

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 18-CI-00794
DIVISION II
ELECTRONICALLY FILED**

DAVID M. WARD, et al.

PLAINTIFFS

v.

SECRETARY OF STATE *ex rel. Allison Lundergan Grimes, et al.*

DEFENDANTS

-and-

WHITNEY WESTERFIELD, *et al.*

INTERVENORS

NOTICE OF APPEAL

Notice is hereby given that Senator Whitney Westerfield, in both his official and personal capacities, Representative Joseph Fischer, in his personal and official capacities, Marsy's Law for Kentucky, LLC and Marsy's Law for Kentucky, a political issues committee, Intervenors in this proceeding, hereby appeal to the Kentucky Court of Appeals from the final and appealable Order entered by this Court on October 15, 2018, a copy of which is attached hereto as Exhibit A.

The Appellants are Senator Whitney Westerfield, in both his official and personal capacities, Representative Joseph Fischer, in his personal and official capacities, Marsy's Law for Kentucky, LLC and Marsy's Law for Kentucky, a political issues committee.

The name of the Appellees against whom this appeal is taken are David M. Ward and Kentucky Association of Criminal Defense Lawyers, Inc., Plaintiffs. Secretary of State, *ex rel* Allison Lundergan Grimes, in her official capacity, and The Kentucky State Board of Elections, *ex rel* Allison Lundergan Grimes, in her official capacity as Chairman and Chief Election Official for the Commonwealth are also parties to the proceedings below and, therefore, are also Appellees in this appeal.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2018, I electronically filed the foregoing document with the Clerk of the Court by using the Kentucky Court of Justice eFiling System. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by electronic mail or First Class Mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

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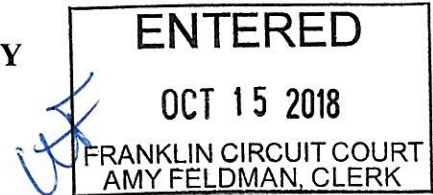
EXHIBIT A

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COMMONWEALTH OF KENTUCKY
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CIVIL ACTION No. 18-CI-00794



DAVID M. WARD, et al.

PLAINTIFFS

vs.

SECRETARY OF STATE, *ex rel.*
Alison Lundergan Grimes, *et al.*

DEFENDANTS

vs.

REP. JOSEPH M. FISCHER;
SEN. WHITNEY WESTERFIELD, in both his personal and
representative capacities;
MARSY'S LAW FOR KENTUCKY, LLC; and
MARSY'S LAW FOR KENTUCKY

INTERVENING DEFENDANTS

OPINION AND ORDER

This matter is before the Court upon Plaintiffs' *Motion for Summary Judgment* and Intervening Defendants' *Cross-Motion for Summary Judgment*. This case was called before the Court on Tuesday, October 9, 2018, at 10:00 a.m. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **GRANTS** Plaintiffs' *Motion for Summary Judgment*, **DENIES** Intervening Defendants' *Cross-Motion for Summary Judgment*, and **ENJOINS** the Secretary of State from certifying the votes cast for or against SB 3.

STATEMENT OF FACTS

On January 2, 2018, Senate Bill 3 ("SB 3") was introduced into session by Senator Whitney Westerfield. SB 3, titled "AN ACT proposing to create a new section of the Constitution of Kentucky relating to crime victims' rights," also known as "Marsy's Law,"

is a proposed amendment to the Kentucky Constitution to provide victims of crimes certain constitutional rights. In its entirety, SB 3 provides:

SECTION 1: IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO READ AS FOLLOWS:

