballot Question in advance of the April 26, 2016 primary election for at least the following three reasons.

*First*, and perhaps most importantly, the terms and phrases sought to be stricken are confusing, distracting and misleading to electors. The insertion of the phrase “of the Supreme Court” after “justices” makes it incorrectly appear as if the proposed constitutional amendment may also impact or affect justices of the United States Supreme Court. This is not the case, and it is possible that the average elector may not understand this important distinction when voting.

Further, the phrase “known as magisterial district judges,” which appears right after “judges and justices of the peace” makes it appear that the proposed amendment does not apply to judges of courts of common pleas, the Superior Court, and the Commonwealth Court.

*Second*, the terms and phrases sought to be stricken are inconsistent with the proposed constitutional amendment as drafted, voted on, and approved by the General Assembly in two consecutive sessions. The Joint Resolution approved by both houses of the General Assembly simply stated: “Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of [70] 75 years.” As currently drafted, the Ballot Question is not limited to, and does not mirror, this legislatively approved language.

*Third*, and finally, the terms and phrases sought to be stricken are nothing more than superfluous and gratuitous commentary, which is more appropriately addressed in the Plain English Statement of Office of Attorney General that accompanies the Ballot Question. Past ballot questions in this Commonwealth have been historically limited to what the new law would be if amended, not what the current state of the law may be at the time of the proposed amendment. To the extent this additional information may be relevant to the elector, it can be found and provided for in the Plain English Statement.

## **II. JURISDICTIONAL STATEMENT**

The Pennsylvania Supreme Court has the ability to hear this electoral matter of immediate public importance pursuant to the plenary powers conferred upon it by Pa.R.A.P. 3309. These powers have been preserved in the Pennsylvania Constitution. *See* Pa. Const. Art. V, §§ 2(a), 10(a); 42 Pa.C.S. § 502.

The propriety of the Ballot Question for Proposed Constitutional Amendment 1, set to appear on the April 26, 2016 primary election ballot, requires the Court's expedited assessment because of the negative and adverse impact the question, as currently drafted, may have on electors. Given the short time period before the April 26, 2016 primary election, expedited review of this electoral matter is warranted and prudent in order ensure that the Ballot Question, as amended or clarified, remains on the ballot for the primary election, as mandated by the Pennsylvania Constitution and the Joint Resolution passed by the General Assembly proposing the constitutional amendment.

Although members of this Court may have an interest or be impacted by the proposed Ballot Question, the rule of necessity mandates that if all of the members of a tribunal may be subject to recusal, then the tribunal must consider the matter regardless of any personal interest of its members. *See Driscoll v. Corbett*, 69 A.3d 197, 207 (Pa. 2013) (concluding that rule of necessity required Supreme Court to decide judges' constitutional challenge to amendment that set mandatory

retirement for judges at age 70). Otherwise, the public would be denied a decision in the matter. *See id.*

### **III. CONCISE STATEMENT OF FACTS**

As required by Article XI, Section 1 of the Pennsylvania Constitution, the General Assembly approved in the 2013-2014 Regular Session, and again in the 2015-2016 Regular Session, a Joint Resolution proposing to amend the Pennsylvania Constitution to increase the mandatory judicial retirement age.

Specifically, the Joint Resolution approved by the General Assembly in two consecutive sessions proposes to amend Section 16(b) of Article V of the Pennsylvania Constitution, titled "Compensation and retirement of justices, judges and justices of the peace," to provide: "Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of [70] 75 years." HB 79 (2013-2014 Regular Session) & HB 90 (2015-2016 Regular Session), attached as Exhibits B & C, respectively.

Consistent with Article XI, Section 1 of the Pennsylvania Constitution, the Joint Resolution further provides that following the second passage of the proposed amendment by the General Assembly:

**The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which . . . occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.**



**HB 79 (2013-2014 Regular Session) & HB 90 (2015-2016 Regular Session).**

**In November 2015, the General Assembly approved the proposed constitutional amendment for a second time. *See* HB 90 (2015-2016 Regular Session). As required by the Election Code and the Joint Resolution approved by the General Assembly, the Secretary of State prepared the ballot question for the proposed constitutional amendment to be voted on by the electors at the April 26, 2016 primary election. *See* 25 P.S. § 3010; HB 90 (2015-2016 Regular Session).**

**The Ballot Question for Proposed Constitutional Amendment 1, as prepared by the Secretary of State for the April 26, 2016 primary election, states:**

**Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?**

**Ballot Question, attached as Exhibit A.**

**As required by the Election Code, it is believed and therefore averred that the Office of Attorney General approved the Ballot Question for Proposed Constitutional Amendment 1, as prepared by the Secretary of State. *See* 25 P.S. § 2755. The Office of Attorney General also drafted the Plain English Statement to accompany the Ballot Question, as required by the Election Code. 25 P.S. § 2621.1; *see* Plain English Statement of Office of Attorney General, attached as Exhibit A.**

#### **IV. ISSUE SOUGHT TO BE REVIEWED**

The Senate seeks to have this Court review, on an expedited basis, an electoral issue of immediate public importance in advance of the April 26, 2016 primary election in order to strike the following confusing surplusage and inconsistent language from the Ballot Question for Proposed Constitutional Amendment 1:

~~Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years[.], instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?~~

Ballot Question, attached as Exhibit A.

#### **V. JUSTIFICATION FOR INVOKING COURT'S PLENARY POWERS**

Exercise of this Court's plenary powers is necessary and of immediate public importance in order to correct and strike, in advance of the April 26, 2016 primary election, certain confusing surplusage and inconsistent language from the Ballot Question for Proposed Constitutional Amendment 1.

The Ballot Question, as drafted by the Secretary of State and approved by the Office of Attorney General, must be corrected and reformed prior to the April 26, 2016 primary election for at least the following three reasons.

*First*, several of the terms and phrases included in the Ballot Question can be construed as confusing, distracting, and misleading to electors. For instance, the

insertion of the phrase “of the Supreme Court” after “justices” gives the appearance that the proposed amendment may impact justices of the United States Supreme Court, and not simply justices of the Pennsylvania Supreme Court. This is not the case, and it is likely that the average elector may not fully appreciate this important distinction. This is acutely so in light of the recent vacancy on the United States Supreme Court created by the passing of Justice Antonin Scalia, where many of the news reports prominently featured his age. *See, e.g.,* Pete Williams and Elizabeth Chuck, *Supreme Court Justice Antonin Scalia Has Died at Age 79*, NBCNews.com (Feb. 14, 2016).<sup>1</sup>

Likewise, the insertion of “known as magisterial district judges” and the inclusion of “instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70” are confusing, distracting and unnecessarily elongate the Ballot Question. For example, the “known as magisterial district judges” phrase makes it appear as if the preceding “judges and justices” phrase refers only to magisterial district judges, which, in turn, makes it appear as if judges of the courts of common pleas, Superior Court, and Commonwealth Court are not subject to the constitutional change. It is precisely to avoid this kind of confusion that the Election Code compels the Secretary of State to prepare the ballot question for proposed constitutional amendments “in brief

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<sup>1</sup> Available at: <http://www.nbcnews.com/news/us-news/supreme-court-justice-antonin-scalia-79-has-died-officials-say-n518156>.

form,” which the Ballot Question as currently drafted clearly is not. *See* 25 P.S. § 3010.

*Second*, many of the terms and phrases included in the Ballot Question are entirely inconsistent with the Joint Resolution drafted, voted on, and approved by the General Assembly in two consecutive sessions. The Joint Resolution approved by the General Assembly was concise and to the point, providing: “Justices, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of [70] 75 years.” HB 79 (2013-2014 Regular Session) & HB 90 (2015-2016 Regular Session). In the Joint Resolution, the General Assembly specifically directed that, following the second passage of the proposed amendment, “[t]he Secretary of the Commonwealth *shall submit this proposed constitutional amendment* to the qualified electors of this Commonwealth at the first primary, general or municipal election[.]” *Id.* (emphasis added).

Yet, despite a clear directive from the General Assembly to submit the proposed constitutional amendment to the electors as drafted by the General Assembly, the Ballot Question for Proposed Constitutional Amendment I submitted by the Secretary of State and approved by the Office of Attorney General includes several additional terms and phrases not included in the Joint Resolution, such as “of the Supreme Court”; “known as magisterial district judges”; and “instead of the current requirement that they be retired on the last day

of the calendar year in which they attain the age of 70.” The Joint Resolution drafted, voted on, and approved by the General Assembly in two consecutive sessions did not include these additional terms, and neither should the Ballot Question for Proposed Constitutional Amendment 1.

*Third*, and finally, many of the terms and phrases included in the Ballot Question are nothing more than superfluous and gratuitous commentary that is beyond the scope of the Ballot Question, and which is more appropriately addressed in the Plain English Statement of Office of Attorney General. Indeed, the insertion of defining terms such as “of the Supreme Court” or “known as magisterial district judges” in the Ballot Question is unnecessary and distracting, especially when these terms are appropriately defined and described in the Plain English Statement of Office of Attorney General accompanying the Ballot Question. *See* Plain English Statement of Office of Attorney General, attached as Exhibit A.

Moreover, the insertion of the phrase “instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70” in the Ballot Question is equally unnecessary and distracting, considering that such a description of the current state of the law has not been historically included in ballot questions. Indeed, past ballot questions in this Commonwealth have traditionally limited questions for proposed constitutional amendments to what the

new law would be if amended, not what the current state of the law may be at the time of the proposed amendment. Below are examples of several such ballot questions approved by this Court in which the current state of law is neither mentioned nor addressed.

- “Shall the Pennsylvania Constitution be amended to disallow bail when the proof is evident or presumption great that the accused committed an offense for which the maximum penalty is life imprisonment or that no condition or combination of conditions other than imprisonment of the accused will reasonably assure the safety of any person and the community?” *Grimaud v. Com.*, 865 A.2d 835, 841 (Pa. 2005).
- “Shall the Pennsylvania Constitution be amended to provide that the Commonwealth shall have the same right to a trial by jury in criminal cases as does the accused?” *Com. v. Tharp*, 754 A.2d 1251, 1252 (Pa. 2000).
- “Shall the Pennsylvania Constitution be amended to require a unanimous recommendation of the Board of Pardons before the Governor can pardon or commute the sentence of an individual sentenced in a criminal case to death or life imprisonment, to require only a majority vote of the Senate to approve the Governor’s appointments to the Board, and to substitute a crime victim for an attorney and a corrections expert for a penologist as Board members?” *Pennsylvania Prison Soc. v. Com.*, 776 A.2d 971, 974 (Pa. 2001).
- “Shall Proposal 7 on the JUDICIARY, adopted by the Constitutional Convention, establishing a unified judicial system, providing directly or through Supreme Court rules, for the qualifications, selection, tenure, removal, discipline and retirement of, and prohibiting certain activities by justices, judges, and justices of the peace, and related matters, be approved?” *Stander v. Kelley*, 250 A.2d 474, 480 (Pa. 1969).

To the extent that an elector may wish to learn about, or to be educated on, the current state of the law, the elector need look no further than the Plain English Statement of Office of Attorney General that accompanies the Ballot Question.

Again, the Plain English Statement of Office of Attorney General is the appropriate setting to provide such additional information and commentary, and, in this case, the Plain English Statement more than sufficiently provides that supplemental information to the elector. *See Plain English Statement of Office of Attorney General*, attached as Exhibit A.

Consistent with Article XI, Section 1 of the Pennsylvania Constitution, the Joint Resolution approved by the General Assembly in two consecutive sessions mandated that the Ballot Question be submitted to “the qualified electors of this Commonwealth at the first primary, general or municipal election which . . . occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.” HB 79 (2013-2014 Regular Session) & HB 90 (2015-2016 Regular Session). Thus, the proposed changes and revisions to the Ballot Question raised herein must be directed by this Court, implemented by the Secretary of State, and approved by the Office of Attorney General on an expedited basis in order to ensure that the Ballot Question appears on the April 26, 2016 primary election ballot, as mandated by the General Assembly.

## **VI. CONCLUSION AND RELIEF SOUGHT**

The electoral issue raised herein is not only an issue of immediate public importance, but, for the foregoing reasons, requires expedited review by this Court in order to ensure that the Ballot Question for Proposed Constitutional Amendment

1 is corrected and amended in time for the fast-approaching April 26, 2016 primary election. The Senate thus respectfully request that this Court grant this Application and strike the confusing surplusage and inconsistent language cited herein from the Ballot Question for Proposed Constitutional Amendment 1, and direct that the strikes be completed, implemented, and approved in advance of the April 26, 2016 primary election.

Respectfully submitted,

**KLEINBARD LLC**

Dated: March 6, 2016

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# EXHIBIT A

**Proposed Constitutional Amendment 1  
Amending the Mandatory Judicial  
Retirement Age**

**Ballot Question**

**Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70?**

**YES**

**NO**

**Plain English Statement of Office of Attorney General**

The purpose of the ballot question is to amend the Pennsylvania Constitution to require that justices, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years.

Presently, the Pennsylvania Constitution provides that justices, judges and justices of the peace be retired on the last day of the calendar year in which they attain the age of 70 years. Justices of the peace are currently referred to as magisterial district judges.

If the ballot question were to be approved, justices, judges and magisterial district judges would be retired on the last day of the calendar year in which they attain the age of 75 years rather than the last day of the calendar year in which they attain the age of 70 years.

This amendment to the mandatory retirement age would be applicable to all judges and justices in the Commonwealth, including the justices of the Pennsylvania Supreme Court, judges of the Commonwealth Court, Superior Court, county courts of common pleas, community courts, municipal courts in the City of Philadelphia, and magisterial district judges.

The ballot question is limited in that it would not amend any other provisions of the Pennsylvania Constitution related to the qualification, election, tenure, or compensation of the justices, judges or magisterial district judges.

The effect of the ballot question would be to allow all justices, judges, and magisterial district judges to remain in office until the last day of the calendar year in which they attain the age of 75 years. This would permit all justices, judges, and magisterial district judges to serve an additional five years beyond the current required retirement age.

