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

**No. _____**

**TOM WOLF, Governor of the Commonwealth of Pennsylvania, and LEIGH M. CHAPMAN, Acting Secretary of the Commonwealth of Pennsylvania,**

**Petitioners,**

**v.**

**GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA,**

**Respondent.**

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# APPLICATION FOR INVOCATION OF KING'S BENCH POWER TO DECLARE SENATE BILL 106 OF 2021 INVALID AND ENJOIN FURTHER ACTION ON CONSTITUTIONAL AMENDMENTS

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## I. INTRODUCTION

Nearly one hundred years ago, this Court proclaimed that "[t]he 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." *Commonwealth ex rel. Schnader v. Beamish*, 164 A. 615, 616-17 (Pa. 1932). Today, this Court is called upon to fulfill this important duty and protect against the General Assembly's defective effort to restrict by amendment the free and equal right of suffrage and the inherent and indefeasible rights to privacy and the pursuit of happiness and to alter the essential architecture of our co-equal branches of government. Nothing less is threatened by Senate Bill No. 106 of 2021 ("SB 106"), the omnibus vehicle designed by the General Assembly to bring radical change to women's reproductive rights, Commonwealth elections and the constitutional separation of powers. This Court, and no other authority, is responsible to ensure that Article XI, § 1 in the Constitution, our precious foundational governing document that protects all Pennsylvanians, is strictly followed and that the rights protected by the Constitution are not subject to the whims of simple majorities in the General Assembly.

Petitioner Tom Wolf, Governor of the Commonwealth, and Leigh M. Chapman, Acting Secretary of the Commonwealth, respectfully urge the Court to exercise its King's Bench power to ensure scrupulous adherence with the

constitutional amendment process in Article XI, § 1 and prevent the imminent erosion of our fundamental rights and separation of powers. The multiple, disparate proposals comprising SB 106 should be declared invalid and further action on this defective attempt to fundamentally change our governing charter should be enjoined.

## II. FACTUAL BACKGROUND

### A. SB 106

Unable to implement their radical agenda through proper legislative channels, the Republican-controlled General Assembly repackaged its failed legislative agenda as SB 106, a joint resolution proposing amendments to the Pennsylvania Constitution. The General Assembly rushed SB 106 through initial passage in a late-night session on July 8, 2022. The single resolution includes the following five "separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania":

- A new provision in the Declaration of Rights—Article I, § 30—to remove rights by declaring that "[t]his Constitution does not grant the right to taxpayer-funded abortion or any other right relating to abortion."
- An amendment to existing Article III, § 9 to exempt the General Assembly's disapproval of regulations from the types of concurrent

resolutions required to be presented to the Governor for veto or approval.

- An amendment to Article IV, § 4 requiring that each nominated candidate for Governor select his or her running mate for Lieutenant Governor, subject to approval of any political party or political body, and that Lieutenant Governor candidates may not at the same time run for Governor.
- An amendment to Article VII, § 1 imposing an entirely new requirement that qualified electors must present "valid identification" to vote by person or by mail and, if an elector does not have "valid identification," he or she may, "upon request and confirmation of identity, be furnished with a government-issued identification. . . ."
- A new constitutional provision—Article VII, § 15—that empowers the General Assembly to "by statute provide for the auditing of elections and election results by the Auditor General" or by "an Independent Auditor" in the years when the Auditor General stands for election.

A copy of SB 106 is attached as Exhibit A.

Section 2(a) of SB 106 directs that "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." Under Article XI, § 1, the process

of publishing notice of the proposed amendments in newspapers throughout the Commonwealth must begin on August 2, 2022.

SB 106 further directs that the five proposed constitutional amendments shall be presented to the qualified electors of the Commonwealth as "separate ballot question[s]" at the first election which is "at least three months after the proposed constitutional amendment is passed" a second time by the General Assembly. The amendments may appear on the ballot at the primary election as early as May 16, 2023, provided that SB 106 is approved by a majority of the members elected to each House in the November 2022 general election.

**B. History of SB 106**

SB 106 is the latest manifestation of the General Assembly's increasingly aggressive attempts to abrogate the constitutional separation of powers. The bill began with a straightforward proposal reported out of committee by the Senate State Government Committee to amend Article IV, § 4 to require that candidates for Governor select their running mates for the office of Lieutenant Governor. SB 106 received first consideration on January 27, 2021. On February 5, 2021, with the single proposed amendment, SB 106 received second consideration and was referred to the Appropriations Committee which voted favorably on the proposed amendment by a vote of 23-1 on February 23, 2021. The resolution—again with only a single

proposed amendment concerning the election of the Lieutenant Governor—passed on third consideration in the Senate by a vote of 43-4 on April 27, 2021.

SB 106, described at the time as "[r]eforming the process of electing the Lieutenant Governor," was reported out of the House State Government Committee by a vote of 14-11 on May 25, 2021, and received first consideration in the House.

On December 14, 2021, SB 106 was significantly expanded on second consideration in the House to include four additional "separate and distinct amendments" to the Pennsylvania Constitution: (1) a proposed amendment to Article III, § 9 (the final resolution maintains this language) which would eliminate the Governor's Constitutional veto power over disapproved regulations; (2) a new amendment to Article IV, § 21 (not in the final resolution) which would limit the duration of executive orders or proclamations by the Governor to an executive agency to 21 days unless otherwise extended by concurrent resolution of the General Assembly; (3) a proposed amendment to Article VII, § 1 (similar to the final resolution) that would require as an additional qualification for electors that they "present valid identification prior to voting, regardless of voting method," and, if an elector does not possess valid identification, he or she shall, "upon request" be furnished with "a government issued identification at no cost"; and (4) a proposal to amend Article VII by adding a new Section 15 (similar to the final resolution) that would direct the General Assembly to "provide for the auditing of elections,

including the administration of elections, certification of election machines, the accuracy of the list of registered voters, the administration of voter registration and election results," to be conducted by the Auditor General or "an independent auditor" in years when the Auditor General stands for office.

### C. Expansion of SB 106 After Failed Attempts at Legislation

The expansion of SB 106 followed on the heels of failed attempts to achieve the same ends through legislation. In fealty to the "big lie" and without of evidence of election fraud or irregularity, Republican state lawmakers sought to revamp Pennsylvania's election laws after the 2020 election, and attempted to require voter identification and election audits. That legislation, HB 1300 of 2021, was vetoed by Governor Wolf on June 30, 2021.[1] On the same day, Governor Wolf line-item vetoed SB 255 (the 2021-2022 General Appropriations Act) to eliminate funding for the General Assembly's proposed new bureau of election audits.[2]

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[1] The veto message is available at https://www.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2021&sessInd=0&billbody=H&billtype=B&billnbr=1300&pn=1869&vetonbr=1 (last visited July 28, 2022).

[2] The veto message is available at https://www.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2021&sessInd=0&billbody=S&billtype=B&billnbr=255&pn=0971&vetonbr=LIV (last visited July 28, 2022).