To secure for victims of criminal acts of public offenses justice and due process and to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, a victim, as defined by law which takes effect upon the enactment of this section and which may be expanded by the General Assembly, shall have the following rights, which shall be respected and protected by law in a manner no less vigorous than the protections afforded to the accused in the criminal and juvenile justice systems: victims shall have the reasonable right, upon request, to timely notice of all proceedings and to be heard in any proceeding involving a release, plea, sentencing, or other matter involving the right of a victim other than grand jury proceedings; the right to be present at the trial and all other proceedings, other than grand jury proceedings, on the same basis as the accused; the right to proceedings free from unreasonable delay; the right to consult with the attorney for the Commonwealth or the attorney's designee; the right to reasonable protection from the accused and those acting on behalf of the accused throughout the criminal and juvenile justice process; the right to timely notice, upon request, of release or escape of the accused; the right to have the safety of the victim and the victim's family considered in setting bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction; the right to full restitution to be paid by the convicted or adjudicated party in a manner to be determined by the court, except that in the case of a juvenile offender the court shall determine the amount and manner of paying the restitution taking into consideration the best interests of the juvenile offender and the victim; the right to fairness and due consideration of the crime victim's safety, dignity, and privacy; and the right to be informed of these enumerated rights, and shall have standing to assert these rights. The victim, the victim's attorney or other lawful representative, or the attorney for the Commonwealth upon request of the victim may seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court with jurisdiction over the case. The court shall act promptly on such a request and afford a remedy for the violation of any right. Nothing in this section shall afford the victim party status, or be construed as altering the presumption of innocence in the criminal justice system. The accused shall not have standing to assert the rights of a victim. Nothing in this section shall be construed to

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alter the powers, duties, and responsibilities of the prosecuting attorney. Nothing in this section or any law enacted under this section creates a cause of action for compensation, attorney's fees, or damages against the Commonwealth, a county, city, municipal corporation, or other political subdivision of the Commonwealth, an officer, employee, or agent of the Commonwealth, a county, city, municipal corporation, or any political subdivision of the Commonwealth, or an officer or employee of the court. Nothing in this section or any law enacted under this section shall be construed as creating:

- (1) A basis for vacating a conviction; or
- (2) A ground for any relief requested by the defendant.

Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415. The question to be submitted to the voters shall read as follows: "Are you in favor of providing constitutional rights to victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and to have a voice in the judicial process?"

SB 3 was passed by both the Kentucky House and the Kentucky Senate.

Following the passage of both chambers, pursuant to KRS 118.415, the General Assembly crafted a question to be placed on the ballot for the November 6, 2018, election for the electorate. KRS 118.415(1) permits the General Assembly to draft a question for the electorate "in a manner calculated to inform the electorate of the substance of the amendment." KRS 118.415(1). The question drafted by the General Assembly reads:

Are you in favor of providing constitutional rights to victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and to have a voice in the judicial process.

SB 3 § 2, 2018 Ky. Acts Ch. 1.

On January 25, 2018, the General Assembly presented SB 3 to Secretary of State, Alison Lundergan Grimes ("Secretary Grimes"), for a referendum in the November 6, 2018, election. KRS 118.415(1) requires the Secretary of State to publish the "question calculated to inform the electorate of the substance of the amendment...at least one (1)

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time in a newspaper of general circulation published in this state...” KRS 118.415(1). On July 22, 2018, Secretary Grimes published the proposed question in the *Louisville Courier-Journal* and the *Lexington Herald-Leader*. On August 27, 2018, Secretary Grimes, pursuant to KRS 118.415(2)-(3), certified the question to the county clerks for Kentucky’s 120 counties for placement on the November 6, 2018, ballot.

On August 7, 2018, prior to the certification by Secretary Grimes, Plaintiffs filed this action generally challenging the substance of the question presented to the electorate concerning SB 3 arguing that it does not comport with the requirements of KRS 118.415(1). Plaintiffs further assert that KRS 118.415 violates Sections 2 and 256 of the Kentucky Constitution, and moreover that SB 3 contains separate unrelated subject matters and thus pursuant to Section 256 of the Kentucky Constitution a separate vote is required for the various subject matters presented in SB 3. The Court granted Intervening Defendants request to intervene on August 20, 2018. The Attorney General, Andy Beshear, filed an amicus curiae brief in support of Defendants and Intervening Defendants. The parties each submitted motions for summary judgment and oral argument was held on October 9, 2018.

STANDARD OF REVIEW

Summary judgment is appropriate when the Court concludes that no genuine issue of material fact for which the law provides relief exists. CR 56.03. Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.01.