**CERTIFICATION OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

*Via First Class Mail:*  
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PA Department of State  
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*Via First Class Mail:*  
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Joe Scarnati, and Senate Majority Leader  
Jake Corman*

# Exhibit H

IN THE SUPREME COURT OF PENNSYLVANIA

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No. 29 MM 2016

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**COPY**

IN RE: PROPOSED CONSTITUTIONAL AMENDMENT 1  
BALLOT QUESTION

petition of: Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake  
rman

**ANSWER OF SECRETARY OF THE COMMONWEALTH PEDRO A.  
CORTÉS TO THE EMERGENCY APPLICATION FOR  
EXTRAORDINARY RELIEF**

---

Respectfully submitted,

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Date Filed: March 11, 2016

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF JURISDICTION..... 1

ORDER OR OTHER DETERMINATION IN QUESTION ..... 2

STATEMENT OF ISSUES TO BE REVIEWED..... 3

STATEMENT OF THE CASE..... 4

SUMMARY OF ARGUMENT ..... 7

ARGUMENT ..... 8

    I.    Applicants’ Emergency Application for Extraordinary Relief should be barred by the doctrine of laches..... 8

    II.   Because the Secretary of the Commonwealth and the Office of Attorney General complied with the Pennsylvania Constitution and the Pennsylvania Election Code, Applicants have failed to assert a justiciable controversy..... 10

    III.  Applicants’ version of the Ballot Question would deny voters relevant information regarding the current mandatory retirement age..... 16

    IV.  The Ballot Question is consistent with previous ballot questions submitted to the electorate where the proposed amendment changes existing language in the Pennsylvania Constitution..... 20

    V.   If this Court were to revise the language of the Ballot Question, it would be impossible for the Secretary of the Commonwealth to comply anew with the publication Requirements of Article XI, Section 1 of the Pennsylvania Constitution..... 24

CONCLUSION..... 29

## TABLE OF AUTHORITIES

### Cases

<i>Bergdoll v. Commonwealth</i> , 858 A.2d 185 (Pa. Commw. Ct. 2004), <i>aff'd</i> , 583 Pa. 44 (2005).....	11, 12, 14
<i>Com v. Tharp</i> , 562 Pa. 231 (2000).....	23
<i>Com. ex. rel. Schnader v. Beamish</i> , 309 Pa. 510 (1932).....	16, 25
<i>Com. ex. rel. Woodruff v. King</i> , 278 Pa. 280 (1923).....	15,25
<i>Grimaud v. Com.</i> , 581 Pa. 398 (2005).....	23
<i>Kremer v. Grant</i> , 529 Pa. 602 (1992).....	26
<i>Pennsylvania Prison Soc. v. Com.</i> , 565 Pa. 526 (2001).....	23
<i>Sernovitz v. Dershaw</i> , 127 A.3d 783 (Pa. 2015).....	8
<i>Stander v. Kelley</i> , 432 Pa. 1 (1968).....	8, 9, 23
<i>Stilp v. Hafer</i> , 553 Pa. 128 (1998).....	8

### Statutes

25 P.S. §1110(b).....	12, 14
25 P.S. §§2600-3591 .....	12

25 P.S. §2621.1 .....	19, 20
25 P.S. §2755 .....	12, 14
25 P.S. §3010(b).....	12, 14, 20
25 P.S. §3041 .....	20
25 Pa.C.S. 3508(a)(1).....	27
25 Pa.C.S. 3508(b)(1) .....	27
42 Pa.C.S. §101 <i>et seq.</i> .....	18
42 Pa.C.S. §762.....	12

**Rules**

Pa.R.A.P. 3309.....	1
---------------------	---

**Constitutional Provisions**

Pa. Const., art. I, sec. 9.....	22
Pa. Const., art. IV, sec. 9.....	22
Pa. Const., art. V, sec. 16(b) .....	4, 21
Pa. Const., art. VII, sec. 14 .....	22
Pa. Const., art. XI sec. 1.....	passim



## STATEMENT OF JURISDICTION

Applicants in this case are the Pennsylvania Senate Majority Caucus, the President Pro Tempore of the Senate, and the Senate Majority Leader (“Applicants”). While the Applicants’ jurisdictional statement properly sets forth the nature of this Court’s jurisdiction, Applicants’ filing is deficient. Pa.R.A.P. 3309 requires that “[a]n application for relief . . . shall show service upon all persons who may be affected thereby . . . .” While the Secretary of the Commonwealth and the Office of Attorney General were served with this Application, and this response is submitted on behalf of both, the sixty-seven county boards of election are also “affected” by any changes or delays relating to the wording of Ballot Question 1, but the docket sheet does not show that service was made on each of the counties. The counties, rather than the Secretary of the Commonwealth or the Office of Attorney General, actually manage the election process, and to the extent that there is any delay occasioned by this litigation—or changing the ballot question—the counties are clearly “affected” by this filing. Because they are “persons who may be affected” by the Application, who have not been served, Applicants have imperfectly invoked the jurisdiction of this Court.

**ORDER OR OTHER DETERMINATION IN QUESTION**

Applicants filed this matter directly with this Court. Accordingly, there is no order or other determination that is being reviewed.

**STATEMENT OF ISSUES TO BE REVIEWED**

I. Whether Applicants' Emergency Application should be denied because of the doctrine of laches?

*Suggested answer:* Yes.

II. Whether Applicants fail to assert a justiciable controversy where the Secretary of the Commonwealth drafted, and the Office of Attorney General approved, the Ballot Question for Joint Resolution 2015-1 in compliance with the Pennsylvania Constitution and the Pennsylvania Election Code, regarding the manner in which proposed amendments are to be submitted to the electorate?

*Suggested answer:* Yes.

III. Whether the Pennsylvania Supreme Court should exercise its plenary powers to revise and strike language from the Ballot Question for Joint Resolution 2015-1, the proposed constitutional amendment amending the mandatory judicial retirement age, at an advanced stage in the amendment process, with fewer than 50 days before the General Primary on April 26, 2016, and at a point on the calendar which would render it impossible for the Secretary of the Commonwealth to comply anew with the publication requirements of Article XI, Section 1 of the Pennsylvania Constitution?

*Suggested answer:* No.

## STATEMENT OF THE CASE

In October 2013, the General Assembly passed Joint Resolution 2013-3, seeking to amend Article V, Section 16(b), which mandates that Pennsylvania jurists retire on December 31 of the year in which the jurist attains age 70. *See Pa. Const. art. V, § 16(b)*. The amendment proposed raising the mandatory retirement age of jurists to age 75. *See Joint Resolution No. 3, 2013, P.L. 1274, H.B. 79*. In accordance with Article XI, Section 1 of the Pennsylvania Constitution, then-Secretary of the Commonwealth Carol Aichele published the proposed constitutional amendment by itself in each of the three months before the 2014 General Election on November 4, 2014, in at least two newspapers in every county in which such newspapers were published. (Kazlauskas Decl. ¶ 3; Marks Decl. ¶¶ 5-7; Cowan Decl. ¶ 3) (Exhibits A, B, C). The advertisements for Joint Resolution 2013-3 cost \$1.28 million, paid for with monies from the General Fund. (Kazlauskas Decl. ¶ 5; Marks Decl. ¶¶ 16-19; Cowan Decl. ¶¶ 4 and 6-9).

A little more than two years later, in November 2015, the General Assembly passed Joint Resolution 2015-1. (Marks Decl. ¶ 9). Joint Resolution 2015-1 proposes an amendment to Article V, Section 16(b) that is identical to the amendment in Joint Resolution 2013-3. *See Joint Resolution No. 1, 2015, P.L. \_\_\_\_\_, H.B. 90*. Because the General Assembly passed the same proposed amendment in two consecutive sessions, the Secretary of the Commonwealth, in

accordance with Article XI, Section 1 of the Pennsylvania Constitution, caused the proposed amendment to be advertised in newspapers across the Commonwealth. (Marks Decl. ¶¶ 9-10 and 15; Cowan Decl. ¶ 5). In addition to the proposed constitutional amendment, the advertisement upon second passage also contains the Ballot Question for Joint Resolution 2015-1 prepared by the Secretary and approved by the Office of Attorney General and the Plain English Statement prepared by the Office of Attorney General. (Marks Decl. ¶ 11-15). The Office of Attorney General approved the Ballot Question and transmitted the Plain English Statement to the Secretary on December 9, 2015. (Marks Decl. ¶ 14).

The first round of advertisements ran in newspapers across the Commonwealth between January 19 and January 23, 2016. (Kazlauskas Decl. ¶ 4; Marks Decl. ¶ 15; Cowan Decl. ¶ 5). The second round of advertisements ran in newspapers between February 19 and February 25, 2016, and the third round of advertisements is scheduled to run in newspapers between March 18 and March 24, 2016. (Kazlauskas Decl. ¶ 4; Marks Decl. ¶ 15; Cowan Decl. ¶ 5). The deadline to approve any changes to the March 2016 publication is March 14, 2016. (Kazlauskas Decl. ¶ 7; Marks Decl. ¶ 20). The total estimated cost to the General Fund for the three-month period is \$1,321,922.98. (Marks Decl. ¶ 16-17 and 19; Cowan Decl. ¶¶ 6-7 and 9).

The Ballot Question will be submitted to the electorate at the 2016 General Primary on April 26, 2016. (Marks Decl. ¶ 11 and 13). Applicants filed this Emergency Application for Extraordinary Relief with this Court on March 6, 2016 and, according to the Proof of Service that was also filed, Applicants served the Secretary, by first-class mail, on the same date. Through their Emergency Application, Applicants ask this Court to exercise plenary jurisdiction over the matter and seek to have the Pennsylvania Supreme Court—in the first instance—revise and strike language from the Ballot Question for Joint Resolution 2015-1.

## SUMMARY OF ARGUMENT

Applicants ask this Court to rewrite Ballot Question 1, which—if passed by the electorate—will increase the mandatory retirement age for Pennsylvania jurists from 70 to 75. They try to do so by improperly invoking the original jurisdiction of this Court and seeking emergency relief. Applicants’ position must be rejected for any number of reasons. *First*, Ballot Question 1 was first published in January of 2016 and was subsequently published in February of 2016. Now, on the eve of the third and final publication, Applicants ask this Court to halt this process and rewrite Ballot Question 1. Applicants have waited too long and their request for extraordinary relief is barred by the doctrine of laches. *Second*, since the Secretary complied with the Pennsylvania Constitution and the relevant provisions of the Election Code, Applicants present no justiciable claim for relief. *Third*, the changes that Applicants desire would deny Pennsylvania voters relevant information relating to the proposed constitutional amendment. *Fourth*, Ballot Question 1 is consistent with previous ballot questions—including one that changed the mandatory retirement age for Pennsylvania jurists. *And, finally*, if Applicants succeed, the Secretary will be unable to place Ballot Question 1 on the fast approaching April 26, 2016 primary ballot. The Emergency Application must be denied.

## ARGUMENT

### **I. Applicants' Emergency Application for Extraordinary Relief should be barred by the doctrine of laches.**

“[L]aches bars relief when there has been a delay arising from the claimant’s failure to exercise due diligence in instituting an action, and such delay has resulted in prejudice to the other party.” *Sernovitz v. Dershaw*, 127 A.3d 783, 789 (Pa. 2015).

Applicants could have pursued relief as early as the first publication of the ballot question in January 2016, or even back in December 2015 when it was approved by the Office of Attorney General. They gained no new information in the intervening two to three months, and whatever the merits of their claims now, they were the same back when the ballot language was first developed and published.

“Whether laches is established requires a factual determination based upon the circumstances of each case.” *Stilp v. Hafer*, 553 Pa. 128, 134, 718 A.2d 290, 293 (1998). For example, in *Stander v. Kelley*, 432 Pa. 1, 246 A.2d 649 (1968), the trial court was presented with a request by a petitioner to enjoin the Secretary of the Commonwealth from printing questions pertaining to Constitutional amendments on the April 23, 1968 ballot. *Id.* Procedurally, the proposed amendments were first advertised in the first week of April 1968, the initial



complaint was filed April 11, 1968, and the election was to be held on April 23, 1968. *Id.* The trial court refused to enter the injunctive relief because of the doctrine of laches. *Id.* The Pennsylvania Supreme Court found that decision was not a clear abuse of discretion or a palpable error of law. *Id.* Subsequently, the petitioner filed an amended pleading seeking permanent injunctive relief, which was denied by the trial court. This Court affirmed the dismissal of the action on substantive grounds and, in a footnote, commented on the timing of the litigation. *See Stander v. Kelley*, 433 Pa. 406, 409 n.1, 250 A.2d 474, 476 n.1 (1969). We submit that this footnote is *dicta*.

Even if that footnote were controlling, however, the fact is that the situation here calls for the application of the doctrine of laches to bar Applicants' extraordinary request. To that end, the ballot language at issue in this case was first published in January of 2016. Applicants did nothing. The ballot language at issue was published again in February of 2016. They did nothing. The ballot language at issue is to be published beginning on March 18, with a final edit date of March 14—and the Applicants finally bring their request. Applicants waited to pursue relief at a point in the amendment process where the Secretary of the Commonwealth has already completed two of the three constitutionally-required advertisements. Additionally, the Commonwealth has already spent over \$1,000,000 in connection with the publishing in 2014 and the estimated cost for

publishing in 2016 is also over \$1,000,000.<sup>1</sup> And, by the time this matter is decided, it likely will be too late for the Secretary to make any changes to the March 2016 publication. And, even if changes could be made to the third publication, that publication would differ from the first and second publications. As a result, significant questions would arise as to whether the ballot question could proceed at all or impact of such a change to those who have already cast absentee ballots.

Applicants offer no explanation for their failure to timely pursue relief from this Court and should not now be permitted to engage the Court at this late stage of the process. By virtue of their delay, Applicants readily contributed to the emergent nature of the relief they seek. The Emergency Application should be denied.

**II. Because the Secretary of the Commonwealth and the Office of Attorney General complied with the Pennsylvania Constitution and the Pennsylvania Election Code, Applicants have failed to assert a justiciable controversy.**

Applicants assert the General Assembly provided a clear directive to the Secretary of the Commonwealth to submit the proposed constitutional amendment to the electors as drafted by the General Assembly. Emergency Appl. for Extraordinary Relief at 8. Applicants further argue that despite the clear directive,

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<sup>1</sup> Two of the three publications have occurred and, thus, monies have already been spent. Moreover, as discussed in more detail below, ballots have already been provided to certain military personnel and likely have been cast.

the Ballot Question prepared by the Secretary and approved by the Office of Attorney General includes terms and phrases not included in Joint Resolution 2015-1. Emergency Appl. for Extraordinary Relief at 8. Applicants' argument is without merit.

Article XI, Section 1 of the Pennsylvania Constitution sets forth the manner in which the Constitution may be amended. Article XI, Section 1 provides:

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, and the Secretary of the Commonwealth shall cause the same 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; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

Pa. Const. art. XI, § 1.

The Commonwealth Court of Pennsylvania in *Bergdoll v. Commonwealth*, 858 A.2d 185 (Pa. Cmwlth. 2004), *aff'd*, 583 Pa. 44, 874 A.2d 1148 (2005),

described in detail the amendment procedure prescribed in Article XI, Section 1 of the Constitution.

Section 1 of Article XI directs that The General Assembly shall prescribe the manner in which the proposed amendments are to be submitted to the qualified electors. Pursuant to this authority, appearing in our Constitution as early as 1874, the General Assembly has directed, in the relevant part of Section 605 of the Election Code, [25 P.S. §§ 2600 – 3591] 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 “each 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).

*Bergdoll*, 858 A.2d at 194-195 (emphasis added).<sup>2</sup>

The petitioners in *Bergdoll* sought a declaration voiding two separate amendments to the Pennsylvania Constitution passed by the electorate at the November 4, 2003 Municipal Election. *Id.* at 194. Petitioners asserted a multitude

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<sup>2</sup> In *Bergdoll* and other cases, challenges to ballot questions were first pressed before a trial court—such as the Commonwealth Court acting in its original jurisdiction. Additionally, in such cases, there were “plaintiffs” or “petitioners” and “defendants” or “respondents.” Applicants have not pursued their challenge in this normal fashion and, given that the Ballot Question was first published in January of 2016, have offered no reason why they did not pursue an action against the Secretary before Commonwealth Court and seek injunctive or mandamus relief. And while this Court certainly enjoys King’s Bench powers, given this, the extraordinary request of original jurisdiction on an emergency basis should not be entertained. *See* 42 Pa.C.S. § 762 (providing extraordinary plenary jurisdiction in matters that are presently before other tribunals).

of violations of State law and federal law, one of which was that only the General Assembly, not the Secretary or the Attorney General, is authorized to draft ballot questions. *Id.* In ruling on that particular claim, the court held that “[i]n 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.**” *Id.* at 195 (emphasis added).

In this case, Joint Resolution 2015-1 provides, in pertinent part, that following second passage of the proposed constitutional amendment, “[t]he Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election . . . which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.” *See* Joint Resolution No. 1, 2015, P.L. \_\_\_, H.B. 90. Applicants read this language as a directive from the General Assembly to the Secretary to submit the proposed amendment to the electorate as drafted by the General Assembly.<sup>3</sup> In fact, this is

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<sup>3</sup> Because of the way the General Assembly drafted the proposed amendment, bracketing 70 and underlining 75, it is simply not possible to use the language from Joint Resolution 2015-1 as a ballot question. Were the Ballot Question to include that language, the Secretary of the Commonwealth, by necessity, would have to explain what the bracket and underline mean since the general public would not be

exactly what the Secretary has done. To that end, the Joint Resolution first asks for the deletion of age 70 from the current Pennsylvania Constitution and, second, asks for the addition of age 75 to Pennsylvania Constitution. The language of Ballot Question No. 1 includes both and, therefore, if the General Assembly's position is correct, the Secretary has complied with the directive of the General Assembly. Applicants' position, by contrast, wants language that only includes part of the proposed amendment—the new age of 75.