Having failed to garner the support necessary to rewrite election procedures through the legislative process, the General Assembly repackaged the same voter identification and election audit procedures as amendments to the Constitution and tacked them onto the resolution to change the procedure for electing the Lieutenant Governor in December 2021.[3]

SB 106, as thus expanded, passed the House on third consideration by a vote of 113-87 on December 15, 2021. It was referred to the Senate Rules and Executive Nominations Committee for concurrence in House amendments on December 15, 2021, where it remained without action until July 2022.

### D. Last Minute Change to SB 106 in Reaction to *Dobbs*

On June 24, 2022, the U.S. Supreme Court reversed nearly 50 years of settled precedent and overturned two of its landmark decisions by ruling in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), that the U.S. Constitution does not confer a right to abortion. Notwithstanding this reversal in federal law, nothing prevents the states from affording greater personal rights and freedoms than the U.S. Constitution. States are, of course, permitted to continue to allow abortion

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[3] Governor Wolf vetoed an effort by the General Assembly to limit the Governor's authority to veto disapproved regulations on October 28, 2016. *See* SB 562 of 2016 (veto message) available at https://www.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2016&sessInd=0&billbody=S&billtype=B&billnbr=562&pn=1897&vetonbr=6) (last visited July 28, 2022).

in accordance with state law. *See, e.g., id.* at 2284; *see also id.* at 2304-06 (Kavanaugh, J., concurring).

In contrast to the federal constitution, the Pennsylvania Constitution recognizes in Article I, § 1 that all Pennsylvanians enjoy an inherent and indefeasible right to personal privacy. Pa. Const. art. I, § 1. Intent on scaling back this fundamental right without risking an executive veto or judicial scrutiny,[4] on July 7, 2022, the Republican-controlled Senate proposed an amendment to SB 106 which would add an entirely new section to the Declaration of Rights Article to paradoxically prohibit any right relating to abortion. The proposed Article I, § 30 states: "This Constitution does not grant the right to taxpayer-funded abortion or any other right relating to abortion."[5]

**E. Late Night Vote on SB 106**

In addition to proposing an entirely new Article I, § 30 concerning abortion, the amendments to SB 106 proposed on July 7, 2022 made modifications to several

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[4] Senate Majority Leader Kim Ward admitted that the General Assembly's proposal to amend the Constitution to eliminate abortion rights is intended to "tak[e] power back to the Legislature and away from the (Pennsylvania) Supreme Court." *See* https://lancasteronline.com/news/politics/analysis-pa-legislatures-focus-on-constitutional-amendments-could-upset-checks-and-balances-in-harrisburg/article_f3acdf96-0a09-11ed-b60c-7f296488fa2e.htm (last visited July 28, 2022).

[5] Previous attempts to pass legislation restricting the right to abortion in the Commonwealth were vetoed by Governor Wolf. *See* HB 321 of 2019; SB 3 of 2017.

of the proposed amendments. It eliminated the proposal to add a new Article IV, § 21 relating to executive orders; supplemented the earlier proposal to add proof of identification to elector qualifications in Article VII, § 1 by requiring a process for "confirm[ing]" an elector's identity before "valid" government identification is provided to electors; and changed the scope of the election audits compelled by the new proposed Article VII, § 15. The amendment proposed on July 7, 2022 included a similar provision concerning election of the Lieutenant Governor that appeared in the original proposal in January 2021.

As thus revised, and while the General Assembly was working to pass an overdue state budget, the Senate Rules and Executive Nominations Committee called for a vote on SB 106 late in the evening on July 7, 2022 without any public notice or prior public hearing. Motions to amend the resolution to specifically address the constitutional right of privacy, the constitutional right to free and equal elections and the constitutional guarantee of equal rights regardless of gender were not permitted. Instead, the committee approved a motion to table all amendments by party-line vote, with all Democratic members voting against the proposed change to regular motion procedures.

Despite vigorous challenges to the truncated process, both chambers brought SB 106 up for final passage on July 8, 2022, just one day after the abortion proposal was added. Notably, a member of the House raised a parliamentary inquiry, asking

whether each separate and distinct proposed constitutional amendment was divisible, which would allow each proposed constitutional amendment to be voted upon separately. The House parliamentarian informed the member that the resolution was not "subject to revision." With five distinct and complex amendments, SB 106 passed by a vote of 28-22 in the Senate and by a vote of 107-92 in the House on July 8, 2022.

The first publication of the proposed amendments in local newspapers will begin on August 8, 2022.

**F. This Dispute**

Governor Wolf brings this action as a constitutional officer whose Article IV powers are fundamentally altered and infringed by the proposed amendments and as a voter with the right to vote on proposed constitutional amendments according to the procedure in Article XI, § 1.[6] Acting Secretary Chapman also brings this action as a voter and as the Commonwealth officer charged in Article XI, § 1 with responsibility for publishing notice of the proposed amendments to Pennsylvania voters. They seek a declaration from this Court under the Declaratory Judgments Act, 42 Pa. C.S.A. § 7531 *et seq.*, that the amendments in SB 106 are constitutionally

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[6] *See, e.g., Bergdoll v. Kane*, 731 A.2d 1261, 1268-69 (Pa. 1999) (holding that electors have standing to bring challenge to proposed constitutional amendment under Article XI, § 1 because "interest sought to be protected is the fundamental right to vote").

invalid and may not be further advertised or put to a second vote in the General Assembly.

## III. BASIS FOR EXERCISE OF KING'S BENCH POWER

The duty to ensure compliance with the constitutional amendment procedure in Article XI, § 1 rests with this Court. *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d 207, 226 (Pa. 2021) (citing *Pa. Prison Soc'y v. Commonwealth*, 776 A.2d 971, 977 (Pa. 2001)). Because amendment of the Constitution is a matter of immense public importance and because ensuring compliance with the process is entrusted to this Court, invocation of King's Bench power under 42 Pa. C.S.A. § 502 is warranted.

King's Bench authority is properly exercised "to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law." *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020) (quoting *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015)); *see also In re Bruno*, 101 A.3d 635, 670 (Pa. 2014). King's Bench power derives from Article V, § 2 of the Pennsylvania Constitution which provides, in relevant part, that the Supreme Court "shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth." Pa. Const. art. V, §

2(a). Article V, § 2 further provides that the Supreme Court "shall have such jurisdiction as shall be provided by law." *Id.* § 2(c).

This authority was codified by the General Assembly as follows: "The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722." 42 Pa. C.S.A. § 502. While King's Bench authority is acknowledged in the Pennsylvania Constitution and codified by the General Assembly, the power dates back to 1722—even before the U.S. Constitution—when the Pennsylvania Supreme Court was created by the Judiciary Act of 1722. *See* Schwab, Michael K., *Long Live the King: The Supreme Court of Pennsylvania's King's Bench Powers*, 65 Vill. L. Rev. 677, 681 & n.24 (2020).