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The moving party bears the initial burden of showing the non-existence of a genuine issue of material fact, and the burden then shifts to the opposing party to affirmatively show the absence of a genuine issue of material fact. *Jones v. Abner*, 335 S.W.3d 471, 475 (Ky. Ct. App. 2011). The movant will only succeed by showing “with such clarity that there is no room left for controversy.” *Steelvest, Inc. v. Scansteel Service Ctr.*, 807 S.W. 2d 476, 482 (Ky. 1991). “The inquiry should be whether, from the evidence on record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial.” *Welch v. Am. Publ'g Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). In reviewing Motions for Summary Judgment, the Court views all facts in the light most favorable to the non-moving party and resolves all doubts in its favor. The Court will only grant summary judgment when the facts indicate that the nonmoving party cannot produce evidence at trial that would render a favorable judgment. *Steelvest*, 807 S.W. 2d at 480.

The Court recognizes that the summary judgment is a device that should be used with caution and is not a substitute for trial. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Jones v. Abner*, 335 S.W.3d at 480. Thus, this Court finds that summary judgment will be proper when it is shown with clarity from the evidence on record that the adverse party cannot prevail, as a matter of law, under any circumstances.

ANALYSIS

On November 6, 2018, six (6) states, including Kentucky, will vote to decide whether to add a constitutional amendment to their respective state constitutions relating

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to Marcy's Law.¹ First, it is important to note that the Court is not addressing the constitutionality or the merits of the actual substance of SB 3, rather, the Court is solely ruling on the manner in which SB 3 has been placed on the ballot for the November 6, 2018, election. A proposed constitutional amendment can only be adopted if "the constitutional requirements with respect to adoption were strictly followed." *Stovall v. Gartrell*, 332 S.W.2d 256, 258 (Ky. 1960). Further, "the validity of a proposed change in the Constitution is a judicial question." *Id.* It is the role of the court to ensure that the question presented to the electorate sufficiently states the substance of the proposed constitutional amendment.

I. Plaintiffs have standing.

Intervening Defendants argue that Plaintiffs lack standing to assert the claim presently before the Court. The Court disagrees. This action is similar to various other challenges to constitutional amendments proposed to the electorate. *See Stovall v. Gartrell*, 332 S.W.2d 256 (Ky. 1960); *Funk v. Fielder*, 243 S.W.2d 474 (Ky. 1951); *Arnett v. Sullivan*, 132 S.W.2d 76 (Ky. 1939). Additionally, "[t]he misuse of taxpayer funds is one form" of injury that gives standing to a party. *Yeoman v. Health Policy Board*, 983 S.W.2d 459, 473 (Ky. 1998). In Kentucky taxpayers are permitted to sue based on the misuse of taxpayer funds. *Id.* This is a declaration of rights action in which Plaintiffs are seeking injunctive relief. Plaintiffs' pleadings clearly state that they object to the use of taxpayer funds to count and certify votes of a proposed constitutional amendment that has not been validly placed on the ballot. The Court finds that Plaintiffs have standing.

¹ A Circuit Court Judge in Florida recently held that Florida's proposed constitutional amendment relating to Marsy's law fails to "fully, fairly, and accurately" inform voters on the contents of the amendment and ordered that the question be removed from the ballot. The issue is now pending before the Florida Supreme Court.

II. The question drafted by the General Assembly does not adequately incorporate the substance of SB 3.

Before addressing the true issue before the Court, it is necessary to outline the law governing amendments to the Kentucky Constitution. Section 256 of the Kentucky Constitution authorizes legislative proposals for constitutional amendments and provides, in relevant part:

...[S]uch proposed amendment or amendments shall be submitted to the voters of the State for their ratification or rejection at the next general election for members of the House of Representatives, the vote to be taken thereon in such manner as the General Assembly may provide, and to be certified by the officers of election to the Secretary of State in such manner as shall be provided by law, which vote shall be compared and certified by the same board authorized by law to compare the polls and give certificates of election to officers for the State at large. If it shall appear that a majority of the votes cast for and against an amendment at said election was for the amendment, then the same shall become part of the Constitution of this Commonwealth, and shall be so proclaimed by the Governor, and published in such manner as the General Assembly may direct. Said amendments shall not be submitted at an election which occurs less than ninety days from the final passage of such proposed amendment or amendments. Not more than four amendments shall be voted upon at any one time. If two or more such amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment...