Applicants' reading, however, is totally inconsistent with the manner in which the General Assembly has exercised its authority under the Pennsylvania Constitution and is at odds with *Bergdoll*. The General Assembly, pursuant to its authority under Article XI, Section 1 of the Constitution, enacted Sections 605 and 1110(b) of the Election Code, 25 P.S. §§ 2755 and 3010(b), which clearly provide the Secretary of the Commonwealth with the authority to determine the ballot question with approval by the Office of Attorney General. *See also Bergdoll*, 858 A.2d at 194-95. If the members of the General Assembly wanted to reserve the right to draft the ballot question, they could have done so (or would have to do so)

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expected to understand legislative drafting. Besides his authority to do so under the Election Code, the Secretary must change the ballot question as a practical matter.

in the relevant sections of the Election Code.<sup>4</sup> Instead, the General Assembly chose to grant the Secretary the discretion to draft the question.

Moreover, while the language cited by Applicants is arguably a directive, for the reasons stated above, it is not a directive as to how to draft the ballot question for the proposed constitutional amendment. Rather, the more plausible reading in light of the Election Code and case law is that the language is a directive to the Secretary to specify at *which election* the Secretary is to submit the proposed amendment to the qualified electors for their approval. Such a reading is consistent with the language of the Constitution that “such proposed amendment . . . shall be submitted to the qualified electors . . . at **such time** at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe[.]” Pa. Const. art. XI, § 1 (emphasis added); *see also Com. ex. rel. Woodruff v. King*, 278 Pa. 280, 122 A. 279 (1923).

Simply put, Applicants have failed to set forth a justiciable claim for the relief that they seek. The Secretary of the Commonwealth and the Office of Attorney General have complied procedurally with Article XI, Section 1 and the relevant sections of the Pennsylvania Election Code. Further, Applicants do not assert any violation of the Pennsylvania Constitution or the Election Code, nor do

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<sup>4</sup> If the General Assembly wanted to direct the precise language of the Ballot Question, it could have done so in Joint Resolution 2015-1, as it has done from time to time when it authorizes referenda on statewide bond issues or other matters.

they assert that the provisions of the Election Code themselves are unconstitutional. As such, Applicants are not entitled to the relief they seek.

**III. Applicants' version of the Ballot Question would deny voters relevant information regarding the current mandatory retirement age.**

Applicants ask this Court to revise and strike language from the Ballot Question for Joint Resolution 2015-1. Applicants contend that the Ballot Question, as drafted by the Secretary and approved by the Office of Attorney General, includes “confusing, distracting, and misleading” terms and phrases, as well as “superfluous and gratuitous commentary.” Emergency Appl. for Extraordinary Relief at 6 and 9. The result of the revisions, however, would actually deprive voters of relevant information on the ballot itself regarding the mandatory judicial retirement age requirement as it currently exists in the Pennsylvania Constitution.

As this Court explained in *Com. ex. rel. Schnader v. Beamish*, 309 Pa. 510, 164 A. 615 (1932):

The Constitution is the fundamental law of our Commonwealth, and in matters relating to alterations or changes in its provisions, the courts must exercise the most rigid care to preserve to the people the right assured to them by that instrument. No method of amendment can be tolerated which does not provide the electorate adequate opportunity to be fully advised of proposed changes.

*Beamish*, 309 Pa. at 515, 164 A. at 616-617.

Joint Resolution 2015-1 states that justices and judges “shall be retired on the last day of the calendar year in which they attain the age of [70] 75 years.” *See*



Joint Resolution No. 1, 2015, P.L. \_\_\_\_, H.B. 90. Because the number 70 in brackets would be deleted from the Constitution and the number 75 underlined would be added, the *existing* language in the Constitution would be *changed* to 75 *instead of* 70. This is not an amendment where new language is merely being added to the Constitution. For this proposed amendment, the existing text would actually change. As such, it is hard to comprehend how making the electorate fully aware of the change as part of the Ballot Question can be characterized as “confusing, distracting, and misleading.” Amending the Ballot Question in the manner suggested by Applicants would likely leave the voter wondering what the current requirement is—or worse yet, leave the voter with the impression that there is currently no requirement at all.

While there is no directive in Joint resolution 2015-1 regarding the draft of the ballot question, the ballot question implicit in the Joint Resolution is the one formulated by the Secretary of the Commonwealth and approved the Office of Attorney General. That Ballot Question clearly states the legislature’s proposal with respect to the amendment. Therefore, the phrase “instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70” should remain in the Ballot Question.

As for the phrase “known as magisterial district judges,” the term “magisterial district judges” is the nomenclature widely used by the legal

community and the general public to refer to district justices in Pennsylvania. The term “justices of the peace,” even though it remains in the Pennsylvania Constitution, is an archaic term seldom used and not likely understood by the average person. Even the Pennsylvania Judicial Code, despite the language in the Constitution, uses the more common “magisterial district judges.” *See* 42 Pa.C.S. § 101 *et seq.* There is no need for this Court to strike the parenthetical with the phrase “known as magisterial district judges.” It is clear the parenthetical is referencing “justices of the peace.” That being said, if the Court for some reason agrees with Applicants’ assertion that the parenthetical makes it appear as if judges of the courts of common pleas, Superior Court, and Commonwealth Court are not subject to the constitutional change, the appropriate remedy, as opposed to striking the entire parenthetical, would be to simply add a comma between the word “judges” and the word “and.” This would provide Applicants the clarity they are seeking and would not be nearly as offensive to the process as revising the entire Ballot Question. The addition of the comma would be a *de minimis* change that would not substantially alter the information that has already been provided to the electorate through the soon-to-be three advertisements in newspapers across the Commonwealth.

Applicants also contend the phrase “of the Supreme Court” after “justices” gives the appearance that the proposed amendment may impact the United States

Supreme Court, particularly in light of the recent death of Justice Antonin Scalia. Emergency Appl. for Extraordinary Relief at 7. It is hard to reconcile how Applicants can on one hand argue the average voter may not fully understand the distinction between the United States Supreme Court and the Pennsylvania Supreme Court, but on the other hand argue that the average voter does not need to be fully aware of the current judicial mandatory retirement age in Pennsylvania. To Applicants’ concerns though, the Ballot Question begins with “Shall the Pennsylvania Constitution be amended . . . .” That language makes it clear the amendment applies to Pennsylvania jurists.<sup>5</sup>

Applicants argue all of the language they want to strike is more appropriately addressed in the Plain English Statement prepared by the Office of Attorney General, but it is important to remember the Plain English Statement does not appear on the ballot. The ballot for the 2016 General Primary will only contain the Ballot Question. (Marks Decl. ¶ 14). Section 201.1 of the Election Code, 25 P.S. § 2621.1, relating to explanation of the ballot question, requires the Secretary to include the statement in the constitutionally-required newspaper advertisements of the proposed amendment, and requires the county boards of election to include the statement in the notice of the election required by Section 1201 of the Election

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<sup>5</sup> As for the news article that Applicants cite, there is no mention in that article about any mandatory retirement age for Supreme Court Justices of the United States Supreme Court—because there is none—and, indeed, Justice Scalia was 79 when he passed away.

Code, 25 P.S. § 3041, which is published in newspapers between three and 10 days before the election. Section 201.1 also requires the county boards of election to post at least three copies of the plain English statement in or about the voting room but outside the enclosed space. 25 P.S. § 2621.1. The fact that the voter does not have the benefit of the statement while he or she is interacting with the ballot itself lends even more weight to the position that the Ballot Question should be as informative as possible within the confines of the 75-word limitation in the Election Code. *See* 25 P.S. § 3010(b). The Ballot Question at issue is 69 words.

As discussed above, this Court should deny Applicants' request for relief and not alter the Ballot Question for Joint Resolution 2015-1, as drafted by the Secretary of the Commonwealth and approved by the Office of Attorney General.

**IV. The Ballot Question is consistent with previous ballot questions submitted to the electorate where the proposed amendment changes existing language in the Pennsylvania Constitution.**

Most amendment proposals submitted to the electorate either directly or indirectly suggest a contrast with the current state of the Constitution.

Simply stating the provision to be added might be construed as adding a second, inconsistent provision to the Constitution. While principles of statutory and constitutional interpretation would hold that the later-ratified portion controls over the earlier version, where, as here, a proposed amendment would actually strike language from the constitutional text (rather than simply append the new

amendment to the existing Constitution), some measure of comparison is not unwarranted.

Applicants are correct that a comparative description has not been included with each and every ballot question proposing a constitutional amendment. Emergency Appl. for Extraordinary Relief at 10. But they are wrong to the extent they assert or suggest that these comparative descriptions have never been used in ballot questions.

Historically speaking, comparative ballot questions are far from unknown. In just the past twenty years, at least four ballot questions have had some measure of comparative language, including the ballot question which gave rise to the current version of the judicial retirement age provision in Article V, Section 16(b) of the Constitution. When the electorate approved the judicial retirement age amendment in the May 2001 Municipal Primary, Question 2 on the ballot read:

Shall [Article V, section 16 of] the Constitution of Pennsylvania be amended to provide that justices of the Supreme Court, judges and justices of the peace shall be retired on the last day of the calendar year in which they attain the age of 70 years, **rather than on the day they attain the age of 70?**

(Emphasis added).<sup>6</sup>

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<sup>6</sup> Staff Report, Joint State Govt. Comm., Ballot Questions and Proposed Amendments to the Pennsylvania Constitution: A Compilation with Statistics from 1958 to 2006 (May 2007). For the ease of this Court, we have provided a copy of that Report with this submission. (Exhibit D).

Besides the obviously relevant ballot question in May 2001, which Applicants' emergency application makes no mention of, the other three most recent examples are:

- Question 2, November 1997<sup>7</sup>
  - Shall [Article IV, section 9 of] the Pennsylvania Constitution be amended to require a unanimous recommendation of the board of pardons before the Governor can pardon or commute the sentence of an individual sentenced in a criminal case to death or life imprisonment, to require **only** a majority vote of the Senate to approve the Governor's appointments to the board, **and to substitute a crime victim for an attorney and a corrections expert for a penologist as board members?** (Emphasis added)
- Question 3, November 1997<sup>8</sup>
  - Shall [Article VII, section 14 of] the Pennsylvania Constitution be amended to require the enactment of legislation permitting absentee voting by qualified electors who at the time of an election may be absent from the municipality where they reside because their duties, occupation or business require them to be elsewhere, **which would change the current law permitting absentee voting by such qualified electors only when they are absent from the entire county where they reside?** (Emphasis added)
- Question 1, November 2003<sup>9</sup>
  - Shall [Article I, section 9 of] the Pennsylvania Constitution be amended to provide that a person accused of a crime has the right to be "confronted with the witnesses against him," **instead of the right to "meet the witnesses face to face"?** (Emphasis added)

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

The ballot questions cited by Applicants as examples can be distinguished from the proposed amendment in Joint Resolution 2015-1. The proposed amendment in *Grimaud v. Com.*, 581 Pa. 398, 865 A.2d 835 (2005), merely added new text to the existing Constitution, so there was no need for a comparative ballot question. See Joint Resolution No. 1, 1998, P.L. 1327, H.B. 1520. The same is true for the amendment and ballot question cited in *Com. v. Tharp*, 562 Pa. 231, 754 A.2d 1251 (2000). See Joint Resolution No. 2, 1998, P.L. 1328, S.B. 555. Applicants cite to the ballot question in *Pennsylvania Prison Soc. v. Com.*, 565 Pa. 526, 776 A.2d 971 (2001), for the proposition that the current law is not mentioned; however, as discussed *supra*, the question is nonetheless clearly an example of a comparative question. Finally, Applicants cite to the ballot question in *Stander*, 433 Pa. at 417, 250 A.2d at 480 to support their proposition. The amendment in *Stander* though was not adopted pursuant to the provisions of the Constitution at the time, but was adopted pursuant to a Constitutional Convention. *Id.* at 416, 479. That process does not apply to the current case in which the proposed amendment was adopted pursuant to the provisions of Article XI, Section 1.

Based on the information above, the Secretary of the Commonwealth correctly drafted a comparative Ballot Question for Joint Resolution 2015-1, which is consistent with established precedent regarding ballot questions submitted to the

electorate in the recent past. Indeed, the last Ballot Question dealing with retirement of Pennsylvania jurists included the “of the Supreme Court” language and also comparative language to notify the electorate of the current standard and the proposed new standard. The present Ballot Question is not materially different from this previous question—to which persons in the shoes of the current Applicants made no objection.<sup>10</sup>

**V. If this Court were to revise the language of the Ballot Question, it would be impossible for the Secretary of the Commonwealth to comply anew with the publication requirements of Article XI, Section 1 of the Pennsylvania Constitution.**

Applicants ask this Court to revise the Ballot Question for Joint Resolution 2015-1, but make no mention of how that revision will affect the Secretary of the Commonwealth in carrying out his duties under Article XI, Section 1 of the Constitution, related to advertising the proposed amendment.

As previously discussed, upon second passage of a proposed amendment, the Secretary of the Commonwealth must publish the proposed amendment in at least two newspapers in every county which said newspapers are published in each of the three months prior to being submitted to the electorate in the form of a ballot

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<sup>10</sup> What Applicants apparently want is the bracketed 70 and the underlined 75 in Ballot Question 1. While some lawyers may understand this to be a strike-out and replacement, average voters may not. The language in the Ballot Question merely makes this point clear.



question. *See* Pa. Const. art. XI, § 1; *see also Beamish*, 309 Pa. at 515, 164 A. at 616.

After the General Assembly passed Joint Resolution 2015-1 in November 2015, and the Office of Attorney General approved the Ballot Question in December 2015, the first round of advertisements for the Joint Resolution ran in newspapers across the Commonwealth between January 19 and January 23, 2016. The second round of advertisements ran in newspapers between February 19 and February 25, 2016, and the third round of advertisements will run in newspapers between March 18 and March 24, 2016. The deadline to approve any changes to the March 2016 publication is March 14, 2016. These advertisements include the Ballot Question as drafted by the Secretary and approved by the Office of Attorney General. The purpose of the publications after second passage is to “advise the electors . . . so they may vote intelligently . . . .” *King*, 278 Pa. at 283, 122 A. at 280.

At this point in the amendment process, and by the time this Court issues even an expedited decision in this matter, the electors will likely have had the benefit of being informed of the proposed amendment, the Ballot Question and the plain English statement on three occasions. The total cost for the 2016 publications is estimated to be \$1,321,922.98. If this Court revises the Ballot Question, with less than 50 days to go before the 2016 General Primary, the

Secretary does not have enough time to re-run the advertisements and comply with Article XI, Section 1 of the Constitution, nor does the Department of State have funds available to pay for any additional advertising. Even if this Court would direct the Secretary to move the Ballot Question to the November 2016 General Election ballot, the Secretary would still have to comply with Article XI, Section 1, which would result in significant additional costs.<sup>11</sup> This Court has previously held that “failure [of the Secretary] to carry out what is mandated [under Article XI] infects the amendment process with an incurable defect.” *Kremer v. Grant*, 529 Pa. 602, 612, 606 A.2d 433, 438 (1992). And while the constitutional requirement may be to advertise only the proposed amendment, which the published advertisements clearly do, the Court cannot ignore that the Ballot Question has been part and parcel of those advertisements.

In addition, under Act 189 of 2012, known as the Uniform Military and Overseas Voters Act (UMOVA), the county boards of election are required to transmit absentee ballots and balloting materials to all covered uniformed-service and overseas voters in extremely remote and isolated areas who submitted an

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<sup>11</sup> The General Assembly recently passed, for the first time, a proposed constitutional amendment to reduce the size of the State House. *See* Joint Resolution No. 1, 2016, P.L. \_\_\_\_, H.B. 153. The Secretary is required to advertise this proposed amendment in each of three months before the November 2016 General Election. The Secretary cannot, however, combine the advertisements for Joint Resolution 2015-1 with Joint Resolution 2016-1 because they are at different stages of the process and, thus, require materially different information. We note this even though Applicants have pressed no such issue.

application no later than 50 days before the primary election. *See* 25 Pa.C.S. § 3508(b)(1). UMOVA also requires county boards of election to transmit absentee ballots and balloting materials to all other covered uniformed-service and overseas voters who submitted an application no later than 45 days before the primary election. *See* 25 Pa.C.S. § 3508(a)(1).