Unlike extraordinary jurisdiction under 42 Pa. C.S.A. § 726, the exercise of King's Bench power is not limited to pending matters. This Court is authorized to "exercise King's Bench powers over matters where no dispute is pending in a lower court." *Friends of Danny DeVito*, 227 A.3d at 884; *see also Williams*, 129 A.3d at 1206; *In re Avellino*, 690 A.2d 1138, 1140 (Pa. 1997). Further, the exercise of King's Bench authority is not limited by prescribed forms of procedure or to actions

of a particular nature, but rather the Court may employ any type of process necessary for the circumstances. *Williams*, 129 A.3d at 1206. "[T]he power of King's Bench allow[s] the Court to innovate a swift process and remedy appropriate to the exigencies of the event." *In re Bruno*, 101 A.3d at 672.

Whether the General Assembly adhered to the procedure for amending the Constitution in Article XI, § 1 is a matter of immediate public concern appropriate for the exercise of King's Bench power. This Court recognized that its "duty to ensure scrupulous adherence to the provisions of Article XI, § 1 is . . . of utmost importance as these provisions are indispensable for the stability of our peaceful, democratic system of governance." *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 227 (citations omitted). Whether SB 106 comports with the "specific and detailed process" in Article XI, § 1, *id.*, presents an extant controversy and, because the constitutionally prescribed publication process is proceeding and state representatives who will vote on second passage of SB 106 are up for election in November, this dispute affects all voters and is of immediate public importance. It follows *a fortiori* that determining the validity of SB 106 which profoundly alters our system of governance is properly within this Court's King's Bench power.

Indeed, this Court previously exercised King's Bench jurisdiction to resolve disputes over constitutional interpretation, including controversies surrounding

constitutional amendments and ballot questions. *See, e.g., In re November 3, 2020 Gen. Election*, 240 A.3d 591, 594-95 & n.1 (Pa. 2020) (exercising King's Bench jurisdiction over dispute concerning election process); *Wolf v. Scarnati*, 233 A.3d 679, 686 (Pa. 2020) (exercising King's Bench jurisdiction to resolve dispute concerning interpretation of constitutional provision affecting separation of powers); *Friends of Danny DeVito*, 227 A.3d at 884-85 (assuming King's Bench jurisdiction to decide constitutional and statutory challenges to executive order affecting Pennsylvanians and Pennsylvania businesses); *Pa. Gaming Control Bd. v. City Council*, 928 A.2d 1255, 1264 n.6 (Pa. 2007) (citing King's Bench jurisdiction as alternative ground to review "fundamental issue of whether a question may lawfully be placed on the ballot for the electorate to consider" and stating: "it is obvious that the invocation of our King's Bench powers is . . . the means by which we insure the judiciary's ability to decide these matters justly and expeditiously").[7]

The General Assembly's attempt to sidestep constitutional checks and balances and rescind fundamental constitutional rights through SB 106 similarly presents an issue of significant public concern that requires timely resolution by this Court. This is the rare case that justifies exercise of King's Bench power. Governor Wolf and Acting Secretary Chapman respectfully request that the Court assume

[7] This Court has also exercised its extraordinary jurisdiction under 42 Pa. C.S.A. § 726 to resolve challenges to constitutional amendments. *See, e.g., Driscoll v. Corbett*, 69 A.3d 197, 201 (Pa. 2013); *Sprague v. Cortes*, 150 A.3d 17, 18 (Pa. 2016).

jurisdiction, set a briefing schedule and list this matter for oral argument.

## IV. ARGUMENTS FOR DECLARATORY RELIEF

Article XI, § 1 of the Pennsylvania Constitution mandates the "specific and detailed process that must be followed in order for an amendment to become a binding part of our organic law." *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 227. That section 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.

Pa. Const. art. XI, § 1.

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." *Pa. Prison Soc'y*, 776 A.2d at 977 (quoting *Schnader*, 164 A. at 616-17) (internal quotation marks omitted). "Nothing short of literal compliance with the mandate [in Article XI, § 1] will suffice." *Kremer v. Grant*, 606 A.2d 433, 436 (Pa. 1992) (quoting *Tausig v. Lawrence*, 197 A. 235, 238 (Pa. 1938)). "[A]ll the clear and mandated provisions of the Constitution must be strictly followed and obeyed and no departures from or circumventions or violations of existing mandatory Constitutional amendment requirements will be permitted." *Stander v. Kelley*, 250 A.2d 474, 479 (Pa. 1969) (citation omitted).

With respect to the proposed amendments, a "ballot question must fairly, accurately, and clearly apprise the voter of the question or issue on which the electorate must vote." *Sprague v. Cortes*, 145 A.3d 1136, 1142 (Pa. 2016) (citing *Stander*, 250 A.2d at 480). "No method of amendment can be tolerated which does not provide the electorate adequate opportunity to be fully advised of proposed changes." *Schnader*, 164 A. at 617. Critically, "[w]hen two or more amendments shall be submitted they shall be voted upon separately." Pa. Const. art. XI, § 1. The right of voters to vote on each substantive change separately is "a sacrosanct right

that [Article XI, § 1] of our organic charter of governance guarantees." *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 242.

SB 106 fails to scrupulously adhere to the mandates in Article XI, § 1. This Court should declare SB 106 invalid and enjoin further publication and other action on the amendments.

### A. The General Assembly Denied Pennsylvania Voters Their Right To Know Whether Their Representatives Supported Each Amendment.

Article XI, § 1 requires that, when agreed to by a majority of the members of each House, "such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon. . . ." Pa. Const. art. XI, § 1. The Secretary of the Commonwealth is then required to "cause the same to be published three months before the next general election, in at least two newspapers in every county" and, "if in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to a majority of the members elected to each House," the "amendment or amendments" shall be published again in the same manner before submission to the electors for a vote. *Id.* The purpose of the vote, recording and publication requirements is to afford "an informed electorate . . . an opportunity to indicate their pleasure at the ballot box and elect individuals to the next General Assembly with different attitudes." *Kremer*, 606 A.2d at 438; *see also*

*Tausig*, 197 A. at 238 (citing *Commonwealth ex rel. Woodruff v. King*, 122 A. 279 (Pa. 1923)).

The General Assembly denied voters their constitutional right to be notified of how their respective legislative members voted on each amendment and their right to replace those members with representatives who share their views. SB 106 is a mishmash of changes to at least four different articles of the Constitution—the Declaration of Rights (Article I), Legislation (Article III), Executive (Article IV) and Elections (Article VII). It abridges personal liberties and freedoms and alters our current balance of power and constitutional checks and balances. Because the various changes were packaged in bulk, the final votes on SB 106 in each chamber were in the aggregate. Members of the General Assembly did not vote separately on whether they approved or disapproved of each ballot question in SB 106 and the legislative record does not reflect "the yeas and nays" on each amendment, let alone each constitutional change wrought by each amendment.

The procedure mandated by Article XI, § 1 is not subject to a substantial compliance standard—rather, "scrupulous adherence" is required, *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 227—and therefore SB 106 is not able to be salvaged simply because aggregate votes were recorded. Just as voters have the right to vote separately on each amendment, they have the right to know how their elected officials voted on each amendment. Without this information, voters

are denied the opportunity guaranteed by Article XI, § 1 to "elect individuals to the next General Assembly with different attitudes." *Kremer*, 606 A.2d at 438-39 (enjoining action to place amendment on ballot where defective advertising denied electorate "opportunity to be advised of [members'] views or attitudes concerning these amendments" and electorate "could not vote for the [next] General Assembly with those views and attitudes in mind").

