

Marsy's Law would wreak havoc with constitution

By Jodine Mayberry, published in Delaware County daily Times, Nov. 1, 2019

"Where are the ads for the other side? A friend asked me earlier this week.

"There are no ads because there is no other side," I replied.

After all, none of us are opposed to providing maximum rights to victims of crime. Who would be?

But there should have been, many ads, articles, op-ed pieces, editorials, workshops and teach-ins to educate us voters about the most sweeping proposed change to our state Constitution seen in decades if not centuries – Marsy's Law – that we are going to be voting on Tuesday.

(To avoid confusion, let me stipulate, every time I say the word "constitution" throughout this column, I am referring to the Pennsylvania State Constitution.)

Marsy's Law is a hot mess that urgently needs to be taken back and done over, for all our sakes – suspects, victims, voters and taxpayers.

It looks like that will happen, thanks to the last-minute intervention of the only good government organizations paying any attention, the Pa. ACLU and Pa. League of Women Voters, who sued last week to try to stop it.

The amendment will still be on the ballot Tuesday because ballots have already been printed, but Wednesday, Commonwealth Court Judge Ellen Ceisler enjoined the Pa. Secretary of State from counting the votes or certifying the results until the state Supreme Court determines whether the amendment is itself constitutional.

And judging from the 39-page opinion Judge Ceisler issued Wednesday, it appears extremely likely that the top court will conclude that it is not. Read it [here](#) if you are online.

The state constitution says, in Article XI § 1, "when two or more amendments shall be submitted they shall be voted upon separately."

Marsy's law proposes to add 15 new rights – 15 separate amendments – for crime victims to the Constitution, impacting at least eight other major constitutional provisions that have been governing our judicial system and protecting the rights of the accused ever since the Constitution was written in 1776.

The Constitution requires that the actual text of a proposed amendment be put before the voters.

Marsy's Law is two and a half pages – too long to put on the ballot and too long for each voter to stand in the polling booth and read while pondering its meaning.

Voters must rely on a brief, incomplete and inaccurate summary of the proposed changes and they must vote yes or no on the entire thing without being able to read exactly what they are voting on or to choose the parts they would support or oppose.

The amendment itself calls for treating victims "with fairness and respect for the victim's safety, dignity and privacy."

But that one little word, “privacy” is omitted from the ballot summary, and it alone would throw the entire judicial system into complete chaos.

For example, if the courts must comply with a victim’s right to privacy, they might have to close a criminal trial when a victim demands it and seal the court records of that trial to the public.

That would be an extreme violation of all our rights, including the right of a suspect to be tried in public and to be sentenced in public if found guilty, and the right of the public to observe the trial and to know its outcome.

That is no small thing. The right to a public trial and a jury of our peers are fundamental protections that goes back 800 years to the Magna Carta (1215), back to a time when every baron maintained his own dungeon and meted out his own version of “justice” to his peasants.

Oh, I hear you ... So what, if criminals are inconvenienced, you are saying.

Here’s what: Criminal suspects – who are presumed innocent until and unless they are convicted – are accorded extensive constitutional rights precisely because we the people have vested awesome powers in the state to deprive them of their liberty and even their lives.

Those rights include the right to bail, the right to confront one’s accuser, the right to a public court proceeding, the right to a speedy trial, protection from double jeopardy and the right to obtain the testimony of witnesses in the defendant’s favor.

Suppose you were a criminal suspect, or your son or daughter or husband or wife? You would want and expect every one of these rights to be accorded to you and your loved ones.

Victims of crime in Pennsylvania already have extensive rights too – notification of court proceedings, the right to make an impact statement, the right to restitution, the right to be protected from violent suspects and the right to know when a convicted criminal has been released.

Mary’s Law goes far beyond that, into the realm of unintended consequences.

If a battered wife or girlfriend has a “right” not to testify against her attacker or the neighbors of a murder victim can not only evade their responsibility but can also exercise their “right” not to “snitch” on the killer, he walks free.

If a bank robbery suspect’s trial is postponed for years because every last “victim” cannot be located and notified of every hearing, his right to a speedy trial is violated and he walks free.

Non-violent suspects may languish in jail for months or years while the courts locate and notify every potential victim and give them the opportunity to appear and “participate” in their bail hearings.

Last February I asked if there were any competent lawyers in the Legislature who could see the need to derail this ugly mishmash of an amendment. The answer obviously is no, as it passed both houses in the second session 489-8.

So go ahead and vote for the amendment on Tuesday just to make yourself and Kelsey Grammar feel good. But pray the state Supreme Court has the wisdom to prevent it from ever actually being chiseled in stone in our constitution.