In 2016, the deadline for county boards of elections to send absentee ballots to uniformed service and overseas voters in extremely remote and isolated areas was March 7, 2016, and the deadline to send absentee ballots to all other covered uniformed-service and overseas voters is March 11, 2016. (Marks Decl. ¶ 21).

Even though there are still statewide objection cases pending before the courts which could potentially impact the final ballot, it is important to note that 625 uniformed-service and overseas absentee ballots were sent out already by the county boards of election as of March 9, 2016 and an additional 1,692 uniformed-service and overseas absentee ballots have been requested and must be sent out no later than March 11, 2016. (Marks Decl. ¶ 22). These are uniformed-service and overseas voters who already face challenges in terms of the timely return of absentee ballots. Any further delays or changes to the ballot have a particular impact on them.

If this Court were to grant Applicants' relief, it would be impossible for the Secretary to comply anew with the publication requirements of Article XI, Section

1, and the change may impact the election processes, which is well under way.

Therefore, Applicants' emergency application should be denied.

# Exhibit I

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

IN RE:

PROPOSED CONSTITUTIONAL  
AMENDMENT 1 BALLOT QUESTION

No. 29 MM 2016

**ORDER**

**PER CURIAM**

**AND NOW**, this \_\_\_\_ day of March, 2016, it is hereby **ORDERED** that the Emergency Application for Extraordinary Relief is **GRANTED**. Having determined that:

1. The Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, Senate Majority Leader Jake Corman, Secretary of the Commonwealth Pedro Cortés, the Pennsylvania Department of State, and the Office of Attorney General of Pennsylvania (collectively, the “Parties”) have agreed to a stipulated resolution of the above matter; and,
2. As part of this stipulated resolution, the Parties have agreed to the entry of this Order.

Accordingly, it is hereby **ORDERED** that:

- a. The Ballot Question for Proposed Constitutional Amendment 1

shall be revised to state, as agreed to by the parties:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?

- b. The Ballot Question for Proposed Constitutional Amendment 1,

as revised, shall appear on the ballot for the November 8, 2016 general election, instead of the April 26, 2016 primary election.

Because the November 8, 2016 general election is the first

which would permit the full cycle of three monthly

advertisements, including the revised language, it is the first

election under Joint Resolution 2015-1 that meets the

requirements of and is in conformance with Article XI, Section

1 of the Pennsylvania Constitution and which occurs at least

three months after the proposed amendment was passed by the

General Assembly.

- c. To ensure compliance with Article XI, Section 1 of the

Pennsylvania Constitution, the Secretary of the Commonwealth

shall publish the Ballot Question for Proposed Constitutional

Amendment 1, as revised, along with the proposed amendment

and the plain English statement previously prepared by the Office of Attorney General, in each of the three months prior to the November 8, 2016 general election.

- d. The Secretary of the Commonwealth shall remove the Ballot Question for Proposed Constitutional Amendment 1 from the ballot certification for the April 26, 2016 primary election, and direct the county boards of election to remove the Ballot Question for Proposed Constitutional Amendment 1 from the ballot.

3. The proposed resolution satisfies all relevant Constitutional and statutory requirements and is consistent with the legislation creating the Ballot Question.



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

IN RE:

No. 29 MM 2016

PROPOSED CONSTITUTIONAL  
AMENDMENT 1 BALLOT QUESTION

**JOINT APPLICATION FOR EXTRAORDINARY RELIEF AND  
APPROVE PARTIES' STIPULATED RESOLUTION**

The Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, Senate Majority Leader Jake Corman, Secretary of the Commonwealth Pedro Cortés, the Pennsylvania Department of State, and the Office of Attorney General of Pennsylvania (collectively, the “Parties”) respectfully move pursuant to Pa.R.A.P. 123 for this Court to grant the Emergency Application for Extraordinary Relief filed in the above matter and approve the Parties’ stipulated resolution set forth below concerning the Ballot Question for Proposed Constitutional Amendment 1 and, in support, aver as follows:

1. In October 2013, the General Assembly passed Joint Resolution 2013-3, seeking to amend Article V, Section 16(b) of the Pennsylvania Constitution to require that justices, judges and justices of the peace (known

as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years.

2. In accordance with Article XI, Section 1 of the Pennsylvania Constitution, the Secretary of the Commonwealth published the proposed amendment in each of the three months before the November 4, 2014 general election, in at least two newspapers in every county in which such newspapers were published.

3. In November 2015, the next session of the General Assembly passed Joint Resolution 2015-1, which proposes an amendment to Article V, Section 16(b) of the Pennsylvania Constitution that is the same as the amendment advertised pursuant to Joint Resolution 2013-3.

4. Joint Resolution 2015-1 directs the Secretary of the Commonwealth, upon second passage of the proposed constitutional amendment, to submit the proposed constitutional amendment to the qualified electors of the Commonwealth at the “first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.”

5. Pursuant to sections 201.1, 605 and 1110(b) of the Election Code, 25 P.S. §§ 2621.1, 2755, 3010(b), the Secretary of the Commonwealth prepared a Ballot Question for Proposed Constitutional Amendment 1, which was approved by the Office of Attorney General, and advertised, along with the proposed amendment and the plain English statement prepared by the Office of Attorney General, in each of the three months before the April 26, 2016 primary election, in at least two newspapers in every county in which such newspapers are published.

6. On March 6, 2016, the Pennsylvania Senate Majority Caucus, Senate President Pro Tempore Joe Scarnati, and Senate Majority Leader Jake Corman filed an Emergency Application for Extraordinary Relief, which sought to strike specific terms and phrases from the Ballot Question for Proposed Constitutional Amendment 1 in advance of the April 26, 2016 primary election.

7. On March 11, 2016, Secretary of the Commonwealth Pedro Cortés, the Pennsylvania Department of State, and the Office of Attorney General filed an Answer in Opposition to the Emergency Application for Extraordinary Relief.

8. With the Emergency Application for Extraordinary Relief still pending before this Court, the Parties, after meaningful consultation and discussion,

are desirous of expeditiously resolving the issues raised in the Emergency Application and the Answer in Opposition and believe resolution of these matters by stipulated agreement under the terms set forth below is in the best interests of all Parties and the electors of the Commonwealth.

9. Further, the Parties believe that their proposed resolution satisfies all relevant Constitutional and statutory requirements and is consistent with the legislation creating the Ballot Question.

10. To this end, the Parties jointly request that this Court exercise its equitable power and grant, on an expedited basis, the Emergency Application for Extraordinary Relief and enter an order approving the following stipulated terms:

- a. Pursuant to the agreed-upon revision by the Parties of the Ballot Question for Proposed Constitutional Amendment 1, the Ballot Question for Proposed Constitutional Amendment 1 shall state:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?

- b. The Ballot Question for Proposed Constitutional Amendment 1, as revised, shall appear on the ballot for the November 8, 2016 general election, instead of the April 26, 2016 primary election.

Because the November 8, 2016 general election is the first

which would permit the full cycle of three monthly advertisements, including the revised language, it is the first election under Joint Resolution 2015-1 that meets the requirements of and is in conformance with Article XI, Section 1 of the Pennsylvania Constitution and which occurs at least three months after the proposed amendment was passed by the General Assembly.

- c. To ensure compliance with Article XI, Section 1 of the Pennsylvania Constitution, the Secretary of the Commonwealth shall publish the Ballot Question for Proposed Constitutional Amendment 1, as revised, along with the proposed amendment and the plain English statement previously prepared by the Office of Attorney General, in each of the three months prior to the November 8, 2016 general election.
- d. The Secretary of the Commonwealth shall remove the Ballot Question for Proposed Constitutional Amendment 1 from the ballot certification for the April 26, 2016 primary election, and direct the county boards of election to remove the Ballot Question for Proposed Constitutional Amendment 1 from the ballot.

11. Given the proximity of the April 26, 2016 primary election, it is critical that the Emergency Application for Extraordinary Relief be resolved as soon as possible so the county boards of election can timely and accurately prepare the ballots for the election.

WHEREFORE, the Parties jointly request that this Court grant, on an expedited basis, the Emergency Application for Extraordinary Relief and enter an order approving the terms of the Parties' stipulated resolution.

Respectfully submitted,

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*Counsel for the Pennsylvania  
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General*

# Exhibit J



## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE RESOLUTION

No. 783 Session of  
2015

INTRODUCED BY HARPER AND MARSICO, APRIL 4, 2016

AS RE-REPORTED FROM COMMITTEE ON RULES, HOUSE OF  
REPRESENTATIVES, AS AMENDED, APRIL 5, 2016

## A CONCURRENT RESOLUTION

1 Further providing for submission to the electorate of a  
2 constitutional amendment on retirement for justices, judges  
3 and justices of the peace.

4 WHEREAS, Pursuant to Article XI of the Constitution of  
5 Pennsylvania, the General Assembly has proposed an amendment to  
6 section 16(b) of Article V of the Constitution of Pennsylvania  
7 providing that justices, judges and justices of the peace be  
8 retired on the last day of the calendar year in which they  
9 attain the age of 75; and

10 WHEREAS, In October 2013, a majority of both houses of the  
11 General Assembly passed Joint Resolution No. 2013-JR3 and  
12 presented it to the Secretary of the Commonwealth, who published  
13 it pursuant to section 1 of Article XI of the Constitution of  
14 Pennsylvania; and

15 WHEREAS, In November 2015, in the General Assembly next  
16 afterwards chosen, a majority of both houses of the General  
17 Assembly passed Joint Resolution No. 2015-JR1 and presented it  
18 to the secretary; and

1       WHEREAS, Pursuant to ~~section~~ SECTIONS 201(c), 201.1 AND 605 <--  
2 of the act of June 3, 1937 (P.L.1333, No.320), known as the  
3 Pennsylvania Election Code, the secretary prepared a ballot  
4 question as Proposed Constitutional Amendment 1, which was  
5 approved by the Attorney General, and published along with the  
6 proposed amendment and the plain English statement prepared by  
7 the Office of Attorney General pursuant to section 1 of Article  
8 XI of the Constitution of Pennsylvania; and

9       WHEREAS, Proposed Constitutional Amendment 1 is scheduled to  
10 appear on the ballot for primary election on April 26, 2016; and

11       ~~WHEREAS, The General Assembly believes that the ballot~~ <--  
12 ~~question as prepared by the secretary contains unnecessary~~  
13 ~~language and consequently may be confusing to electors; and~~

14       ~~WHEREAS, On March 6, 2016, the General Assembly filed an~~  
15 ~~application asking the Pennsylvania Supreme Court to order that~~  
16 ~~the ballot question be amended; and~~

17       ~~WHEREAS, On March 23, 2016, the Supreme Court denied approval~~  
18 ~~of a stipulated resolution between the parties, noting that~~  
19 ~~"such denial shall not be construed as condoning or constraining~~  
20 ~~any future legislative or executive action by the parties"; and~~

21       WHEREAS, The General Assembly has prepared a revised ballot  
22 question for Proposed Constitutional Amendment 1 which ~~avoids~~ <--  
23 ~~confusion and~~, IN THE VIEW OF THE GENERAL ASSEMBLY, more <--  
24 accurately reflects the language of Joint Resolution No. 2013-  
25 JR3 and Joint Resolution No. 2015-JR1; and

26       WHEREAS, There is insufficient time to publish the revised  
27 ballot question before primary election on April 26, 2016, as  
28 required by section 1 of Article XI of the Constitution of  
29 Pennsylvania; and

30       WHEREAS, Under section 802 of the Pennsylvania Election Code,

1 only persons registered and enrolled as members of a political  
2 party are entitled to vote in any primary election of that  
3 party; and

4 WHEREAS, More than 1 million Pennsylvania registered voters  
5 are not registered and enrolled as members of one of the two  
6 major political parties and therefore are not entitled to vote  
7 in the primary election of either of those political parties;  
8 and

9 WHEREAS, Many of those registered voters may be unaware of  
10 their right to vote on Proposed Constitutional Amendment 1  
11 during the primary election on April 26, 2016, and consequently  
12 may not cast a vote on the ballot question; and

13 WHEREAS, Proposed Constitutional Amendment 1 is a matter of  
14 Statewide importance to all citizens of the Commonwealth, not  
15 merely registered members of the two major political parties;  
16 and

17 WHEREAS, If Proposed Constitutional Amendment 1 were to be  
18 placed on the ballot for the general election on November 8,  
19 2016, the secretary will have sufficient time to publish the  
20 revised ballot question as required under the Constitution of  
21 Pennsylvania and registered voters who are not members of one of  
22 the two major political parties will be more likely to  
23 participate in the decision to approve or disapprove Proposed  
24 Constitutional Amendment 1; and

25 WHEREAS, Under section 1 of Article XI of the Constitution of  
26 Pennsylvania, it is within the authority of the General Assembly  
27 to prescribe the manner and time at which proposed amendments to  
28 the Constitution are submitted to the qualified electors of the  
29 Commonwealth for approval; therefore be it

30 RESOLVED (the Senate concurring), That ~~the General Assembly~~ <--

1 ~~direct~~ the Secretary of the Commonwealth ~~to~~ remove the ballot <--  
2 question for Proposed Constitutional Amendment 1 from the ballot  
3 certification for the primary election on April 26, 2016; and be  
4 it further

5 RESOLVED, That ~~the General Assembly direct the secretary to~~ <--  
6 ~~direct~~ the county boards of election ~~to~~ remove, to the extent <--  
7 possible, the ballot question for Proposed Constitutional  
8 Amendment 1 from the ballot; and be it further

9 RESOLVED, That ~~the General Assembly direct~~ the secretary ~~to~~ <--  
10 disregard any vote on Proposed Constitutional Amendment 1 in the  
11 primary election on April 26, 2016, and ~~prohibit the secretary~~ <--  
12 ~~from making~~ THE SECRETARY NOT MAKE a tally of votes cast on <--  
13 Proposed Constitutional Amendment 1; and be it further

14 RESOLVED, That the General Assembly direct the secretary to  
15 place Proposed Constitutional Amendment 1 on the ballot for the  
16 general election on November 8, 2016, in the following form:

17 Shall the Pennsylvania Constitution be amended to require  
18 that justices of the Supreme Court, judges, and  
19 magisterial district judges be retired on the last day of  
20 the calendar year in which they attain the age of 75  
21 years?;

22 and be it further

23 RESOLVED, That, to ensure compliance with section 1 of  
24 Article XI of the Constitution of Pennsylvania, the General  
25 Assembly direct the secretary to publish the ballot question for  
26 Proposed Constitutional Amendment 1 as revised along with the  
27 proposed amendment and the plain English statement previously  
28 prepared by the Office of Attorney General, in each of the three  
29 months prior to the general election on November 8, 2016; and be  
30 it further

1       RESOLVED, That, upon passage by a majority of both houses of  
2 the General Assembly, this concurrent resolution be transmitted  
3 to the Secretary of the Commonwealth for implementation.

# Exhibit K

[Home](#) / [Bill and Amendments](#) / [Bill Information](#)

## Bill Information - History

### House Resolution 783; Regular Session 2015-2016

**Sponsors:** [HARPER](#) and [MARSICO](#)

**Printer's No.(PN):** [3091\\*](#) , [3071](#)

**Short Title:** A Concurrent Resolution further providing for submission to the electorate of a constitutional amendment on retirement for justices, judges and justices of the peace.