KY. CONST. § 256. Section 257 of the Kentucky Constitution addresses the requirement of publication of proposed constitutional amendments and states:

Before an amendment shall be submitted to a vote, the Secretary of State shall cause such proposed amendment, and the time that the same is to be voted upon, to be published at least ninety days before the vote is to be taken thereon in such manner as may be prescribed by law.

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KY. CONST. § 257. KRS 118.415(1) acts in conjunction with Sections 256 and 257 of the Kentucky Constitution and states:

The General Assembly may state the substance of the amendment to the Constitution of Kentucky in the form of a question in a manner calculated to inform the electorate of the substance of the amendment. When an amendment to the Constitution has been proposed by the General Assembly, the Secretary of State shall cause the question calculated to inform the electorate of the substance of the amendment which is prepared by the General Assembly or the Attorney General to be published at least one (1) time in a newspaper of general circulation published in this state, and shall also cause to be published at the same time and in the same manner the fact that the amendment will be submitted to the voters for their acceptance or rejection at the next regular election at which members of the General Assembly are to be voted for. The publication shall be made not later than the first Tuesday in August preceding the election at which the amendment is to be voted on.

KRS 118.415(1).

The heart of the issue before the Court is does the question submitted to the electorate incorporate the substance of the amendment in order to properly inform the electorate of the contents of the proposed constitutional amendment, SB 3. Plaintiffs' argument is simple. Plaintiffs claim that the ballot question submitted by the General Assembly does not present the substance of SB 3 in a manner which informs the electorate of the contents of SB 3. Plaintiffs additionally submit that the Court should declare KRS 118.415 invalid because it contradicts the language of Section 256 concerning what must be submitted to the electorate before voting on a constitutional amendment. Intervening Defendants first assert that Section 256 does not require that the entire proposed amendment be placed on the ballot and KRS 118.415(1) allows the General Assembly to instead submit a question to inform the electorate of the substance of SB 3. Similarly,

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Intervening Defendants reason that question posed to the electorate by the General Assembly contains an appropriate summary of the contents of SB 3.

First, Plaintiffs contention that KRS 118.415 is invalid as it directly conflicts with the requirements of Section 256 is incorrect. As stated above, Section 256 directs the General Assembly to submit the proposed amendment to the electorate in a manner that is in its discretion and does not require the entire amendment to be presented on the ballot. KRS 118.415(1) allows the General Assembly to “state the substance of the amendment proposed to the Constitution of Kentucky in the form of a question in a manner calculated to inform the electorate of the substance of the amendment.” KRS 118.415(1). In *Funk v. Fielder*, the Supreme Court of Kentucky agreed that Section 256 authorizes the content of KRS 118.415(1):

The generality of the constitutional provision that the “vote to be taken thereon in such manner as the General Assembly may provide” left it open for the legislature to prescribe the manner, and, in doing so, it enacted [the predecessor to KRS 118.415(1)].

243 S.W.2d 474, 476 (Ky. 1951). The Supreme Court of Kentucky’s reasoning in *Funk* decrees that KRS 118.415 is constitutional and leaves to the discretion of the General Assembly the format in which the proposed constitutional amendment is presented to the electorate.

Though Section 256 and KRS 118.415(1) grant the General Assembly the ability to present the proposed constitutional amendment to the electorate in the form of a question, that question must encompass the substance of the amendment in order to properly and fairly inform the public of the contents of the proposed constitutional amendment. The question posed by the General Assembly regarding SB 3 does not satisfy

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this requirement. Stated again, the question certified for the November 6, 2018, election provides:

Are you in favor of providing constitutional rights to the victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and to have a voice in the process?

SB 3 § 2, 2018 Ky. Acts Ch. 1.