This attempt at political "cover" is a plain violation of Article XI, § 1 and renders SB 106 constitutionally invalid. This Court should enforce Article XI, § 1 as designed and written to require that each and every amendment be put to a separate yea and nay vote so that the electorate can hold members of the General Assembly accountable for their positions on critically important public policy issues in SB 106 and every other modification to the Constitution. Failure to do so will empower future simple majorities controlling the General Assembly to hijack the amendment process and pursue changes to our fundamental law *en masse* while avoiding electoral consequences that flow from publication of their views contrary to both the letter and spirit of Article XI, § 1.

### B. The Proposed Amendment Concerning Abortion Poses Two Discrete Questions in Violation of the Separate Vote Requirement.

Article XI, § 1 requires that, "[w]hen two or more amendments shall be submitted they shall be voted upon separately." Pa. Const. art. XI, § 1. The proposed amendment on abortion violates the separate vote mandate.

The separate vote requirement has been a mandatory part of the constitutional amendment process since 1838. *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 231. Adoption of a new article governing the amendment process was a topic of "vigorous debate" at the 1837-1838 Constitutional Convention because the notion of allowing the legislature to lead the process of proposing constitutional amendments conflicted with the "perceived exclusive right of the people to change their charter of governance." *Id.* at 230. Article XI, § 1 was specifically "designed to constrain the legislature's ability to propose amendments, and, at the same time, preserve the people's right to make the final decision as to whether any amendments proposed by the legislature would become effective." *Id.* (citing Kenneth Gormley, et al., *The Pennsylvania Constitution—A Treatise on Rights and Liberties* 852 (1st ed. 2004)).

The intent of requiring separate votes was to prohibit the "pernicious" practice of "logrolling" where popular and unpopular propositions are combined to entice voter support. *Id.* at 231 (citations omitted); *see also id.* at 238. As this Court explained:

> Consistent with the[] restrictions [in Article XI, § 1], and evidencing an intent on the part of the delegates to ensure that each person voting on a proposed constitutional amendment be given the opportunity to fully understand the nature of the change or changes to the constitution it would produce, the delegates considered, and adopted, with no debate, the separate vote requirement. The purpose of this provision, as

> articulated by its author, John J. M'Cahen, a delegate from Philadelphia, and memorialized in the written proceedings of the convention, was to prevent the legislature from connecting two dissimilar amendments one of which might be good and the other evil, and in consequence of which the connexion [sic] the good which was wanted, might be rejected by the people rather than be taken with the evil which accompanied it.

*Id.* at 230-31 (internal citations and internal punctuation marks omitted).

The importance of the separate vote requirement was reinforced in later constitutional conventions. The 1874 Constitution changed the requirement that the electorate "*may* vote for or against each amendment separately and distinctly," Pa. Const. art. X, § 1 (1838-1874) (emphasis added), to its present requirement that multiple amendments "*shall* be voted upon separately," Pa. Const. art. XVIII, § 1 (1874-1967) (emphasis added). *See League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 232. At the Constitutional Convention in 1967, language was added to Article XI, § 1 requiring that, whenever emergency amendments are presented to voters for approval, the voters must also vote on those emergency provisions "separately." *Id.* at 233. This was deemed "a strong indication of the continuing essential importance of the separate vote requirement in our Commonwealth's constitutional amendment process." *Id.*

In determining whether a proposed amendment violates the separate vote requirement, courts examine whether the amendment makes multiple changes and, if so, whether those changes are "sufficiently interrelated to justify their presentation

to the electorate in a single question." *Id.* at 236 (citation omitted). If the multiple changes form an interlocking package necessary to accomplish one overarching objective such that the multiple changes stand or fall as a whole, they may be presented to the electorate in a single question. *Id.* at 237. If, however, any of the multiple changes are independent of the others and could stand alone, Article XI, § 1 requires that they be presented separately to the voters so that they may individually vote on those changes. *Id.*

The multiple changes in Article 1, § 30 fail this test. The amendment proposes two distinct changes: first, a declaration that there is no right to taxpayer-funded abortion; and second, a declaration that there is no other right relating to abortion. These propositions are not dependent on each other to be effective. The existence of a constitutional right to abortion does not necessarily mandate public funding for the procedure and *vice versa*. The propositions are independent and can and do stand alone. For nearly 50 years the U.S. Supreme Court recognized a right to abortion in the U.S. Constitution based on *Roe v. Wade*, 410 U.S. 113 (1973), but both the U.S. Supreme Court and this Court perceived no constitutional right to public funding of abortion, *see Harris v. McRae*, 448 U.S. 297, 316 (1980) ("[I]t simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices."); *Fischer v. Department of Public Welfare*, 502 A.2d 114, 120 (Pa. 1985) ("[M]erely

because all have the right to do a thing does not require that the Commonwealth is obligated to provide the means to all."). Because access to abortion and public funding for abortion operate independently, Article XI, § 1 requires that voters must be given the opportunity to vote separately on each proposed change to the Constitution in Article I, § 30.

The General Assembly's coupling of the separate issues into a single question is exactly the pernicious logrolling which Article XI, § 1 was designed to prevent. While access to safe abortion care is generally favored, taxpayer funding of abortion is not.[8] The General Assembly put its thumb on the scales of the amendment process by combining the ban on taxpayer funding with the denial of a right to abortion and by leading with the more popular proposition.[9] As crafted by the General Assembly, the amendment is deceptively compound and impermissibly "constrains the ability of the electors to make a 'free and mature judgment,' as it is impossible for voters

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[8] *See, e.g.*, Knights of Columbus/Marist Poll, January 2022, at 5, 9, available at kofc-marist-polling-crosstabs2022.pdf (last visited July 28, 2022) (53% of respondents oppose taxpayer-funded abortion and only 12% of respondents oppose abortion in all circumstances).

[9] Republican lawmakers focused only on the taxpayer-funded aspect of the proposed amendment during the floor debate. The debate in the House is available at https://www.youtube.com/watch?v=leXNXBammX8&t=41991s (last visited July 28, 2022) and the debate in the Senate is available at https://www.pasenategop.com/blog/complete-senate-session-136/ (last visited July 28, 2022). The single-focus advocacy reinforces how misleading it is for voters who are being asked to consider the funding and abortion rights issues as one amendment.

to express assent only to the provision[] which they favor, and reject those which they disapprove." *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 231 (citations omitted).

This Court invalidated similarly compound amendments as violative of the separate vote requirement in *League of Women Voters of Pa. v. Degraffenreid* and *Bergdoll*. *See id.* at 240 (enjoining amendment that added numerous new constitutional rights because "we can easily envision a voter supporting one or more of these rights without approving of all of them"); *Bergdoll*, 731 A.2d at 1269-70 (enjoining ballot question which "addressed two separate proposals" but did not permit electorate to vote separately on each). The same result is required here. Article I, § 30 denies voters the right to vote on each change separately and is therefore invalid under Article XI, § 1.