**Actions:**

[PN 3071](#) Referred to [JUDICIARY](#), April 4, 2016  
 Reported as committed, [April 5, 2016](#)  
 Re-committed to [RULES](#), April 5, 2016

[PN 3091](#) Re-reported as amended, [April 5, 2016](#)  
 Adopted, April 6, 2016 ([110-77](#))  
 (Remarks see House Journal Page ), April 6, 2016  
 In the Senate  
 Referred to [RULES AND EXECUTIVE NOMINATIONS](#), April 7, 2016  
 Reported as committed, [April 11, 2016](#)  
 Adopted, April 11, 2016 ([32-17](#))  
 (Remarks see Senate Journal Page ), April 11, 2016  
 Signed in House, April 12, 2016  
 Signed in Senate, April 12, 2016

\* denotes current Printer's Number

[? How to Read a Bill](#) [? About PDF Documents](#)

# Exhibit L





### 2016 Presidential Primary

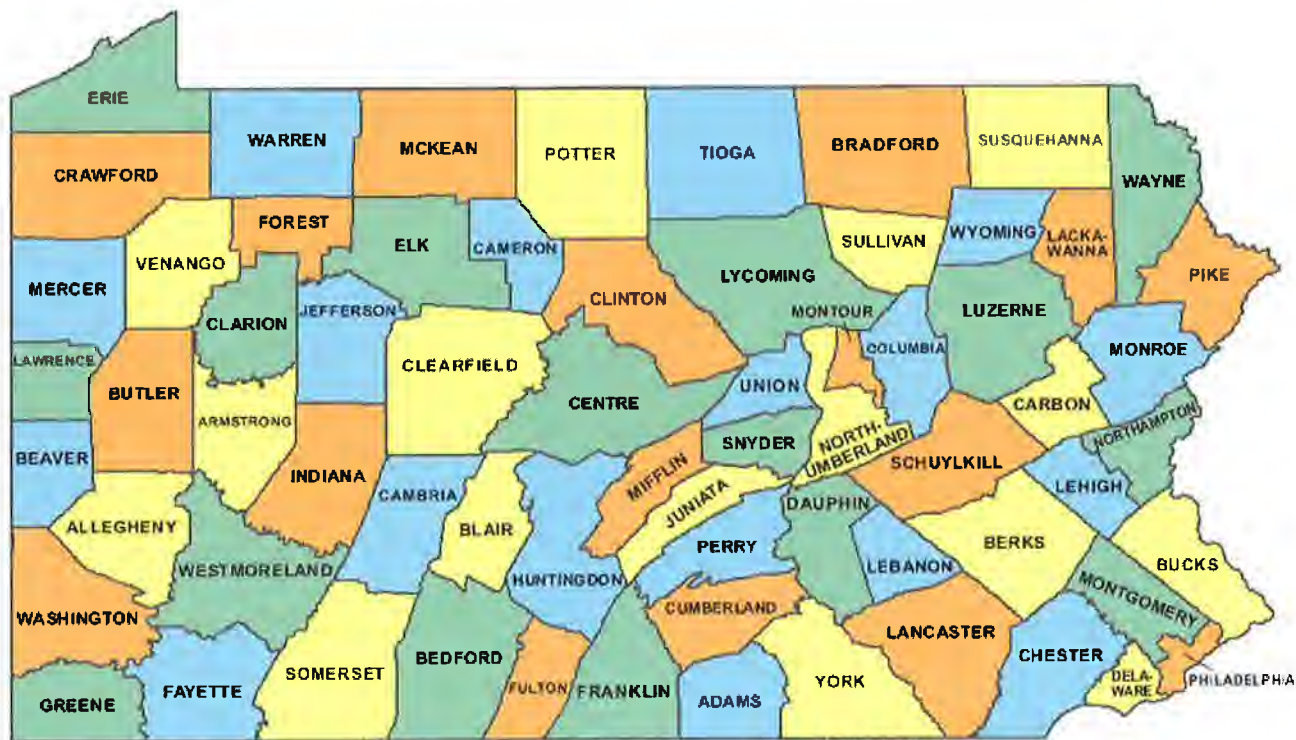
Tuesday, April 26, 2016

Official Returns

### Statewide

9,157 Out of 9,157 Districts (100.00%) Reporting Statewide

100.00%



Filter Options

President of the United States

County Breakdown

President of the United States

Democratic

Republican

United States Senator

CLINTON, HILLARY  
55.61%

CRUZ, RAFAEL EDWARD  
21.67%

Attorney General

935,107 Votes  
SANDERS, BERNARD

345,506 Votes  
RUBIO, MARCO A

<input type="checkbox"/> Auditor General	<b>731,881 Votes</b>	<b>11,954 Votes</b>
<input type="checkbox"/> State Treasurer	DE LA FUENTE, ROQUE ROCKY <b>0.86%</b>	BUSH, JOHN ELLIS <b>0.60%</b>
<input type="checkbox"/> Ballot Questions	<b>14,439 Votes</b>	<b>9,577 Votes</b>
		CARSON, BENJAMIN SOLOMON <b>0.93%</b>
		<b>14,842 Votes</b>
		KASICH, JOHN R <b>19.44%</b>
		<b>310,003 Votes</b>
		TRUMP, DONALD J <b>56.61%</b>
		<b>902,593 Votes</b>

[Back to Top](#)

United States Senator

County Breakdown

On April 19, 2016, the Pennsylvania Supreme Court reinstated Democratic U.S. Senate candidate Joseph Vodvarka to the ballot. Because this ruling came so close to the April 26, 2016, Primary Election, the reporting of complete vote totals for Mr. Vodvarka will be delayed as some counties will have to manually tally his votes.

Democratic

Republican

VODVARKA, JOSEPH JOHN

TOOMEY, PATRICK J

**5.45%****100.00%****85,837 Votes****1,342,941 Votes**

FETTERMAN, JOHN K

**19.49%****307,090 Votes**

SESTAK, JOSEPH A. JR.

**32.57%****513,221 Votes**

MCGINTY, KATIE

**42.50%**

**669,774 Votes**

[Back to Top](#)

**Attorney General**

**County Breakdown**

**Democratic**

**Republican**

MORGANELLI, JOHN  
**16.22%**

PETERS, JOSEPH C.  
**36.18%**

**250,097 Votes**

**464,491 Votes**

SHAPIRO, JOSHUA D  
**47.03%**

RAFFERTY, JOHN C JR  
**63.82%**

**725,168 Votes**

**819,510 Votes**

ZAPPALA, STEPHEN A II  
**36.74%**

**566,501 Votes**

[Back to Top](#)

**Auditor General**

**County Breakdown**

**Democratic**

**Republican**

DEPASQUALE, EUGENE A  
**100.00%**

BROWN, JOHN A  
**100.00%**

**1,307,226 Votes**

**1,203,209 Votes**

[Back to Top](#)

**State Treasurer**

**County Breakdown**

**Democratic**

**Republican**

TORSELLA, JOSEPH M.

VOIT, OTTO W. III

**100.00%****100.00%****1,300,295 Votes****1,191,619 Votes**[Back to Top](#)**Ballot Questions**

On April 20, 2016, the Commonwealth Court of Pennsylvania ruled that House Resolution 783, postponing the vote on Ballot Question 1, a proposed constitutional amendment relating to the mandatory judicial retirement age, will go into effect, and that the question should not appear on the Primary Election ballot. Because this ruling came so close to the April 26, 2016, Primary Election, it was not possible to remove it from the ballot. Any votes cast on Ballot Question 1 will not be counted/certified by the Secretary of the Commonwealth.

**PROPOSED CONSTITUTIONAL AMENDMENT 1 AMENDING THE  
MANDATORY JUDICIAL RETIREMENT AGE**

**49.01%****50.99%****Votes: Yes: 1,173,828 No: 1,221,422**

**PROPOSED CONSTITUTIONAL AMENDMENT 2 ABOLITION OF THE  
PHILADELPHIA TRAFFIC COURT**

**59.76%****40.24%****Votes: Yes: 1,469,641 No: 989,492**[Back to Top](#)**Last Updated Time: Jul 20, 2016 3:17:43 PM**

# Exhibit M

## AFFIDAVIT

I, Jonathan Marks, do hereby state and verify that the statements made below are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities and am making this statement under penalty of perjury.

1. I am employed by the Department of State (Department) as the Commissioner of the Bureau of Commissions, Elections and Legislation (BCEL). As part of my duties, I supervise the administration of the Department's duties relating to elections. Under my authority as Commissioner, I am responsible for managing the process by which the Department meets the constitutional requirements regarding the publication of proposed constitutional amendments.
2. Pursuant to Article XI, § 1 of the Pennsylvania Constitution, after the General Assembly passes a proposed constitutional amendment, the Secretary of the Commonwealth shall cause the proposed constitutional amendment to be published in at least two newspapers in every county in which such newspapers are published in each of the three months prior to the next general election. If the next General Assembly also passes the proposed constitutional amendment, the Secretary of the Commonwealth shall again cause the proposed constitutional amendment to be published in at least two newspapers in every county in which such newspapers are published at least three months after the General Assembly's vote and prior to being submitted to the qualified electors in the form of a ballot question.
3. Pursuant to the requirements of 25 P.S. § 2621.1, whenever a proposed constitutional amendment shall be submitted to the qualified electors, the Attorney General shall prepare a statement in plain English which indicates the purpose, limitations and effects of the ballot question on the people of the Commonwealth. The Secretary of the Commonwealth is required to include such statement in the publications required by Article XI, § 1 of the Pennsylvania Constitution and certify such statement to the county boards of elections.
4. The Department contracts with Mid-Atlantic Newspaper Services, Inc. (MANSI) Media for the provision of services related to the publication of proposed constitutional amendments.
5. In accordance with the Commonwealth Court's order dated April 20, 2016, the Secretary of the Commonwealth removed Proposed Constitutional Amendment 1 from the official ballot certification and efforts were made at the polling places via a notice to inform voters of its status. A copy of the email to the counties with the amended certification and sample polling place notice is attached hereto as Exhibit A.
6. House Resolution 783 of 2016 (H.R. 783), a concurrent resolution adopted by the majorities in both houses of the General Assembly on April 12, 2016, directed the Secretary of the Commonwealth to remove the ballot question for Proposed Constitutional

Amendment 1 from the General Primary ballot on April 26, 2016, and to place a revised version of the ballot question on the General Election ballot on November 8, 2016.

7. In order for the revised Proposed Constitutional Amendment 1 to be properly placed on the November 2016 ballot pursuant to the requirements of Article XI, § 1 of the Pennsylvania Constitution, the first round of advertisements must be published no later than August 8, 2016.
8. In order to meet that timeframe, advertising space must be reserved in newspapers. The text of the advertisements, including the language of the ballot question, must be provided to MANSI no later than July 27, 2016.
9. Given the uncertainty due to the nature and timing of this litigation, as well as the impending publication deadlines, the Secretary of the Commonwealth voluntarily changed the form of the ballot question to conform to the text of H.R. 783 and intends to submit it to the Office of the Attorney General for approval under the terms of 25 P.S. § 2621.1.

5/13/2016  
Date

  
Jonathan Marks, Commissioner  
Bureau of Commissions, Elections  
and Legislation  
Department of State

# Exhibit N



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Senator Jay Costa, Pa. 43rd District,	:	
Senator Daylin Leach, Pa. 17th District,	:	
in their Official Capacities, and	:	
Senator Christine M. Tartaglione, Pa.	:	
2nd District, in her Official Capacity	:	
and individually on behalf of qualified	:	
electors in the Commonwealth of	:	
Pennsylvania,	:	
Petitioners	:	
v.		
	:	No. 251 M.D. 2016
	:	Argued: June 9, 2016
Secretary Pedro A. Cortes, Senator	:	
Joseph B. Scarnati, Pa. 25th District,	:	
and Senator Jacob Corman III,	:	
Pa. 34th District, each in their	:	
Official Capacities,	:	
Respondents	:	

**BEFORE: HONORABLE P. KEVIN BROBSON, Judge**  
**HONORABLE ANNE E. COVEY, Judge**  
**HONORABLE DAN PELLEGRINI, Senior Judge**

**OPINION BY JUDGE BROBSON                      FILED: July 6, 2016**

Before the Court are cross-applications for summary relief filed by the Honorable Jay Costa, the Honorable Daylin Leach, and the Honorable Christine M. Tartaglione,<sup>1</sup> duly-elected members of the Pennsylvania Senate (Petitioners), and by the Honorable Joseph B. Scarnati and the Honorable Jacob Corman III, also duly-elected members of the Pennsylvania Senate (Respondents). The

---

<sup>1</sup> Senator Tartaglione brings this action not only in her official capacity but also as an individual.

cross-applications are filed in response to Petitioners' amended petition for review in the nature of a complaint for declaratory and equitable relief, challenging House Resolution 783 of 2016 (H.R. 783).<sup>2</sup> This case involves the extent of the General Assembly's powers under Article XI, section 1 of the Pennsylvania Constitution, which provides, in relevant part:

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, and the Secretary of the Commonwealth shall cause the same 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; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years. When two or more amendments shall be submitted they shall be voted upon separately.

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<sup>2</sup> Although Petitioners filed the amended petition for review after the filing of the cross-applications for summary relief, the parties have had the opportunity to address the amended petition for review in their filings.

At issue is whether and, if so, when the General Assembly may, by concurrent resolution, withdraw a proposed constitutional amendment placed on a primary election ballot and place the same proposed constitutional amendment on the next general election ballot. We now deny Petitioners' application for summary relief, grant Respondents' application for summary relief, and enter judgment in favor of Respondents.

## I. BACKGROUND

H.R. 783 is a concurrent resolution adopted by majority votes in both the Pennsylvania House of Representatives, on April 6, 2016, and the Pennsylvania Senate, on April 11, 2016. Among other things, H.R. 783 purports to remove "Proposed Constitutional Amendment 1" from the April 26, 2016 General Primary Election (2016 Primary Election) ballot (April 2016 Ballot) and place the same on the November 8, 2016 General Election (2016 General Election) ballot (November 2016 Ballot). Proposed Constitutional Amendment 1, if approved by electors, would amend section 16(b) of Article V of the Pennsylvania Constitution to provide that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75.<sup>3</sup>

This case does not concern the legal validity of the processes and procedures followed by the General Assembly, the Secretary, and the Attorney General of Pennsylvania in securing Proposed Constitutional Amendment 1's place on the April 2016 Ballot.<sup>4</sup> Instead, Petitioners commenced this action in this

---

<sup>3</sup> Section 16(b) of Article V of the Pennsylvania Constitution currently provides that Pennsylvania justices, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 70.

<sup>4</sup> There is no dispute that the constitutional and statutory requirements for placing the proposed constitutional amendment on the April 2016 Ballot had been met prior to the General (Footnote continued on next page...)

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**(continued...)**

Assembly's passage of H.R. 783. As required by Article XI, section 1 of the Pennsylvania Constitution, the House of Representatives, on June 28, 2013, approved a resolution placing a ballot question before the qualified electors. The ballot question proposed an amendment to Article V, section 16(b) of the Pennsylvania Constitution, which would raise the mandatory judicial retirement age to 75. See Pa. House Bill 79 Session of 2013 (H.B. 79). On October 15, 2013, the Senate approved the joint resolution, and, on October 22, 2013, the joint resolution was filed with the Secretary as "Pamphlet Law Resolution No. 3." See Legis. Hist. of H.B. 79. Thereafter, as directed by H.B. 79 and as mandated by Article XI, section 1, the Secretary advertised this first passage of the proposed constitutional amendment. On November 17, 2015, both the House of Representatives and Senate approved a joint resolution representing the necessary second passage of the proposed constitutional amendment. See Pa. House Bill 90 Session of 2015 (H.B. 90). Consistent with H.B. 90 and Article XI, section 1, the Secretary advertised the proposed amendment for the second time. This advertisement included a "plain English" summary of the proposed amendment, prepared by the Office of Attorney General (OAG). Thereafter, the Secretary submitted the proposed constitutional amendment to the Commonwealth's qualified electors as a ballot question for the 2016 Primary Election, as mandated by H.B. 90.