The November 3, 1992, general election presented a proposed constitutional amendment regarding the Executive Department contained in Senate Bill 226 (“SB 226”). SB 226 contained numerous changes to the Constitution and the proposed amendment was presented to the electorate in the form of a question. The question posed stated:

Are you in favor of (1) permitting the Governor and other state officers election in 1995 and after to serve two consecutive terms; (2) electing the Governor and Lieutenant Governor by casting one vote for both offices; (3) giving the Lieutenant Governor duties assigned by the Governor and the General Assembly, with the Senate selecting a senator to act as President of the Senate; (4) allowing the Governor to retain power while absent from the state, and transferring power to the Lieutenant Governor only if the Governor cannot discharge the duties of the office; (5) removing the provision requiring an election to [fill a] vacancy in the Governor’s office that occurs in the first two years of the term; (6) if the Governor and Lieutenant Governor cannot act, transferring power to the Attorney General and then to the Auditor; (7) eliminating the offices of Register of Land Office and Superintendent of Public Instruction as elective offices; (8) permitting the General Assembly to require the Senate’s consent to the selection of inferior state officer and members of boards and commissions; and (9) moving all elections (except elections for state constitutional officers) to even-numbered years by adding one year to the terms of all officials regularly elected in 1993, adding one year to the terms of local officials elected in 1995, and subtracting one year from the terms of circuit judges and judges of the court of appeals elected in 1999?

It is clear that the question posed to the electorate in the November 1992 election is vastly more detailed than the question drafted for the upcoming election. The November 1992

question highlights the proposed constitutional changes to fairly inform the electorate and was an accurate summary of SB 226.

Similar to SB 226, SB 3 contains numerous new constitutional rights that if passed will be granted to crime victims. Specifically, there are ten (10) new enumerated rights proposed in SB 3: (1) the reasonable right, upon request, to timely notice of all proceedings and to be heard in any proceeding involving a release, plea, sentencing, or other matter involving the right of a victim other than grand jury proceedings; (2) the right to be present at the trial and all other proceedings, other than grand jury proceedings, on the same basis as the accused; (3) the right to proceedings free from unreasonable delay; (4) the right to consult with the attorney for the Commonwealth or the attorney's designee; (5) the right to reasonable protection from the accused and those acting on behalf of the accused throughout the criminal and juvenile justice process; (6) the right to timely notice, upon request, of release or escape of the accused; (7) the right to have the safety of the victim and the victim's family considered in setting bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction; (8) the right to full restitution to be paid by the convicted or adjudicated party in a manner to be determined by the court, except that in case of a juvenile offender the court shall determine the amount and manner of paying the restitution taking into consideration the best interests of the juvenile offender and the victim; (9) the right to fairness and due consideration of the crime victim's safety, dignity, and privacy; and (10) the right to be informed of these enumerated rights. SB 3 § 1, 2018 Ky. Acts Ch. 1.² Moreover, SB 3 gives standing to crime victims to

² Many of these rights are already afforded to victims in our statutes, KRS 421.500 thru 421.575, the Kentucky Crime Victim Bill of Rights. Additionally, the Court has no problem if these statutory rights are elevated to constitutional rights. However, the process upon which this proposed amendment has been introduced toward approval is what concerns the

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assert the above rights including the right to enforce any of the above rights and requires the presiding court to promptly act upon the request of a victim to enforce a right.

The Court agrees with Plaintiffs that the question crafted by the General Assembly fails to adequately address the substance of SB 3. A substantial question is one that “is not misleading or inconsistent and reveals the essential character and purpose of the proposed amendment...” *Funk*, 243 S.W.2d at 476. The question presented to the electorate does not need to contain every possible consequence of the enactment of the constitutional amendment, however, the question must sufficiently inform the electorate of the contents of the proposed constitutional amendment. The question drafted by the General Assembly for SB 3 merely asks if voters are interested in providing constitutional rights to victims and instead of stating the proposed constitutional rights simply categorizes the rights as the right to be treated “fairly” and with “dignity and respect,” including the right to have a “voice” in the process. Instead, SB 3 contains ten (10) enumerated rights for crime victims, many of which cannot simply be summarized as treating a victim “fairly” and with “dignity and respect,” of giving them a “voice.” Treating a victim “fairly” and with “dignity and respect” is a common courtesy, which vastly differs from providing victims with constitutional protections in criminal proceedings. Many voters may want crime victims to be treated “fairly” and with “dignity and respect,” but those same voters may not want to extend standing to a crime victim or decree the ten (10) specific enumerated rights to victims. The electorate cannot be expected or required to vote on a constitutional amendment of which they are not accurately informed of the substance. Section 256 and

Court. The summary is simply too vague to inform voters of what is actually being placed in our Constitution. Furthermore, it is disingenuous to think that our electorate would not vote for this amendment if it was printed in its entirety (as suggested by the Defendants). That in itself supports the Court’s ruling.