### C. The Proposed Amendment Concerning Abortion Is Invalid Because It Infringes Inherent and Indefeasible Rights Enshrined in the Declaration of Rights.

The resolution to amend the Constitution to nullify any right to abortion fails for a separate, foundational reason: the robust privacy rights acknowledged in the Declaration of Rights in Article I of the Pennsylvania Constitution predate the Constitution's enactment, exist independent of its provisions and are not subject to amendment.

The very first section in the Declaration of Rights in Article I—titled "Inherent rights of mankind"—declares that "[a]ll men are born equally free and independent, and have certain ***inherent and indefeasible*** rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Pa. Const. art. I, § 1 (emphasis added). Article I, § 25 directs that "everything" in Article I "is excepted out of the general powers of government and shall forever remain inviolate." Pa. Const. art. I, § 25. The Declaration of Rights in Article I "is an enumeration of the fundamental individual human rights possessed by the people of this Commonwealth that are specifically exempted from the powers of Commonwealth government to diminish." *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 803 (Pa. 2018).

Personal liberty is an inherent and indefeasible rights recognized by Article I, § 1 and declared "forever . . . inviolate" by Article I, § 25. Over 50 years ago, this Court acknowledged that the right to privacy is rooted in the people's "inherent and indefeasible right[]" to pursue their own happiness. *Commonwealth v. Murray*, 223 A.2d 102, 109 (Pa. 1966). "One of the pursuits of happiness is privacy. The right of privacy is as much property of the individual as the land to which he holds title and the clothing he wears on his back." *Id.* It encompasses the freedom to make important personal decisions, including decisions about one's body and one's

personal relationships.. *See generally John M. v. Paula T.*, 571 A.2d 1380, 1386 (Pa. 1990) (recognizing "clear privacy interests in preserving . . . bodily integrity"); *Commonwealth v. Bonadio*, 415 A.2d 47, 50 (Pa. 1980) (recognizing freedom "from interference in defining and pursuing . . . own morality" with respect to sexual relationships); *Fabio v. Civil Serv. Comm'n*, 414 A.2d 82, 89 (Pa. 1980) (privacy rights extend to sexual activities); *In re June 1979 Allegheny Cnty. Investigating Grand Jury*, 415 A.2d 73, 77 (Pa. 1980) (privacy interest in avoiding disclosure of personal information "finds explicit protection in the Pennsylvania Constitution, Art. 1, § 1").

The robust and sacrosanct rights enshrined in Article I, § 1 of the Pennsylvania Constitution include the indefeasible liberty right to control one's body and reproductive life and the right to decide whether to parent. Pursuit of happiness within the meaning of Article I, § 1 requires freedom to decide not to continue a pregnancy and bear a child, especially where pregnancy and childbirth risk the mother's life and in cases of rape or incest. The General Assembly's attempt to nullify the inherent and indefeasible rights to privacy and control over one's body which predate and exist independent of the Constitution is facially invalid and void *ab initio*. *See generally Driscoll v. Corbett*, 69 A.3d 197, 209 (Pa. 2013) (characterizing as "colorable" argument that constitutional amendment cannot validly infringe on inherent and indefeasible constitutional right); *Commonwealth v.*

*Tharp*, 754 A.2d 1251, 1253 (Pa. 2000) ("[T]he people of the Commonwealth have the authority to amend their state constitution as they deem fit, so long as they do not violate some other provision of the Pennsylvania . . . constitution[]") (citation omitted); *Stander*, 250 A.2d at 478 ("A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be.").[10]

Because an amendment cannot alter or infringe the inherent and indefeasible right to privacy in Article I, § 1, the resolution to eliminate "any other right concerning abortion" is a nullity and pursuit of such an amendment should be enjoined.[11]

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[10] To the extent *Gondelman* can be construed as suggesting the opposite conclusion, that case did not involve a proposal to amend one of the "inherent and indefeasible" rights recognized in Article I, § 1 and is not controlling or applicable here. *See Gondelman v. Commonwealth*, 554 A.2d 896 (Pa. 1989) (rejecting argument that constitutional provision imposing mandatory retirement age constituted improper government classification on basis of age).

[11] Other state supreme courts have interpreted language in state constitutions to guarantee the right to abortion. *See, e.g., Hodes & Nauser v. Schmidt*, 440 P.3d 461, 491-92 (Kan. 2019) ("section 1 of the Kansas Constitution Bill of Rights protects a woman's right to make decisions about whether she will continue a pregnancy . . ."); *Right To Choose v. Byrne*, 450 A.2d 925, 933 (N.J. 1982) ("The right to choose whether to have an abortion . . . is a fundamental right of all pregnant women."); *Moe v. Sec'y of Admin. & Fin.*, 417 N.E.2d 387, 398-99 (Mass. 1981) (right to abortion is "but one aspect of a far broader constitutional guarantee of privacy" linked to a person's strong interest in "self-determination: and "being free from nonconsensual invasion of [her] bodily integrity"); *see also* Wharton, Linda J., *Roe at Thirty-Six and Beyond: Enhancing Protection for Abortion Rights Through State Constitutions*, 15 Wm. & Mary J. Women & L. Gender & Soc. Just. 469, 499-510 (2009) (collecting cases).

### D. The Proposed Amendment Concerning Abortion Is Irredeemably Vague and Therefore Invalid.

The proposed amendment concerning abortion is also invalid because it is ambiguous and incapable of objective interpretation. As designed, the proposal to strip away "any other right relating to abortion" is so broad that it necessarily implicates a host of other constitutional rights. For example, if the Constitution confers no "other right relating to abortion," is a doctor accused of performing an illegal abortion entitled to a trial by jury or to be represented by counsel? If Pennsylvania residents enjoy "no other right relating to abortion," is it a violation of equal protection if the medical procedure is denied on the basis of race or ethnicity? Because the proposed amendment is drafted in the negative (unlike every other section of Article I), its outer boundaries are unknown and unknowable. Such imprecision is impermissible in a statute. *See Commonwealth v. Barud*, 681 A.2d 162, 165 (Pa. 1996) (due process requires that criminal statutes "provide[] reasonable standards by which a person may gauge their future conduct") (citations omitted). Lack of a clear standard is anathema when amending the Constitution.

As Justice Wecht aptly explained, "our Constitution does not permit the General Assembly to load the dice, to hoodwink or infantilize the voters by crafting a ballot question calculated to deceive and mislead." *Sprague*, 150 A.3d at 31 n.8 (Wecht, J., op. in support of reversal). The General Assembly's proposed

amendment denying "any other right relating to abortion" does just that. It does not withstand constitutional scrutiny.

### E. The Proposed Amendments Change Multiple Constitutional Provisions But Fail To Afford the Electorate the Opportunity To Vote Separately on Each Change.