Several events occurred following the Secretary's submission of the proposed constitutional amendment. On March 6, 2016, Respondent Senators filed an emergency application requesting that the Pennsylvania Supreme Court act in its King's Bench jurisdiction to alter the wording of the proposed constitutional amendment, which at that time read:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and justices of the peace (known as magisterial district judges) be retired on the last day of the calendar year in which they attain the age of 75 years, instead of the current requirement that they be retired on the last day of the calendar year in which they attain the age of 70.

Respondent Senators sought to alter the proposed constitutional amendment to read:

Shall the Pennsylvania Constitution be amended to require that judges and justices of the peace be retired on the last day of the calendar year in which they attain the age of 75 years.

By per curiam order, dated March 23, 2016, our Supreme Court denied any relief. In apparent response, on April 6, 2016, the House of Representatives approved H.R. 783, which the Senate adopted on April 11, 2016. Petitioners then filed the action now before the Court. Petitioners sought preliminary injunctive relief, which the Court, by the Honorable P. Kevin Brobson, denied by order dated April 20, 2016, amended April 28, 2016. In its opinion, the Court advised the Secretary to work with the county boards of elections to notify voters "that Proposed **(Footnote continued on next page...)**"

Court's original jurisdiction to challenge the legal validity of H.R. 783, the operative clauses of which provide:

RESOLVED (the Senate concurring), That the Secretary of the Commonwealth remove the ballot question for Proposed Constitutional Amendment 1 from the ballot certification for the primary election on April 26, 2016; and be it further

RESOLVED, That the county boards of election remove, to the extent possible, the ballot question for Proposed Constitutional Amendment 1 from the ballot; and be it further

RESOLVED, That the [S]ecretary disregard any vote on Proposed Constitutional Amendment 1 in the primary election on April 26, 2016, and the [S]ecretary not make a tally of votes cast on Proposed Constitutional Amendment 1; and be it further

RESOLVED, That the General Assembly direct the [S]ecretary to place Proposed Constitutional Amendment 1 on the ballot for the general election on November 8, 2016, in the following form:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges, and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?;

and be it further

RESOLVED, That, to ensure compliance with section 1 of Article XI of the Constitution of

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**(continued...)**

Constitutional Amendment 1 is not on the April 2016 Ballot, regardless of what the actual ballot may say, and that any votes cast on that question will *not* be canvassed, counted, or tabulated.” *Costa v. Cortes* (Pa. Cmwlth., No. 251 M.D. 2016, filed April 20, 2016), slip op. at 20-21, amended April 28, 2016.

Pennsylvania, the General Assembly direct the [S]ecretary to publish the ballot question for Proposed Constitutional Amendment 1 as revised along with the proposed amendment and the plain English statement previously prepared by the Office of Attorney General, in each of the three months prior to the general election on November 8, 2016; and be it further

RESOLVED, That, upon passage by a majority of both houses of the General Assembly, this concurrent resolution be transmitted to the Secretary of the Commonwealth for implementation.

In Count I of their amended petition for review, Petitioners contend that H.R. 783 violates Article III, section 9 of the Pennsylvania Constitution, because it was not presented to the Governor for approval. In Count II, Petitioners contend that H.R. 783 unconstitutionally infringes on the rights of qualified electors who have or will cast their votes in the 2016 Primary Election by absentee ballot. In Count III, Petitioners essentially request preliminary injunctive relief, which this Court denied by order dated April 20, 2016. In Count IV, Petitioners seek mandamus relief in the form of an “[o]rder requiring the Secretary to accept, count and certify the votes on the ballot question proposing the amendment to [section] 16(b) cast in the April 26, 2016 primary election.” (Amended Petition for Review, ¶93.) In Count V of the Amended Petition for Review, Petitioners allege a violation of Article XI, section 1 of the Pennsylvania Constitution, contending that H.R. 783 violates the mandatory advertising requirements of that section. Finally, in Count VI, Petitioners contend that H.R. 783 violates Article III, section 3 of the Pennsylvania Constitution, which requires that any legislative act of the General Assembly be restricted to a single subject.

## II. ISSUES PRESENTED

Petitioners and Respondents have filed cross-applications for summary relief under Pa. R.A.P. 1532(b). Petitioners frame the issues to be decided, as follows: (1) whether the General Assembly violated Article III, section 9 of the Pennsylvania Constitution when it used a concurrent resolution to direct the Secretary of the Commonwealth to remove Proposed Constitutional Amendment 1 from the April 2016 Ballot (Count I); (2) whether H.R. 783 violates Article XI, section 1 of the Pennsylvania Constitution by interfering with the three-month advertising requirement of that section (Count V); (3) whether H.R. 783 violates the single-subject requirement of Article III, section 3 of the Pennsylvania Constitution (Count VI); and (4) whether H.R. 783 violates Article XI of the Pennsylvania Constitution by impermissibly disenfranchising the voters of this Commonwealth (Count II). Respondents, by contrast, frame the matter as involving but a single question—*i.e.*, whether the General Assembly permissibly used a concurrent resolution to move Proposed Constitutional Amendment 1 to the November 2016 Ballot, “where Article XI, section 1 of the Pennsylvania Constitution vests the General Assembly with the exclusive authority to determine the time and manner of submitting constitutional amendments to the electorate.” (Respondents’ Br. at 2.)

In addition to setting forth arguments in their favor for the issues framed by Petitioners, Respondents argue that Petitioners are not entitled to mandamus relief as a matter of law, and, therefore, their count for mandamus relief (Count IV), in which Petitioners seek to compel the Secretary to certify the results of the 2016 Primary Election with respect to Proposed Constitutional Amendment 1, must fail. The Secretary has not filed an application for summary



relief. The Secretary has, however, filed a brief in response to Petitioners' application for summary relief, in which the Secretary asserts the same or similar arguments as Respondents.

### III. DISCUSSION

#### A. Governing Legal Standards

In evaluating a request for summary relief, the Court applies the same standards that apply on summary judgment. *See Myers v. Commonwealth*, 128 A.3d 846, 849 (Pa. Cmwlth. 2015). Summary relief under Pa. R.A.P. 1532(b), therefore, is appropriate where the moving “party’s right to judgment is clear . . . and no issues of material fact are in dispute.” *McGarry v. Pa. Bd. of Prob. and Parole*, 819 A.2d 1211, 1214 n.7 (Pa. Cmwlth. 2003).

“In a case like this one, which calls upon the court to construe an Article of the Pennsylvania Constitution, the fundamental rule of construction which guides us is that the Constitution’s language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption.” *Ieropoli v. AC&S Corp.*, 842 A.2d 919, 925 (Pa. 2004). Thus, a provision of the Constitution “will be interpreted, not in a strained or technical manner, but as understood by the people who adopted it.” *Blum by Blum v. Merrell Dow Pharm., Inc.*, 626 A.2d 537, 546 (Pa. 1993). Furthermore, the various principles of statutory construction apply with equal force in interpreting the Pennsylvania Constitution. *Booth & Flinn v. Miller*, 85 A. 457, 459 (Pa. 1912) (“The established rules of construction applicable to statutes apply also in the construction of a Constitution.”). To that end, we observe that pursuant to Section 1922(3) of the Statutory Construction Act of 1971 (Statutory Construction Act), 1 Pa. C.S. § 1922(3), there is a presumption that “the General Assembly does not intend to violate the Constitution . . . of this Commonwealth.” Given the



strong presumption of constitutionality under Section 1922(3), “[a] party challenging an act has a heavy burden of persuasion[,]” and “[l]egislation will not be invalidated unless it clearly, palpably and plainly violates the Pennsylvania Constitution.” *League of Women Voters of Pa. v. Commonwealth*, 692 A.2d 263, 269-70 (Pa. Cmwlth. 1997). “[A]ny doubts are to be resolved in favor of a finding of constitutionality.” *Id.* at 270. Although Section 1922(3) applies to the construction of statutes, as noted above those same principles apply to the construction of constitutional provisions. *See Booth & Flinn*, 85 A. at 459.

Notwithstanding the applicability of statutory construction principles in general,

[o]ur Supreme Court has repeatedly stated that “nothing short of literal compliance” with this detailed process for the amendment of the fundamental law of our Commonwealth will suffice. Also, our Supreme Court has made clear that the analytical model for deciding a challenge to the enactment of constitutional amendments is not based on the substantial deference afforded to the adoption of legislation.

*Bergdoll v. Commonwealth*, 858 A.2d 185, 193-94 (Pa. Cmwlth. 2004), *aff’d*, 874 A.2d 1148 (Pa. 2005) (internal citations omitted).

### **B. Challenge to the Form of H.R. 783 (Count I)**

First, we address Petitioners’ argument that the General Assembly impermissibly used a concurrent resolution to direct the Secretary of the Commonwealth to remove Proposed Constitutional Amendment 1 from the April 2016 Ballot in violation of Article III, section 9 of the Pennsylvania Constitution. Article III, section 9 provides:

Every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor and

before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

Petitioners contend that once the General Assembly passed Proposed Constitutional Amendment 1 by joint resolution for the second time, the Secretary was required to publish the proposed amendment and submit it to the qualified electors of the State pursuant to Article XI, section 1 of the Pennsylvania Constitution. It is undisputed that the Secretary complied with the publication requirements of Article XI, section 1 of the Pennsylvania Constitution with respect to the submission of Proposed Constitutional Amendment 1 to the electors on the April 2016 Ballot. The passage of H.R. 783, and this Court's refusal to enjoin its implementation, removed the question from the April 2016 Ballot.<sup>5</sup>

Petitioners assert that the General Assembly, through H.R. 783, created an "entirely different species of legislative action" not contemplated under the General Assembly's Article XI, section 1 power, by: (1) directing the Secretary to remove Proposed Constitutional Amendment 1 from the April 2016

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<sup>5</sup> As we observed in footnote 4 above, the General Assembly followed the mandates of Article XI, section 1 of the Pennsylvania Constitution in adopting H.B. 79 and H.B. 90 through two joint resolutions. Joint resolutions are the proper mechanism for placing proposed constitutional amendments on a future ballot for the electorate's consideration. *See West Shore Sch. Dist. v. Pa. Labor Relations Bd.*, 570 A.2d 1354, 1357 (Pa. Cmwlth. 1990) ("The General Assembly uses joint resolutions for the sole purpose of proposing constitutional amendments."), *remanded sub nom. Blackwell v. Commonwealth, State Ethics Comm'n*, 589 A.2d 1094 (Pa. 1991). Concurrent resolutions are commonly used "for recalling a bill from the Governor or the other house, returning a bill to the Governor, adjournments sine die or in excess of three days, recesses in excess of a week and memorializing Congress." 101 Pa. Code § 9.43(b). Traditionally, concurrent resolutions have not required approval of the Governor, because they were not considered an exercise of legislative power. *See, e.g., Commonwealth v. Kuphal*, 500 A.2d 1205, 1206-07 (Pa. Super. 1985).

Ballot; (2) directing the county boards of elections to remove, to the extent possible, Proposed Constitutional Amendment 1 from the April 2016 Ballot; (3) directing the Secretary to disregard any vote on Proposed Constitutional Amendment 1 in the primary election; (4) prohibiting “the Secretary from making any ‘tally of votes cast on Proposed Constitutional Amendment 1’” for the 2016 Primary Election; and (5) directing “the Secretary to alter the ballot question’s language” from that which he drafted on his own accord and placed on the April 2016 Ballot.” (Petitioners’ Br. at 24-25.) Petitioners assert that nothing in Article XI, section 1, provides the General Assembly with the authority to direct the Secretary to remove ballot questions from the ballot once the Secretary has placed the question on the ballot, disregard an election return, prohibit the Secretary from tallying votes, or compel the Secretary to alter the language of a ballot question on a proposed amendment. Rather, Petitioners contend that pursuant to Article III, section 9 of the Pennsylvania Constitution the substance of H.R. 783 should have been presented to the Governor for approval as a legislative bill. Petitioners contend that fundamental separation of powers concerns require each branch of government to operate within its own “separate sphere of power.” *Jefferson Cnty. Court Appointed Employees Ass’n v. Pa. Labor Relations Bd.*, 985 A.2d 697, 706 (Pa. 2009). Based on that reasoning, Petitioners contend that the General Assembly could not alter the constitutional amendment process that it set in motion with respect to Proposed Constitutional Amendment 1 without proceeding under Article III, section 9, because Article XI, section 1 does not authorize the actions contained in H.R. 783.

Petitioners next address the “time” and “manner” power in Article XI, section 1 of the Pennsylvania Constitution, which provides that any proposed

constitutional amendment “shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe.” Petitioners argue that even if portions of H.R. 783 could be derived from this power, such that it need not be approved by the Governor, H.R. 783’s directives to the Secretary fall outside of this power because they are in conflict with what is commonly referred to as the Election Code.<sup>6</sup> Petitioners contend that the Election Code “sets forth the specific contours of the General Assembly’s authority to issue directives to the Secretary as an Executive Department official. As that authority derives from the Election Code, H.R. 783 could not alter it without resort to the legislative procedures mandated in Article III.” (Petitioners’ Br. at 27.) They note that “[b]ecause a resolution does not have the force and effect of law, our Supreme Court has always held that the General Assembly cannot use this legislative device as a substitution for a law.” *West Shore Sch. Dist. v. Pa. Labor Relations Bd.*, 570 A.2d 1354, 1357 (Pa. Cmwlth. 1990), *remanded sub nom. Blackwell v. Commonwealth, State Ethics Comm’n*, 589 A.2d 1094 (Pa. 1991). Petitioners contend that H.R. 783 purports to prohibit the Secretary from complying with his duties under Section 201(c) of the Election Code, *as amended*, 25 P.S. § 2621(c), relating to certification to county boards of elections of “the form and wording of constitutional amendments and other questions to be submitted to the electors of the State at large,” and Section 201(f) of the Election Code, *as amended*, 25 P.S. § 2621(f), which requires the Secretary to “canvass and compute the votes cast . . . upon questions as required by the provisions of this act” and “to proclaim the results of such

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<sup>6</sup> Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

primaries and elections.” Finally, Petitioners contend that under Section 605 of the Election Code, 25 P.S. § 2755, the form of the ballot question is to be determined by the Secretary and the Attorney General and not by the General Assembly. With respect to each of these statutory provisions, Petitioners contend that H.R. 783 affects a change to the law, which can only be accomplished by legislative bill and through the procedures set forth in Article III of the Pennsylvania Constitution.

Respondents counter that it is well-established that Article III of the Pennsylvania Constitution applies only to legislation and is thus inapplicable to the process for amending the Constitution. Instead Article XI, section 1 of the Pennsylvania Constitution provides the “complete and detailed process” for amending the Constitution. *Kremer v. Grant*, 606 A.2d 433, 436 (Pa. 1992). Article XI, section 1 exclusively commits to the General Assembly the power to “prescribe” the “manner” and “time” under which the proposed constitutional amendments “shall be submitted to the qualified electors” of the Commonwealth. *See* Pa. Const. art. XI, § 1. Nothing in Article XI, section 1, however, mandates how the General Assembly must “prescribe” the time at which and manner by which a proposed constitutional amendment will be submitted to the electorate—*i.e.*, whether the General Assembly must do so by joint resolution, concurrent resolution, or otherwise. Rather, the only requirement under Article XI, section 1 is that “a majority of the members elected to each House” agree to the time and manner prescription, which Respondents contend occurred through H.R. 783. Thus, Respondents contend that whether the General Assembly passed a joint resolution or concurrent resolution is irrelevant to Article XI, section 1, as both comply with the constitutional requirements set forth therein.

