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What Commonwealth Court's Decision to Scrap Victim Rights Amendment Could Mean for Judicial Districts Plan

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The Commonwealth Court's decision to throw out a ballot question seeking to enshrine victim's rights into the Pennsylvania Constitution—which is all but certain to be appealed to the state Supreme Court—could shed light on judicial scrutiny of a constitutional amendment that would create geographic districts for statewide appellate court seats, lawyers told *The Legal*.

The Commonwealth Court on a 3-2 vote rejected the victim's rights measure, known as "Marsy's Law," because it violated the single-subject rule, since it would change numerous parts of the Pennsylvania Constitution. The majority said the measure would have had to be broken down into several discrete questions.

The decision in *League of Women Voters v. Boockvar* was handed down Jan. 7.

The ripple effect of the decision on the "Marsy's Law" ballot question could be felt if the judicial district proposal is put before voters in the May primary.

Deborah Gross, president and CEO of Pennsylvanians for Modern Courts, which opposes judicial districts for

statewide appeals courts, also said the Commonwealth Court majority's ruling established key principles that would govern scrutiny of upcoming ballot measures.

"There's not a lot of cases on this constitutional amendment process and the single-subject question, but we do have some precedent now and I think based on what we have, with this proposed amendment, there is a good argument to be made its unconstitutional," Gross said.

Backers of "Marsy's Law" sought to create a long list of new rights for victims of crimes and those impacted by crimes, including the rights "to be treated with fairness and respect for the victim's safety, dignity and privacy; to have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the accused; to reasonable and timely notice of and to be present at all public proceedings involving the criminal or delinquent conduct; to be notified of any pretrial disposition of the case; with the exception of grand jury proceedings, to be heard in any proceeding where a right of the victim is implicated, including, but not limited to, release, plea, sentencing, disposition, parole and pardon."

In the Commonwealth Court's non-precedential decision, Judge Ellen Ceisler said the proposed amendment, which is also known as Marsy's

Law, would affect numerous different aspects of the Constitution, including the right to a speedy trial and the requirement to have open courts.

"While the proposed amendment guarantees rights to victims, the substantive effect on the Constitution would be to infringe on rights in several provisions of the Constitution, particularly Article I, Sections 923 and 14, which directly relate to commonwealth's ability to take away an individual's freedoms," Ceisler said. "The affected rights include those conferred by the Confrontation Clause of Article I, Section 924 (as well as the right to a speedy trial) and the Right to Open Courts and Full Remedy found in Article I, Section 11."

Ceisler was joined by Judge Michael Wojcik, with Judge Patricia McCullough agreeing with the holding that the ballot question essentially proposed two or more constitutional amendments that needed to be voted on separately.

Steven Bizar of Dechert, who represented the League of Women Voters in challenging the Marsy's Law proposal, said the Constitution makes it very clear that voters should not be forced to vote either yes or no on a range of topics in one question, and he was not surprised by the Commonwealth Court majority's holding.

“The court is very clear that you have to look at the content, purpose and effect,” he said. “I think it followed established precedent. I think it’s within the mainstream of Pennsylvania jurisprudence.”

Judge Mary Hannah Leavitt, however, opposed the majority and said all of the issues those challenging the amendment had raised were speculative. Judge Christine Fizzano Cannon joined Leavitt.

While the narrow ruling is all but certain to be appealed to the Supreme Court, some attorneys said the decision gives insight into how the court is likely to view the constitutional amendment proposal—now moving through the General Assembly—that would establish separate judicial districts for all three of the state’s appellate courts.

“The natural consequence of the proposed amendment would be to alter 14 separate provisions of the Pennsylvania Constitution,” Shanin Specter of Kline & Specter said. “It’s bedrock principle that the voters have a right to vote on constitutional amendments in a way that does not blend one subject matter into another because otherwise the voters don’t know what they’re voting on.”

The matter, introduced by Rep. Russ Diamond, R-Lebanon, proposes to break the Commonwealth Court into nine districts, the Superior Court into 15 districts and the Supreme Court into seven. The state House approved the measure in December 2019 and the Senate passed it in July. The measure will need to pass both houses again before it can be put to voters in the form of a ballot question, and on Wednesday the House Judiciary Committee narrowly advanced the measure in a 13-12 vote.

Both Gross and Specter pointed to the fact that the single proposal aims to alter all three appellate courts, each of which are addressed in

different sections of the Constitution. Specter also noted the proposal would alter a range of other issues, including how the districts would need to be configured and the existing requirements regarding the Supreme Court’s role in altering judicial districts.

However, Ballard Spahr’s David Pittinsky, counsel for Marsy’s Law for Pennsylvania, said he does not think the Commonwealth Court’s ruling will stand. Specifically, he said the majority misapplied the 2005 case *Grimaud v. Commonwealth*, which he said rejects the notion that different questions are required when there would only be implicit effects on other portions of the Constitution.

“It would be hard to imagine any proposed constitutional amendment which not would affect some other parts of the Constitution, so you’d never have a constitutional amendment pass muster,” Pittinsky said.

He added that, although McCullough ultimately joined Ceisler and Wojcik, she did not embrace the majority’s broader view of the issue. Instead, he said, Leavitt and Cannon got the issue right in finding that the problems the majority raised would be too speculative to require multiple questions.

Pittinsky also said his client will be appealing the ruling to the Supreme Court, which will have to take up the case, since the Commonwealth Court heard the issue sitting in its original jurisdiction capacity.

Duquesne Law professor Bruce Ledewitz, who focuses on constitutional law, said that *Grimaud* did away with a strict single-subject analysis, but add that there still exists a bar against amending two different provisions in the constitution at once. He doubted that either Marsy’s Law or the judicial districting amendments would be barred under *Grimaud*, but

they could run into issues regarding the single provision question.

“It’s a technical argument, but these are technical matters,” Ledewitz said.

Regarding what the recent Marsy’s Law decision could mean for the judicial districting amendment, Pittinsky declined to offer any specific thoughts. But—joining all the other attorneys who spoke with *The Legal* for this article—he said he is opposed to the redistricting issue.

“I think it’s wrong,” he said. “It’s a device to gerrymander the Supreme Court.”