A proposed constitutional amendment also violates Article XI, § 1 if it "effectuates more than one substantive change" to the Constitution. *League of Women Voters of Pa. v. Degraffenreid*, 265 A.3d at 236 (citing *Grimaud v. Commonwealth*, 865 A.2d 835, 845 (Pa. 2005)). SB 106 fails this test as well because its amendments substantively alter other constitutional provisions without fairly and accurately apprising voters of the multiple changes and without giving voters the chance to vote separately on each change.

#### 1. The proposed amendment denying any constitutional right relating to abortion substantively alters Article I, §§ 1, 25, 26 and 28.

In addition to working radical change to existing law, Article I, § 30 impacts the mother's right to life guaranteed by Article I, § 1 and Article I, § 25, the right to equal protection guaranteed by Article I, § 26 and the prohibition against gender discrimination in Article I, § 28. Denying "any other right relating to abortion" would require a woman to bear a child even at the risk of her own life and deprive the woman of the right to defend her own life expressly recognized in Article I, § 1. The amendment would also deny women access to medically-necessary abortions

and equal access to funding where the life of the woman is endangered if the fetus were carried to term and where pregnancy results from rape or incest, all in violation of Article I, §§ 26 and 28. The proposed amendment provides no notice of these other substantive constitutional changes and voters are not afforded the opportunity to vote separately on each change. This violates Article XI, § 1.

**2. The proposed amendment to the rulemaking process substantively alters Article IV, § 2 and the constitutional separation and balance of powers.**

The General Assembly proposes to amend Article III, § 9 to add "disapproval of a regulation" to the narrow class of concurrent resolutions that are not constitutionally required to be "presented to the Governor" for approval or veto and which require a two-thirds vote of both Houses to override a veto by the Governor. The addition of "disapproval of a regulation" substantively alters the "constitutional design for the separation of powers" of which Article III, § 9 is an "integral part[]." *Wolf*, 233 A.3d at 687-88. The constitutional separation of powers is achieved through Article IV, § 2 which vests the Governor with "[t]he supreme executive power" and directs that the Governor "shall take care that the laws be faithfully executed," Pa. Const. art. IV, § 2, and Article IV, § 15 which authorizes the Governor to veto legislation with which he or she does not approve and which shall be final unless overridden by two-thirds of the members of both Houses. Pa. Const. art. IV, § 15.

"The [Executive's] participation in the legislative process [is] to protect the Executive Branch from [the legislature] and to protect the whole people from improvident laws." *Commonwealth v. Sessoms*, 532 A.2d 775, 778-79 (Pa. 1987) (quoting *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919, 951 (1983)). Administrative rulemaking is "entirely executive in nature" and is intended "to ensure fairness in [the executive] pursuing his responsibility to execute the laws enacted by the legislature." *Id.* at 779. Under the separation of powers, "once the legislature makes its choice enacting legislation, its participation ends. It can thereafter control the execution of its enactment only indirectly—by passing new legislation." *Id.* at 779-80 (quoting *Bowsher v. Synar*, 478 U.S. 714, 733-34 (1986)) (internal punctuation and emphasis omitted).[12]

By exempting disapproval of regulations from the Governor's veto, the General Assembly arrogates to itself executive rulemaking authority and eviscerates

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[12] For example, earlier this summer, the General Assembly introduced legislation that would require legislative approval of the Governor's proposal to have Pennsylvania join the Regional Greenhouse Gas Initiative (RGGI). Governor Wolf vetoed similar legislation last year which sought to prohibit the Commonwealth from joining RGGI without legislative support. In 2021, the General Assembly passed Act 70 of 2021 which repealed the regulatory framework for defining executive, administrative and professional exemptions under the Pennsylvania Minimum Wage Act, requiring the Department of Labor & Industry to promulgate new regulations defining what it means to qualify for the exemptions. Just last month, Governor Wolf vetoed, disapproved and returned to the General Assembly a deficient concurrent resolution disapproving regulations promulgated by the Pennsylvania Department of Education concerning charter schools.

the separation of powers and constitutional authority bestowed on the Governor in Article IV, § 2. Without presentment to the Governor, administrative rulemaking is left to the direction of a simple majority of the General Assembly, with no protection of either the Executive or a two-thirds veto override. The amendment thus vests the legislature with ultimate, unreviewable authority to execute its own laws. This attempt to convert our system of tripartite governance to a parliamentary democracy substantively alters the separation and balance of powers and the Governor's constitutional authority and is, therefore, constitutionally infirm.

### 3. The proposal to amend the Constitution to impose a voter identification requirement substantively alters the constitutional right to "free and equal" elections.

The General Assembly proposes to amend the qualifications of electors in Article VII, § 1 to require that electors present "an unexpired government-issued identification" to vote in person or by mail and, if the elector does not possess a "valid" government issued identification, he or she may "request" and upon "confirmation of identity" be furnished with a government-issued identification at no cost. The proposed amendment would substantively alter Article I, § 5 of the Pennsylvania Constitution which guarantees that "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art. I, § 5. This provision mandates that "all aspects of the electoral process, to the greatest degree possible, be kept open and

unrestricted to the voters of our Commonwealth, and, also conducted in a manner which guarantees, to the greatest degree possible, a voter's right to equal participation in the electoral process for the selection of his or her representatives in government." *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d at 804. It "guarantees our citizens an equal right, on par with every other citizen, to elect their representatives." *Id.*

The General Assembly's proposed amendment to the voter qualification provision would substantively alter Article I, § 5 by unnecessarily burdening the fundamental right to vote and by imposing an unequal proof of identification requirement. Under the General Assembly's proposal, electors ***with*** a "valid identification," defined as "an unexpired government-issued identification" would be qualified to vote, whereas electors ***without*** government-issued identification would be compelled to apply for and undergo an undefined intrusive governmental "confirmation" process to establish their identity before receiving the identification necessary to cast their vote. Moreover, the imposition of such a requirement would substantially encumber the voting process and pose a significant barrier that risks disenfranchising voters, most particularly the elderly, disabled individuals and the financially disadvantaged. *See Applewhite v. Commonwealth*, 54 A.3d 1, 4 (Pa. 2012) (acknowledging that requiring voter identification risks disenfranchising

"most vulnerable segments of our society"). The amendment thus impacts the "free and equal" guarantee in the Declaration of Rights under Article I, § 5.[13]

### 4. The proposal to require election audits by the Auditor General or an Independent Auditor substantively alters this Court's constitutional authority to decide election contests.