Respondents dispute the General Assembly’s characterization of H.R. 783 as representing “an entirely different species of legislative action.”<sup>7</sup> They emphasize that Article XI, section 1 expressly empowers the General Assembly to direct the Secretary when (time) and how (manner) to submit a proposed constitutional amendment to the qualified electors of the Commonwealth, with the only limit being that it may not be submitted before three months after being agreed to by both Houses (presumably to allow the Secretary to satisfy the publication requirements). Moreover, Respondents note that Section 605 of the Election Code is consistent with Article XI, section 1 of the Pennsylvania Constitution, in that it too exclusively commits to the General Assembly the power to “prescribe” the “manner and time of submitting to the qualified electors of the State any proposed amendment or amendments to the Constitution for the purpose of ascertaining whether the same shall be approved by a majority of those voting thereon.” Accordingly, Respondents maintain that the General Assembly has acted consistent with both the Pennsylvania Constitution and the Election Code by directing the time at which and manner by which the Secretary is to submit Proposed Constitutional Amendment 1 to the electors of the Commonwealth, and, the Secretary has the legal obligation *under both* to follow the prescriptions. Because the General Assembly exercised powers committed exclusively to it, Respondents argue there can be no violation of the separation of powers, and Article III, section 9 is inapplicable.

We now hold that H.R. 783 was a valid exercise of the General Assembly’s exclusive power under Article XI, section 1 of the Pennsylvania

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<sup>7</sup> (Respondents’ Br. at 13 (quoting Petitioners’ Br. at 24).)

Constitution to prescribe both the time at which and manner by which the Secretary is to submit Proposed Constitutional Amendment 1 to the qualified electors of this Commonwealth for their consideration. The Pennsylvania Supreme Court has recognized that Article XI, section 1 of the Pennsylvania Constitution provides the “complete and detailed process for the amendment of that document.”<sup>8</sup> See *Kremer*, 606 A.2d at 436. In *Mellow v. Pizzingrilli*, 800 A.2d 350 (Pa. Cmwlth. 2002) (en banc), we explained:

Because a proposed constitutional amendment is not a “law,” the provisions of Article III relating to the enactment of legislation are inapplicable. . . . In this respect, [amendment of the Pennsylvania Constitution] is not a legislative act at all, but a separate and specific power granted to the General Assembly, similar to the impeachment and trial powers granted to the House of Representatives and Senate, respectively, under Article VI, Sections 4 and 5. As to the impeachment power, we have held that the trial procedures are within the exclusive power of the Senate and are not subject to invasion by the Courts. Similarly, we believe that Article XI has vested the power to propose amendments in the General Assembly. Other than the express requirements set forth in Article XI, the procedure to be used in proposing such amendments is exclusively committed to the legislature.

*Mellow*, 800 A.2d at 359 (citations omitted); see also *Grimaud v. Commonwealth*, 806 A.2d 923 (Pa. Cmwlth. 2002) (en banc) (following *Mellow*), *aff’d*, 865 A.2d 835 (Pa. 2005).

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<sup>8</sup> Our reasoning is consistent with the Court’s opinion and order, dated April 20, 2016, amended April 28, 2016, in which the Court denied Petitioners’ application for special relief in the nature of a preliminary injunction.

Although *Mellow* addressed challenges regarding only the “manner” of amendments, it is nevertheless instructive here. In *Mellow*, we considered several challenges to two constitutional amendments approved by the electorate during the May 2001 Primary Election. In one of the challenges, the petitioners in that case contended that one of the amendments should be set aside because the joint resolutions passed in 1998 and 2000 by the General Assembly did not contain identical language. This Court rejected that argument, refusing to curb the General Assembly’s power under Article XI, section 1 beyond the express limits set forth in that constitutional provision. “Because Article XI does not require identical language or content in the *resolutions* (as opposed to the proposed amendment itself),” we opined “there is no constitutional violation.” *Mellow*, 800 A.2d at 359.

By its express terms, H.R. 783 sets both the time at which and manner by which Proposed Constitutional Amendment 1 is to be submitted to the electorate in that it removes the question from the April 2016 Ballot and moves the question to the November 2016 Ballot. Under *Mellow*, the power of the General Assembly to set the time at which and manner by which amendments to the Pennsylvania Constitution are to be submitted to the electorate is an Article XI, section 1 power. Pursuant to Article XI, section 1 of the Pennsylvania Constitution, the power granted therein is *exclusive* to the General Assembly. The only express constitutional limitation on time is that it must be submitted at least three months after final agreement by the two houses of the General Assembly, which is not at issue here.<sup>9</sup> *Id.* We agree with Respondents that nothing in

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<sup>9</sup> H.R. 783 expressly provides for the re-publication and re-advertising of Proposed Constitutional Amendment 1, as well as the plain English statement of the OAG, in each of the three months prior to the 2016 General Election. Thus, even though the Secretary already had **(Footnote continued on next page...)**



Article XI, section 1 mandates how the General Assembly must “prescribe” the time at which and manner by which a proposed constitutional amendment will be presented to the electorate. Thus, it is immaterial whether the General Assembly did so by joint or concurrent resolution, so long as “a majority of the members elected to each House” agreed to the time and manner prescription.<sup>10</sup> *Id.*

Even if we were to agree with Petitioners’ general proposition that the General Assembly could not use H.R. 783 to impose directives on the Secretary that are inconsistent with the Secretary’s directives set forth in the Election Code, we conclude that H.R. 783 is not so flawed. First, H.R. 783 does not alter the duties of the Secretary or prohibit the Secretary from complying with his duties under Section 201(c) of the Election Code. Section 201(c) of the Election Code requires the Secretary to do the following:

*To certify to county boards of elections for primaries and elections the names of the candidates for President and Vice-President of the United States, presidential electors, United States senators, representatives in Congress and all State offices, including senators, representatives, and judges of all courts of record, and delegates and alternate delegates to National conventions, and members of State committees,*

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**(continued...)**

complied with the publication and advertisement requirements of Article XI, section 1 of the Pennsylvania Constitution in advance of the 2016 Primary Election, the General Assembly took this additional step to ensure notice to the electorate by directing the Secretary to re-publish and re-advertise. In his papers submitted to the Court, the Secretary has indicated his intentions to re-publish and re-advertise.

<sup>10</sup> As this Court in *Mellow* observed, “[i]ndeed, the General Assembly may properly choose to consider a proposed constitutional amendment under the title of a ‘bill,’ ‘act,’ ‘resolution,’ or a ‘mystery wrapped in an enigma,’ a title that might be more forthright in many instances.” *Mellow*, 800 A.2d at 359 n.11.

*and the form and wording of constitutional amendments or other questions to be submitted to the electors of the State at large.*

(Emphasis added.) On this issue, H.R. 783 provides that “the Secretary of the Commonwealth [shall] remove the ballot question for Proposed Constitutional Amendment 1 from the ballot certification for the primary election on April 26, 2016.” As a result of H.R. 783, which this Court refused to enjoin preliminarily, Proposed Constitutional Amendment 1 was not a question submitted to the electorate on the April 2016 Ballot. Clearly, Section 201(c) of the Election Code does not empower the Secretary to certify to the county boards of elections the form and wording of a constitutional amendment *that is not* to be submitted to the electors of the State at large. Thus, H.R. 783 appears to do nothing more than echo existing law with respect to the Secretary’s duties.

Second, H.R. 783 does not alter the duties of the Secretary or prohibit the Secretary from complying with his duties under Section 201(f) of the Election Code. Section 201(f) of the Election Code, requires the Secretary to “canvass and compute the votes cast . . . upon questions as required by the provisions of this act” and “to proclaim the results of such primaries and elections.” On this subject, H.R. 783 provides: “RESOLVED, That the [S]ecretary *disregard* any vote on Proposed Constitutional Amendment 1 in the primary election on April 26, 2016, and the [S]ecretary not make a *tally* of votes cast on Proposed Constitutional Amendment 1.” (Emphasis added.) Like our analyses above, we look to Section 201(f) of the Election Code and what it does and does not require of the Secretary. By its terms, Section 201(f) of the Election Code only requires the Secretary to canvass and compute the votes cast on questions lawfully placed before the electorate—*i.e.*, “questions as required by the” Election Code. In light of H.R. 783, Proposed Constitutional Amendment 1 was not a question submitted

to the electorate, *regardless of its presence on some ballots*. Thus, the Secretary is under no legal obligation to “canvass and compute” votes cast on Proposed Constitutional Amendment 1 during the 2016 Primary Election. A corollary to this legal conclusion is that the Secretary has no authority to canvass and compute votes cast on a question that is *not* before the electorate.

Finally, we address Petitioners’ claim that H.R. 783 alters the duties of the Secretary or prohibits the Secretary from complying with his duties under Section 605 of the Election Code. Section 605 of the Election Code provides, in its entirety:

*Unless the General Assembly shall prescribe otherwise with respect to any particular proposed amendment or amendments and the manner and time of submitting to the qualified electors of the State any proposed amendment or amendments to the Constitution for the purpose of ascertaining whether the same shall be approved by a majority of those voting thereon, the said amendment or amendments which have heretofore, or which may hereafter be proposed, and which have not been submitted to the qualified electors of the State, shall be submitted to the qualified electors of the State for the purpose aforesaid, at the first municipal or general election at which such amendment or amendments may be legally submitted to the electors, which election shall occur at least three months after the date upon which such proposed amendment or amendments shall have been agreed to for the second time by a majority of the members elected to each house of the General Assembly, as provided in Article Eighteen,<sup>[11]</sup> section one of the Constitution. Said election shall be conducted on said election day in the manner prescribed by the provisions of this act. Such proposed constitutional amendments shall be printed on the ballots or ballot labels in brief*

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<sup>11</sup> Renumbered as Pa. Const. art. XI, § 1.

*form to be determined by the Secretary of the Commonwealth with the approval of the Attorney General.*

(Emphasis added.) Although not as developed as some of Petitioners' other arguments, Petitioners appear to challenge the ability of the General Assembly, through its Article XI, section 1 "time" and "manner" power, to set the form, or wording, of the constitutional amendment submitted to the electorate. In other words, Petitioners appear to raise a conflict between H.R. 783 and Section 605 of the Election Code.

During oral argument in this matter, the Court expressed concern to the parties that such a conflict could arise if either the Secretary or the Attorney General rejected the form of Proposed Constitutional Amendment 1 set forth in H.R. 783. In his filings with the Court in this matter, however, the Secretary has indicated that he will follow the form of the question set forth in H.R. 783. (Secretary's Br. at 3, 22.) In addition, the Secretary, through his application for leave to file post-submission communication, which the Court granted, submitted a letter by Solicitor General Bruce L. Castor, Jr., dated June 14, 2016, wherein the Solicitor General, on behalf of the OAG, conveyed his approval of the form of Proposed Constitutional Amendment 1, as set forth in H.R. 783. In light of these facts, the debate over whether H.R. 783 conflicts with Section 605 of the Election Code with respect to the form of the ballot question has become academic.

As a general rule, courts will not decide moot cases. "[A] case is moot if there is no actual case or controversy in existence at all stages of the controversy." *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448 (Pa. Cmwlth. 2012). As this Court explained in *Philadelphia Public School Notebook*:

Mootness problems arise in cases involving litigants who clearly had one or more justiciable matters at the outset of the litigation, but events or changes in the facts or law occur which allegedly deprive the litigant of the necessary stake in the outcome after the suit is underway.

*Id.* It is well settled that the courts “do not render decisions in the abstract or offer purely advisory opinions.” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 659 (Pa. 2005). Judicial intervention “is appropriate only where the underlying controversy is real and concrete, rather than abstract.” *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

As with most rules of general application, there are exceptions to the mootness doctrine for circumstances where “(1) the conduct complained of is capable of repetition yet evading review, or (2) involves questions important to the public interest, or (3) will cause one party to suffer some detriment without the Court’s decision.” *Cytemp Specialty Steel Div., Cyclops Corp. v. Pa. Pub. Util. Comm’n*, 563 A.2d 593, 596 (Pa. Cmwlth. 1989). Notwithstanding these exceptions, however, we note that “[c]onstitutional questions are not to be dealt with abstractly.” *Wortex Mills v. Textile Workers Union of Am.*, 85 A.2d 851, 857 (Pa. 1952) (quoting *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 22 (1931); see *In re Gross*, 382 A.2d 116, 120 (Pa. 1978). This Court, therefore, should be even more reluctant to decide moot questions which raise constitutional issues. See *id.* Instead, we “prefer to apply the well-settled principles that [courts] should not decide a constitutional question unless absolutely required to do so.” *Krenzelak v. Krenzelak*, 469 A.2d 987, 991 (Pa. 1983); see also *Atlantic–Inland, Inc. v. Bd. of Supervisors of West Goshen Twp.*, 410 A.2d 380, 383 (Pa. Cmwlth. 1980) (opining that “a court will not consider a constitutional issue unless it is clearly necessary to do so to dispose of the case before it”).

Clearly, there is a prevailing debate over whether the General Assembly has the power, under Article XI, section 1 of the Pennsylvania Constitution and Section 605 of the Election Code, to set the form of the ballot question to the exclusion of the Secretary and the Attorney General. There is, however, no case or controversy because, in light of an intervening event—*i.e.*, approval of the question by the OAG—resolution of that dispute will have no bearing on the form of the question for Proposed Constitutional Amendment 1 on the November 2016 Ballot. The issue, therefore, is moot. The Court declines to consider the dispute under any of the exceptions to the mootness doctrine. The General Assembly infrequently exercises its Article XI, section 1 power with respect to constitutional amendments. If, in the context of future proposed amendments, a dispute arises between the General Assembly, the Secretary, and/or the Attorney General as to which has the ultimate power to set the form of the ballot question to be presented to the electorate, we see no reason why such a dispute could not be resolved at that time.

With respect to the great public importance exception, the Pennsylvania Supreme Court has opined: “It is only in very rare cases where exceptional circumstances exist or where matters or questions of great public importance are involved, that this court ever decides moot questions or erects guideposts for future conduct or actions.” *Wortex Mills*, 85 A.2d at 857. Although the substance of Proposed Constitutional Amendment 1 is of great public importance, we are not convinced that resolution of an abstract dispute over who sets the form of the ballot question rises to such a level, particular where, as here, the two branches of government that stand on opposite sides of this hypothetical

power struggle agree on the form of the question. We are not inclined to foment discord where there is common ground.

As to the third exception to the mootness doctrine, no harm or detriment will befall Petitioners if we do not resolve this question. As noted above, the form of the question has been set and agreed to by all parties in interest—the General Assembly, the Secretary, and the Attorney General. Petitioners gain nothing and lose nothing by our refusal to decide this moot question. Finally, resolution of this moot question involves consideration of the General Assembly’s power under Article XI, section 1 of the Pennsylvania Constitution. As noted above, we are reluctant to resolve constitutional issues in the absence of a true case and controversy. Accordingly, Petitioners’ challenge to H.R. 783 as presenting a conflict over which, as between the General Assembly or the Secretary with the approval of the Attorney General, sets the form of Proposed Constitutional Amendment 1 to be submitted to the qualified electors of this Commonwealth is moot.

**C. H.R. 783 and the Three-month Advertising Requirement  
(Count V)**

As discussed above, Article XI, section 1 of the Pennsylvania Constitution provides, in relevant part, that following the passage of a proposed constitutional amendment by a majority of the members of both houses of the General Assembly in two consecutive sessions,

the Secretary of the Commonwealth shall cause the same again to be published . . . and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses, as the General Assembly shall prescribe.

With regard to the manner of publication, Article XI, section 1 of the Pennsylvania Constitution provides that the proposed amendment “be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published.”

Petitioners contend that H.R. 783 compels the Secretary to act contrary to his duties under Article XI, section 1 of the Pennsylvania Constitution, because it prevents him from completing the process to effect the proposed amendment to the Pennsylvania Constitution in the time-frame initially established by the General Assembly and as originally advertised. Petitioners disagree with the Court’s earlier interpretation of Article XI,<sup>12</sup> which recognized the General Assembly’s exclusive authority over the time and manner of placing a proposed amendment on the ballot as including the authority to move a proposed amendment from a primary election to the next following general election. They argue that if the General Assembly were to have unconstrained power over the “time” and “manner” of the vote on a proposed amendment it could permanently remove a proposed amendment from the ballot at any time before voting begins. Such ability, according to Petitioners, would contravene the intentions of the framers of Article XI.