KRS 118.415(1) convey to the General Assembly the authority to pose the substance of the constitutional amendment in the form of a question to the electorate, however, a question that does not contain an accurate summary of the substance of the constitutional amendment cannot be said to inform the public. Members of the electorate, some of whom for the first time on November 6, 2018, are presented with the General Assembly's drafted question, cannot be expected to gather from the posed question the actual contents of SB 3.

Further, the question crafted by the General Assembly fails to adequately encompass that SB 3 seeks to provide standing to victims to assert the ten (10) new enumerated rights and the right to enforce any of the proposed rights. It is unfair for the electorate to vote on a proposed constitutional amendment in which the question posed is misleading and fails to inform the public of the actual substance of the proposed constitutional amendment. Because the question drafted by the General Assembly and certified by Secretary Grimes is misleading as it fails to accurately reflect the substance of SB 3 in order to fairly and fully inform the electorate of its contents, the Court hereby enjoins Secretary Grimes from certifying the ballots cast for or against SB 3.

II. SB 3 does not contain multiple unrelated subjects.

Plaintiffs argue that SB 3 contains multiple unrelated subjects in violation of the "single subject or related subject" rule found in Section 256. In 1979 the stricter single subject rule was removed from Section 256 and replaced with the allowance of multiple related subjects. The Court agrees with Intervening Defendants that though SB 3 contains multiple subjects, the subjects are related. To make a determination of "relatedness," the Court must inquire "whether the whole matter found in the amendment is so related to the

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general subject of the amendment as to have a natural connection with it, or is so foreign to it as to have no bearing upon the general subject matter and the object sought to be accomplished.” *Hatcher v. Meredith*, 173 S.W.2d 665, 667-68 (Ky. 1943) It is clear that the contents of SB 3 “are not distinct or essentially unrelated.” *Funk*, 243 S.W.2d at 478. SB 3 concerns the rights of crime victims in the criminal and juvenile justice systems, and thus all clauses of the amendment are “related to the general subject of the amendment.” *Hatcher*, 173 S.W.2d at 667.

III. Plaintiffs challenges that relate to the impact of SB 3.

Additionally, Plaintiffs raise a variety of challenges concerning the impact that SB 3 could have on the Commonwealth’s legal system and the omission of these various impacts from the question posed to the electorate. These claims include: (1) that SB 3 will impose legislative control over elements reserved for the control of the judicial branch; (2) the unclear language of who is considered a victim; (3) the creation of new rights of privacy for persons determined to be victims; and (4) the limitation placed on victims to remedy violations of the ten (10) new proposed enumerated rights. At this time, these challenges to SB 3 are premature. The possible future impact of SB 3 is not something for the Court to determine before the proposed constitutional amendment has been properly placed on the ballot and passed by the electorate. If SB 3 is passed by the electorate there will no doubt be challenges made concerning constitutional conflicts, however, those issues must ripen before they can be adequately addressed by this Court. Neither Section 256 nor KRS 118.415(1) require the General Assembly to inform the electorate about the impact or possible future consequences of SB 3. Thus, the Court declines to address Plaintiffs

arguments concerning the impact that SB 3 could have on the Commonwealth's legal system.