The General Assembly's proposal to amend the Constitution to authorize the General Assembly to develop a protocol for the Auditor General or an Independent Auditor to audit Commonwealth elections would substantively alter the judiciary's constitutional authority over election contests conferred by Article VII, § 13. That section directs that "[t]he trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public

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[13] Litigation surrounding a previous legislative effort to require voter identification illustrates the practical difficulties associated with such a requirement and particularly with ensuring that voters are not unnecessarily burdened in exercising their fundamental right to vote. *See Applewhite v. Commonwealth*, 54 A.3d 1 (Pa. 2012) (returning matter to Commonwealth Court to assess whether voters will be disenfranchised as result of implementation of voter identification requirement and whether preliminary injunction is necessary to prevent disenfranchisement). Despite considerable effort spanning several years, election officials were unable to implement a system whereby electors were able to secure qualifying identification without undue burden. *See Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Cmwlth. Jan. 17, 2014) (ruling that identification requirement did not "pass constitutional muster because there is no legal, non-burdensome provision of a compliant photo ID to all qualified electors"). The proposed amendment to Article VII, § 1 imposes a greater burden than the legislation at issue in *Applewhite* in that it purports to require electors without a "valid" government-issued identification to undergo a "confirmation of identity" process developed by the General Assembly in order to receive a government-issued identification which is a prerequisite to exercising the right to vote.

officers, whether State, judicial, municipal or local, and contests involving questions submitted to the electors at any election shall be by the courts of law, or by one or more of the law judges thereof." Pa. Const. art. VII, § 13. While this section confers on the General Assembly the authority "by general law" to "designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto," *id.*, the authority to "determine[e] [ ] contested elections" resides exclusively with the courts. *Id.*; *see generally In re Contested Election of Senator*, 2 A. 341, 342 (Pa. 1886) ("purpose" of Article VIII, § 17 is "to provide a method or procuring and presenting . . . the evidence and information necessary for" each house to determine qualifications of its members under Article II, § 9).

By conferring on the General Assembly the power to develop protocols for election audits by the Auditor General or an Independent Authority not accountable to the electorate, the amendment creates a standardless parallel process for examining, investigating and undermining election results independent of and not subject to this Court's exclusive constitutional authority to determine contested elections. Beyond inviting chaos, creation of an oligarchical tribunal independent of the judiciary transgresses on the courts' constitutional authority to decide election contests under Article VII, § 13.

* * * * *

In sum, SB 106 substantively, purposefully and silently infringes upon and alters the manner in which multiple existing constitutional provisions function. Pursuit of the amendments without identifying the other substantive changes denies voters their "sacrosanct" right to understand and vote on each change separately in violation of Article XI, § 1. *League of Women Voters of Pa.*, 265 A.3d at 242 ("right to vote on each change separately [is] a sacrosanct right that [Article XI, § 1] of our organic charter of governance guarantees").

### F. The Complex, Multiple Amendments in SB 106 May Only Properly Be Pursued by Constitutional Convention.

Beyond the flaws in the separate amendments, the process employed by the General Assembly is itself flawed. The complex, multiple and varying amendments that impact personal rights and restructure our government's balance and separation of powers should be pursued through a constitutional convention, rather than the amendment process in Article XI, § 1.

As the Commonwealth Court explained in *Pa. Prison Soc'y v. Commonwealth*, 727 A.2d 632, 634-35 (Pa. Cmwlth. 1999), *rev'd on other grounds*, 776 A.2d 971 (Pa. 2001), the process described in Article XI, § 1 is reserved for simple, straightforward changes to the Constitution, whereas multiple, complex changes should be made by constitutional convention. The Court said:

> Amendments to the Constitution should not be taken lightly or made easily. The process described in Article XI, Section 1 is reserved for simple, straight forward

> changes to the Constitution, easily described in a ballot question and easily understood by the voters. This process should not be used to circumvent a constitutional convention, the process for making complex changes to the Constitution.
>
> . . .
>
> If multiple changes are so interrelated that they must be made together as a unit, then they are too complex to be made by the process described in Article XI, Section 1. Those changes should be made by constitutional convention, where they can be more adequately debated and understood.

*Id.*

This reasoning applies with resounding force here. The General Assembly repackaged its failed legislative agenda as constitutional amendments which work radical changes to the Constitution in the areas of women's reproductive and health care rights, election procedures, elector qualifications and the constitutional separation and balance of powers without fairly apprising voters of the nature and extent of the changes and without affording voters the required opportunity to vote separately on each change. The proposals in SB 106 are exactly the sort of complex changes that require careful deliberation at a constitutional convention prior to a fair and accurate presentation to the electorate. The hasty overnight procedure employed by the General Assembly obscures the extent and nature of the changes to our governing document and is wholly inconsistent with the requirement that the electorate must be fairly, accurately and clearly apprised of those changes.

The General Assembly should be compelled to pursue its proposed amendments, if at all, through the convention process.

### G. This Constitutional Interpretation Dispute Is Ripe for Decision by This Court.

SB 106 was passed on July 8, 2022. As of the date of this filing, the amendments in SB 106 are being prepared for publication in local newspapers and voters are considering which candidates to support in the November elections for the Senate and House without the benefit of their representatives' vote on each proposed amendment. The many violations of Article XI, § 1 detailed in this Application are complete, ascertainable and ripe for adjudication under the Declaratory Judgments Act. *See, e.g., Pa. Gaming Control Bd. v. City Council*, 928 A.2d 1255, 1265 (Pa. 2007) (enjoining city from submitting ballot question pursuant to city ordinance where petitioner challenged ordinance on its face and disputed city's authority to submit ballot question); *Deer Creek Drainage Basin Auth. v. County Bd. of Elections*, 381 A.2d 103, 107 (Pa. 1977) (exercising plenary jurisdiction and granting injunctive relief to prevent invalid referendum question from appearing on ballot "to avoid unnecessary voter confusion and the unjustified expenditure of public resources on an inoperative election").

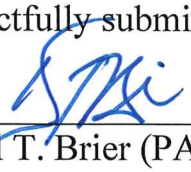
Moreover, failure to seek judicial relief now invites a challenge on laches grounds later. *See, e.g.*, *Kelly v. Commonwealth*, 240 A.3d 1255, 1256 (Pa. 2020) (dismissing petition for review based on petitioner's "failure to file their facial constitutional challenge in a timely manner"); *Stander*, 250 A.2d at 476 (noting that plaintiffs' application for preliminary injunction seeking to enjoin ballot question on constitutional amendments was denied "on the basis of the plaintiffs' laches in waiting until the 'eve' of the election to bring their action").

The constitutionality of SB 106 is ripe for decision now and should be decided now before further publication and before the upcoming state office elections.

## V. CONCLUSION

SB 106 irreparably and plainly violates Article XI, § 1. This Court should exercise jurisdiction over this important public matter, declare that SB 106 is constitutionally invalid and enjoin further action on the joint resolution.

Respectfully submitted:

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Date: July 28, 2022

## CERTIFICATE OF COMPLIANCE

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

Daniel T. Brier

Date: July 28, 2022

# Exhibit A

PRIOR PASSAGE - NONE

PRIOR PRINTER'S NOS. 71, 1279 PRINTER'S NO. 1857

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# SENATE BILL

## No. 106 Session of 2021

INTRODUCED BY ARGALL, MARTIN, STEFANO, PHILLIPS-HILL, DiSANTO, BAKER, MASTRIANO, PITTMAN AND REGAN, JANUARY 22, 2021

AMENDMENTS TO HOUSE AMENDMENTS, IN SENATE, JULY 7, 2022

A JOINT RESOLUTION

Proposing separate and distinct amendments to the Constitution of the Commonwealth of Pennsylvania, PROVIDING THAT THERE IS NO CONSTITUTIONAL RIGHT TO TAXPAYER-FUNDED ABORTION OR OTHER RIGHT RELATING TO ABORTION; further providing for action on concurrent orders and resolutions ~~and~~, for Lieutenant Governor~~; providing for executive orders; further providing~~ AND for qualifications of electors; and providing for election audits. <--

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

Section 1. The following separate and distinct amendments to the Constitution of Pennsylvania are proposed in accordance with Article XI:

(1) THAT ARTICLE I BE AMENDED BY ADDING A SECTION TO READ: <--

§ 30. ABORTION.