Petitioners also observe that our Supreme Court has identified two independent reasons for the requirement that there be statewide advertising of a proposed amendment, specifically (1) to inform voters that a proposed constitutional amendment will be placed on the next election ballot and to explain

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<sup>12</sup> Petitioners refer to the Court’s order dated April 20, 2016, amended April 28, 2016, denying Petitioners’ application for special relief in the nature of a preliminary injunction.



the substance of the proposed amendment, and (2) to provide a three-month window during which voters may ascertain the attitudes of the candidates with regard to the proposed amendment. *See Kremer*, 606 A.2d at 438.<sup>13</sup> With regard to ascertaining attitudes, the three-month window enables the voters to have sufficient time to determine how Senate and House candidates on that same ballot voted on the proposed amendment. Under the current scenario, Petitioners contend that, because H.R. 783 was not advertised, voters were not provided a sufficient opportunity to determine which candidates voted to remove the proposed amendment from the April 2016 Ballot. For these reasons, Petitioners urge the Court to construe Article XI to prohibit any alteration of the vote on a proposed amendment within three months of the originally prescribed election.

Respondents counter that Petitioners' argument is based on the faulty assumption that H.R. 783 is somehow subject to the advertising requirements of Article XI, section 1 of the Pennsylvania Constitution. Respondents contend that, by its express terms, Article XI, section 1 requires only publication of the "proposed amendment or amendments." Pa. Const. art. XI, § 1. Respondents observe that Petitioners ignore that H.R. 783 expressly provides for the re-publication and re-advertising of Proposed Constitutional Amendment 1, as well as the "plain English" statement of the OAG, in each of the three months *prior to* the 2016 General Election. Furthermore, Respondents observe that voters will

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<sup>13</sup> In *Kremer*, our Supreme Court wrote:

For if an informed electorate disagrees with the proposed amendments, they will have an opportunity to indicate their displeasure at the ballot box and elect individuals to the next General Assembly with different attitudes.

*Kremer*, 606 A.2d at 438.

have more than three additional months to research and perform due diligence as to Proposed Constitutional Amendment 1 and candidates. Respondents agree that a permanent removal of a proposed constitutional amendment arguably would be contrary to Article XI, section 1, but they observe that no such permanent removal is contemplated by H.R. 783.

We are unswayed by Petitioners' concern that this Court's interpretation of the General Assembly's "time" and "manner" power under Article XI, section 1 is so unfettered that it would allow the General Assembly to thereafter refuse to place a ballot question, passed by both Houses in two consecutive legislative sessions, before voters in the next following general election, *at the latest*. Indeed, such a scenario would not likely survive judicial scrutiny. H.R. 783, however, provides that Proposed Constitutional Amendment 1 will be before voters for their consideration on the next general election ballot following second consideration by both Houses of the General Assembly, that being the November 2016 Ballot.

We are also unpersuaded by Petitioners' argument that H.R. 783 violated the publications requirements of Article XI, section 1. Nothing in Article XI, section 1 of the Pennsylvania Constitution requires publication or advertising of H.R. 783. Two of the Secretary's constitutional duties under Article XI, section 1 are related to publication of proposed amendments following each passage by the General Assembly. There is no contention in this case that the Secretary failed to comply with those publication mandates. In fact, the record is clear that Proposed Constitutional Amendment 1 was advertised in accordance with Article XI, section 1. Moreover, under H.R. 783, Proposed Constitutional Amendment 1 will be re-published and re-advertised, and voters will have

additional time to consider the amendment and the attitudes of candidates with respect thereto, so the intent behind Article XI, section 1 will be fulfilled.

The Secretary's third constitutional duty requires the Secretary to place a proposed constitutional amendment before the electorate "in such manner, and at such time *at least three months after being so agreed to by the two Houses*, as the General Assembly shall prescribe." Pa. Const. art. XI, § 1 (emphasis added). It is implicit that the reason why the General Assembly and, by extension, the Secretary must wait *at least* three months before putting the question before the electorate is to provide sufficient time for the Secretary to comply with the three-month advertising period described above. The General Assembly, through H.R. 783, has set the 2016 General Election (the latest possible election) as the time that Proposed Constitutional Amendment 1 should be placed before the electorate. As of the date of this opinion, there is sufficient time for the Secretary to re-publish and re-advertise consistent with Article XI, section 1 of the Pennsylvania Constitution and the goals articulated by the Pennsylvania Supreme Court in *Kremer*.

For these reasons, we conclude that H.R. 783 does not itself cause a violation of the advertising requirements in Article XI, section 1 of the Pennsylvania Constitution.

#### **D. H.R. 783 and the Single-Subject Rule (Count VI)**

Petitioners argue that if H.R. 783 is examined as if it were a bill, rather than a concurrent resolution, it is facially deficient, as it impermissibly covers more than one subject in violation of Article III, section 3, of the Pennsylvania Constitution, relating to the "[f]orm of *bills*." (Emphasis added.) Article III, section 3 of the Pennsylvania Constitution provides:

No *bill* shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

(Emphasis added.) Our Supreme Court has identified what it refers to as the “twin requirements” of Article III, section 3, as the requirements “that each bill have only one subject, and that the subject be clearly expressed in the title.” *City of Philadelphia*, 838 A.2d at 585. In *City of Philadelphia*, our Supreme Court described the reasons why Pennsylvanians incorporated Article III, section 3 into the Pennsylvania Constitution of 1874, including distrust of corporate influence upon the General Assembly and a resulting desire to make the deliberative process of *legislative enactment* more visible to our citizens. *Id.* at 585-86. By adopting Article III, section 3, Pennsylvanians sought to address a number of practices that members of the General Assembly occasionally employed to obtain *passage of legislation* without subjecting the legislation to an open and deliberative process.

In support of their argument that H.R. 783 violates the single-subject requirement of Article III, section 3 of the Pennsylvania Constitution, Petitioners contend that H.R. 783 attempts to, in part: (1) effect a change in time for the vote on an amendment to Article V, section 16(b) of the Pennsylvania Constitution; (2) direct action by a member of the executive branch—*i.e.*, the Secretary; and (3) modify portions of the Election Code for the primary and general elections of 2016. Petitioners contend that H.B. 783 cannot do all three and still comply with the single-subject requirement of the Pennsylvania Constitution and, therefore, must be held unconstitutional *in toto*. In support of this position, Petitioners rely on *Pennsylvania State Association of Jury Commissioners v. Commonwealth*, 64 A.3d 611 (Pa. 2013), for the proposition that

the single-subject requirement is violated where dual functions of government are addressed in the same bill.

Respondents counter that Article III, section 3 of the Pennsylvania Constitution applies only to legislation and is inapplicable to the process for amending the Constitution. Respondents further argue that even if H.R. 783 were governed by Article III, section 3, H.R. 783 is limited to the single-subject matter of prescribing the time and manner by which Proposed Constitutional Amendment 1 is to be submitted to the electorate, and those functions constitutionally rest with the General Assembly.

We agree with Respondents that H.R. 783 is not a legislative bill and, therefore, is not governed by Article III. Rather, as discussed above, actions by the General Assembly relating to the “time” and “manner” of amending the Pennsylvania Constitution are governed exclusively by Article XI, section 1 of the Pennsylvania Constitution, *Mellow*, which does not contain a single-subject requirement.

Assuming, however, Article III, section 3 did apply, H.R. 783 would pass constitutional muster under a single-subject analysis. The stated subject and objective for H.R. 783 is “providing for submission to the electorate of a constitutional amendment on retirement for justices, judges and justices of the peace.” H.R. 783. All of the provisions of H.R. 783 assist in carrying out this main objective and are otherwise germane to its stated subject matter. *See City of Philadelphia*, 838 A.2d at 587 (“[T]he strictures of Article III, [s]ection 3 are often satisfied where the provisions added during the legislative process assist in carrying out a bill’s main objective or are otherwise ‘germane’ to the bill’s subject as reflected in its title.”). Moreover, as noted above, any portions of H.R. 783 that

Petitioners characterize as “directives” to the Secretary merely recognize the Secretary’s duties under Article XI, section 1 of the Pennsylvania Constitution or the Election Code and do not change those duties.

For these reasons, we conclude that H.R. 783 does not violate the single-subject requirement of Article III, section 3 of the Pennsylvania Constitution.

**E. H.R. 783 and Voter Disenfranchisement (Count II)**

Petitioners’ argument as to why H.B. 783 disenfranchises voters has changed over time. Originally, they argued that voters were disenfranchised because some had cast absentee ballots at the time that H.B. 783 was passed. They now argue that despite H.R. 783 and this Court’s refusal to enjoin its implementation, many voters voted on Proposed Constitutional Amendment 1 during the 2016 Primary Election. Failure to count those votes, Petitioners argue, equates to voter disenfranchisement. Petitioners theorize that the electorate will be confused if asked again to vote on Proposed Constitutional Amendment 1 in a revised form, given that voters may not vote on the same amendment within five years. *See* Pa. Const. art. XI, § 1. Petitioners contend that election night results from the 2016 Primary Election show that a majority of voters rejected Proposed Constitutional Amendment 1 and that H.R. 783 essentially nullifies the will of the majority.

Respondents’ argument in opposition is succinct and compelling—there can be no voter disenfranchisement in the absence of a right to vote—and we

agree with Respondents.<sup>14</sup> In light of H.B. 783, and this Court’s refusal to enjoin its implementation, Proposed Constitutional Amendment 1 was not before the electorate on the April 2016 Ballot, regardless of how successful some or even most counties were at removing the question or informing voters that their votes on the proposed amendment would not be counted. H.R. 783 in no way disenfranchised voters who had no right to vote on the Proposed Constitutional Amendment 1 in the first place and who were only able to vote because of insufficient measures to fully advise voters that Proposed Constitutional Amendment 1 was not before the electorate on the April 2016 Ballot.

Moreover, as observed by the Secretary:

Petitioners’ position, if adopted, would work the only true disenfranchisement, by denying voters who properly refrained from voting on the questions a say in the outcome. Whether or not H.R. 783 is a proper exercise of the General Assembly’s constitutional authority, the purported “vote” on the proposed amendment during the [2016 Primary Election] cannot, under any rational view, be retroactively deemed official.

(Secretary’s Br. at 13.) Furthermore, the prohibition in Article XI, section 1 of the Pennsylvania Constitution that “no amendment or amendments shall be submitted oftener than once in five years,” was also set forth in Article XVIII of the Pennsylvania Constitution of 1874. *See Stander v. Kelley*, 250 A.2d 474, 480

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<sup>14</sup> Because we agree with Respondents that there can be no voter disenfranchisement for a question not before the electorate, we need not discuss the parties’ arguments regarding the number of voters who did or did not vote on Proposed Constitutional Amendment 1 when some county boards of elections were unable to remove it from the April 2016 Ballot. We also need not address Respondents’ arguments that Petitioners relied upon disputed facts (*i.e.*, “unofficial” and incomplete statewide election returns that are not part of the record) or documents presented at the preliminary injunction hearing.

(Pa. 1969). As to both Pennsylvania Constitutions, our Supreme Court interpreted that clause as referring to an amendment that had been previously submitted and rejected and not one that was never before submitted to the electorate. *Id.* For the reasons explained above, Proposed Constitutional Amendment 1 was not submitted to and rejected by the electorate in the 2016 Primary Election. Accordingly, it may be placed before the electorate during the 2016 General Election without violating the five-year provision in Article XI, section 1.

Finally, Petitioners appear to seek relief previously denied by this Court—*i.e.*, consideration of Proposed Constitutional Amendment 1 as part of the 2016 Primary Election and the counting and certification of the votes cast in that election with respect to that ballot question. The law of the case doctrine provides additional grounds to refuse this request. The law of the case doctrine provides that Pennsylvania courts “should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.” *Ario v. Reliance Ins. Co.*, 980 A.2d 588, 597 (Pa. 2009). The Court’s order dated April 20, 2016, denied Petitioners’ injunctive relief and, by law, conclusively removed Proposed Constitutional Amendment 1 from the April 2016 Ballot. Practicality and the law of the case doctrine dictate that our prior ruling cannot now be undone. As a result, inclusion of Proposed Constitutional Amendment 1 on the November 2016 Ballot is not only appropriate under the law, but it is also necessary in order to afford the entire electorate an opportunity to vote on the amendment.

#### **F. Mandamus Relief (Count IV)**

Respondents argue that Petitioners improperly seek mandamus relief to compel the Secretary to count and certify the votes taken on Proposed Constitutional Amendment 1 in the 2016 Primary Election in accordance with his



constitutional and statutory duties. “A writ of mandamus is ‘an extraordinary remedy which compels official performance of a ministerial act or mandatory duty, as opposed to a discretionary act.’” *Griffin v. Pa. Dep’t of Corr.*, 862 A.2d 152, 154 n.1 (Pa. Cmwlth. 2004) (quoting *Africa v. Horn*, 701 A.2d 273, 275 (Pa. Cmwlth. 1975)). A writ of mandamus may issue only where “the petitioners have a clear legal right, the responding public official has a corresponding duty, and no other adequate and appropriate remedy at law exists.” *Brown v. Levy*, 73 A.3d 514, 516 n.2 (Pa. 2013). Mandamus will not issue where “it is apparent that the writ will be futile or ineffectual by reason of the inability of the respondent to comply therewith.” *Commonwealth ex rel. McLaughlin v. Erie Cnty.*, 100 A.2d 601, 604 (Pa. 1953).

Respondents argue that the duty Petitioners demand the Secretary to perform—*i.e.*, counting and certifying the 2016 Primary Election votes—is impossible, because H.R. 783, which this Court declined to enjoin, removed Proposed Constitutional Amendment 1 from the April 2016 Ballot. As a result, not all voters were able to vote on the proposed amendment and any election results were unofficial and incomplete. Also, Respondents argue that Petitioners have not established either a clear right to relief or a corresponding duty on the part of the Secretary, as the Secretary’s duty to count and certify votes cast on a ballot question is only triggered when that question is placed before the electorate, which did not occur in connection with the April 2016 Ballot. Finally, Respondents argue that an adequate remedy exists at law, namely that all qualified electors will be permitted to cast their vote on Proposed Constitutional Amendment 1 during the 2016 General Election.

We agree with Respondents that Petitioners, as a matter of law, are not entitled to mandamus relief for all the reasons enumerated above. Simply put, the Secretary can have no duty to count and certify votes on a ballot question not submitted to the electorate, and Proposed Constitutional Amendment 1 was not on the April 2016 Ballot. Thus, Petitioners' count for mandamus relief must fail.

#### **IV. Conclusion**

Accordingly, we deny Petitioners' application for summary relief, grant Respondents' application for summary relief, and enter judgment in favor of Respondents.

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P. KEVIN BROBSON, Judge

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Senator Jay Costa, Pa. 43rd District,  
Senator Daylin Leach, Pa. 17th District,  
in their Official Capacities, and  
Senator Christine M. Tartaglione, Pa.  
2nd District, in her Official Capacity  
and individually on behalf of qualified  
electors in the Commonwealth of  
Pennsylvania,

Petitioners

v.

No. 251 M.D. 2016

Secretary Pedro A. Cortes, Senator  
Joseph B. Scarnati, Pa. 25th District,  
and Senator Jacob Corman III,  
Pa. 34th District, each in their  
Official Capacities,

Respondents

**ORDER**

AND NOW, this 6th day of July, 2016, upon consideration of the cross-applications for summary relief filed by the Honorable Jay Costa, the Honorable Daylin Leach, and the Honorable Christine M. Tartaglione (Petitioners) and by the Honorable Joseph B. Scarnati and the Honorable Jacob Corman III (Respondents), it is hereby ordered that Petitioners' application for summary relief is DENIED and Respondents' application for summary relief is GRANTED. Judgment is entered in favor of Respondents.

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P. KEVIN BROBSON, Judge