IV. Ripeness, laches, and irreparable harm.

Intervening Defendants assert that Plaintiffs' claims are not ripe for review and that this Court should withhold judgment until after the November 6, 2018, election, as the electorate may not vote in favor of SB 3. "[R]ipeness involves weighing two factors: (1) the hardship to the parties of withholding court consideration; and (2) the fitness of the issues for judicial review." *W.B. v. Commonwealth, Cabinet for Health and Family Services*, 388 S.W.3d 108, 114 (Ky. 2012). Plaintiffs contend that the issue before the Court is ripe for review. The Court agrees with Plaintiffs that the issue before the Court is ripe for review. The first element of ripeness considers the hardship to the parties without court consideration of the issue. As the Court stated above, the ballot question certified for the November 6, 2018, election does not accurately reflect the contents of SB 3 in order to inform the electorate. Without Court intervention the electorate will vote on a constitutional amendment in which they are not fairly informed of the substance of the proposed amendment. The second element of ripeness is a determination of the fitness for judicial review. The issue is undoubtedly fit for judicial review as "the validity of a proposed change in the Constitution is a judicial question." *Stovall*, 332 S.W.2d at 258. The Court declines to further address Intervening Defendants argument concerning ripeness, as the Court believes that ripeness is an obvious nonissue.

Finally, Intervening Defendants reason that Plaintiffs' claims are barred by laches and the lack of irreparable harm. The Court disagrees. The doctrine of laches "serves to bar claims in circumstances where a party engages in unreasonable delay to the prejudice of

others rendering it inequitable to allow that party to reverse a previous course of action.” *Plaza Condominium Ass’n v. Wellington*, 920 S.W.2d 51, 54 (Ky. 1996). The doctrine of laches is one of niche application that does not presently apply. First, Plaintiffs initiated this action prior to Secretary Grimes certifying the proposed ballot question. Additionally, Plaintiffs correctly reason that the legality of the ballot question of a proposed constitutional amendment is something that the Court should address at any time prior to the election to avoid harm. Further, Intervening Defendants contention that Plaintiffs lack irreparable harm clearly fails. It would be unduly harmful to allow the citizens of the Commonwealth to vote on a proposed constitutional amendment where the question posed does not accurately inform the electorate of the substance contained in SB 3.

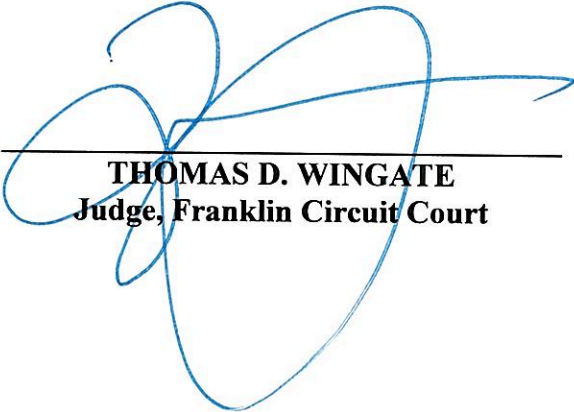
CONCLUSION

For the foregoing reasons, the Court finds that the ballot question drafted by the General Assembly for the November 6, 2018, election fails to sufficiently state the substance of the proposed constitutional amendment in order to accurately inform the electorate of the contents of SB 3. The Court anticipates that this matter will be settled by the appellate courts upon review and the Secretary of State may count the ballots but withhold certification unless ordered by a reviewing court.

WHEREFORE, the Court hereby **GRANTS** Plaintiffs’ *Motion for Summary Judgment* and **DENIES** Intervening Defendants’ *Cross-Motion for Summary Judgment*. The Secretary of State is hereby **ENJOINED** from certifying the votes cast for or against SB 3.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 15 day of October, 2018.



THOMAS D. WINGATE
Judge, Franklin Circuit Court

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EXH : 000018 of 000019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opinion and Order was mailed, this 15th day of October, 2018, to the following:

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Commonwealth of Kentucky
Amy Feldman, Franklin Circuit Clerk

Case #: 18-CI-00794

Envelope #: 1264405

Received From: SNYDER, SHERYL G

Account Of: SNYDER, SHERYL G

Case Title: WARD, DAVID M , ET AL VS. SECRETARY OF

Confirmation Number: 83870472

STATE, EX REL, ET
 Filed On: 10/15/2018 4:52:39PM

#	<u>Item Description</u>	<u>Amount</u>
1	Civil Filing Fee	\$150.00
2	Court Facilities Fee	\$25.00
3	Money Collected For Others(Attorney Tax Fee - Appeals)	\$10.00
4	Money Collected For Others(Postage)	\$21.44
5	Charges For Services(Copy - Photocopy)	\$38.40
	TOTAL:	<u>\$244.84</u>

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