THIS CONSTITUTION DOES NOT GRANT THE RIGHT TO TAXPAYER-FUNDED ABORTION OR ANY OTHER RIGHT RELATING TO ABORTION.

~~(1)~~ (2) That section 9 of Article III be amended to read: <--

§ 9. Action on concurrent orders and resolutions.

Every order, resolution or vote, to which the concurrence of

both Houses may be necessary, except on the questions of adjournment, disapproval of a regulation or termination or extension of a disaster emergency declaration as declared by an executive order or proclamation, or portion of a disaster emergency declaration as declared by an executive order or proclamation, 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.

~~(2)~~ (3) That section 4 of Article IV be amended to read: <--

§ 4. Lieutenant Governor.

A Lieutenant Governor shall be chosen jointly with the Governor by the casting by each voter of a single vote applicable to both offices, for the same term, and subject to the same provisions as the Governor[; he]. Each candidate for Governor, having been nominated under the laws of this Commonwealth, shall, subject to the approval of the political party or political body, if any, nominating such candidate, select a candidate for Lieutenant Governor within such time before the gubernatorial general election as the General Assembly shall prescribe by law. A person may not seek election to both offices simultaneously. The Lieutenant Governor shall be President of the Senate. As such, [he] the Lieutenant Governor may vote in case of a tie on any question except the final passage of a bill or joint resolution, the adoption of a conference report or the concurrence in amendments made by the House of Representatives.

~~(3) That Article IV be amended by adding a section to read:~~ <--

~~§ 21. Executive orders.~~

~~An executive order or proclamation by the Governor or an~~

~~executive agency with the force and effect of law may not be in effect for more than 21 days, unless otherwise extended in whole or in part by concurrent resolution of the General Assembly.~~

~~(4) That section 1 of Article VII be amended to read:~~

~~§ 1. Qualifications of electors.~~

~~[Every citizen 21] Only citizens 18 years of age or older, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.~~

~~1. He or she shall have been a citizen of the United States at least one month.~~

~~2. He or she shall have resided in the State [90] 30 days immediately preceding the election.~~

~~3. He or she shall have resided in the election district where he or she shall offer to vote at least [60] 30 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within [60] 30 days preceding the election.~~

~~4. He or she shall present valid identification prior to voting, regardless of voting method. If an elector does not possess valid identification, he or she shall, upon request, be furnished with a government issued identification at no cost to the elector. For purposes of this paragraph, the term "valid identification" shall mean any unexpired government issued identification, unless otherwise authorized by statute.~~

(4) THAT SECTION 1 OF ARTICLE VII BE AMENDED TO READ: <--

§ 1. QUALIFICATIONS OF ELECTORS.

(A) EVERY CITIZEN 21 YEARS OF AGE, POSSESSING THE FOLLOWING QUALIFICATIONS, SHALL BE ENTITLED TO VOTE AT ALL ELECTIONS SUBJECT, HOWEVER, TO SUCH LAWS REQUIRING AND REGULATING THE REGISTRATION OF ELECTORS AS THE GENERAL ASSEMBLY MAY ENACT.

1. HE OR SHE SHALL HAVE BEEN A CITIZEN OF THE UNITED STATES AT LEAST ONE MONTH.

2. HE OR SHE SHALL HAVE RESIDED IN THE STATE 90 DAYS IMMEDIATELY PRECEDING THE ELECTION.

3. HE OR SHE SHALL HAVE RESIDED IN THE ELECTION DISTRICT WHERE HE OR SHE SHALL OFFER TO VOTE AT LEAST 60 DAYS IMMEDIATELY PRECEDING THE ELECTION, EXCEPT THAT IF QUALIFIED TO VOTE IN AN ELECTION DISTRICT PRIOR TO REMOVAL OF RESIDENCE, HE OR SHE MAY, IF A RESIDENT OF PENNSYLVANIA, VOTE IN THE ELECTION DISTRICT FROM WHICH HE OR SHE REMOVED HIS OR HER RESIDENCE WITHIN 60 DAYS PRECEDING THE ELECTION.

(B) IN ADDITION TO THE QUALIFICATIONS UNDER SUBSECTION (A) OF THIS SECTION, A QUALIFIED ELECTOR SHALL PROVIDE A VALID IDENTIFICATION AT EACH ELECTION IN ACCORDANCE WITH THE FOLLOWING:

1. WHEN VOTING IN PERSON, THE QUALIFIED ELECTOR SHALL PRESENT A VALID IDENTIFICATION BEFORE RECEIVING A BALLOT TO VOTE IN PERSON.

2. WHEN NOT VOTING IN PERSON, THE QUALIFIED ELECTOR SHALL PROVIDE PROOF OF A VALID IDENTIFICATION WITH HIS OR HER BALLOT.

(C) IF A QUALIFIED ELECTOR DOES NOT POSSESS A VALID IDENTIFICATION, HE OR SHE SHALL, UPON REQUEST AND CONFIRMATION OF IDENTITY, BE FURNISHED WITH A GOVERNMENT-ISSUED IDENTIFICATION AT NO COST TO THE QUALIFIED ELECTOR.

(D) FOR PURPOSES OF THIS SECTION, THE TERM "VALID IDENTIFICATION" MEANS AN UNEXPIRED GOVERNMENT-ISSUED

IDENTIFICATION, UNLESS OTHERWISE PROVIDED FOR BY LAW.

(5) That Article VII be amended by adding a section to read:

§ 15. Election audits.

The General Assembly shall by statute provide for the auditing of elections~~, including the administration of elections, certification of election machines, the accuracy of the list of registered voters, the administration of voter registration~~ and election results~~. Election audits shall be conducted~~ by the Auditor General. In years when the Auditor General stands for election to any office, an Independent Auditor shall conduct the audit. <--

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:

(1) Submit the proposed constitutional amendment under section 1(1) of this resolution to the qualified electors of

this Commonwealth as a separate 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 amendment is passed by the General Assembly.

(2) Submit the proposed constitutional amendment under section 1(2) of this resolution to the qualified electors of this Commonwealth as a separate 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 amendment is passed by the General Assembly.

(3) Submit the proposed constitutional amendment under section 1(3) of this resolution to the qualified electors of this Commonwealth as a separate 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 amendment is passed by the General Assembly.

(4) Submit the proposed constitutional amendment under section 1(4) of this resolution to the qualified electors of this Commonwealth as a separate 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 amendment is passed by the General Assembly.

(5) Submit the proposed constitutional amendment under section 1(5) of this resolution to the qualified electors of this Commonwealth as a separate 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 amendment is passed by the General Assembly.