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Supreme Court of Kentucky

Case Nos. 2020-SC-520-T, 2020-SC-0544-T

DAVID M. WARD, *et al.*

*Appellants/ Cross-
Appellees*

v.

On Transfer from the Court of Appeals
Case No. 2020-CA-1371

On Appeal from the
Franklin Circuit Court
Civil Action No. 20-CI-00471

SECRETARY OF STATE, *ex rel.*, MICHAEL G. ADAMS, in
his official capacity, *et al.*

Appellees

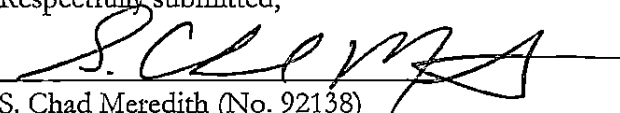
and

SENATOR WHITNEY WESTERFIELD, in his official and
personal capacities, *et al.*

*Appellees/ Cross-
Appellants*

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A handwritten signature in black ink, appearing to read "S. C. P. M. A.", is written over a horizontal line.

INTRODUCTION

This case concerns the constitutionality of the Marsy's Law constitutional amendment and its enabling legislation. The Franklin Circuit Court correctly held that the amendment was properly placed on the 2020 ballot, but it incorrectly refused to grant summary judgment on the Appellants' claims that Marsy's Law and its enabling legislation are unconstitutional on their merits.

STATEMENT CONCERNING ORAL ARGUMENT

The Attorney General respectfully requests oral argument as this case presents constitutional issues that do not often come before the Commonwealth's courts.

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COUNTERSTATEMENT OF THE CASE

In 2020, the General Assembly proposed, and the citizens of Kentucky overwhelmingly ratified—for the second time—the constitutional amendment known as Marsy’s Law. Marsy’s Law adds specific rights for crime victims to the Kentucky Constitution, like the right “to be heard in any proceeding involving a release, plea, [or] sentencing” of the individual who perpetrated the crime against them. Ky. Const. § 26A.¹ The measure is named for Marsy Nicholas, who was stalked and murdered by her ex-boyfriend, and whose family was confronted by her murderer at a supermarket after he was released on bail with no notice to the family. *See Marsy’s Story*, Marsy’s Law Website (July 22, 2021), https://www.marsyslaw.us/marsys_story.

After voters’ initial adoption of Marsy’s Law in 2018, this Court declared the amendment invalid because its entire text had not been placed on the ballot. *See Westerfield v. Ward*, 599 S.W.3d 738 (Ky. 2019) (“*Ward I*”). The second time around, every single word of the amendment was printed on the ballot. And citizens approved the amendment with more than 63% of the vote—which was a slight uptick from the 2018 vote, where more than 62% of voters approved the amendment. Thus, after two statewide votes on the

¹ After its ratification by the people at the 2020 general election, Marsy’s Law was added to the Constitution as Section 26A. For the sake of clarity, this Brief calls the amendment “Marsy’s Law” rather than Section 26A. And the Brief variously refers to the amendment’s enabling legislation—2020 Ky. Acts Chapter 101—as either the “enabling legislation” or “Chapter 101.”

amendment, this much is clear: Kentuckians overwhelmingly desire Marsy's Law to be part of the Constitution.

But even though the entire text of Marsy's Law appeared on the 2020 ballot as this Court instructed, the Appellants were not satisfied. They sued in Franklin Circuit Court arguing, among other things, that the 2020 ratification of the amendment still violated § 256 of the Constitution because the ballot did not also contain the text of enabling legislation that the General Assembly passed to facilitate the implementation of Marsy's Law should it be adopted by the voters. *See* Compl., Record at 3–4, hereinafter “R. at __.” The enabling legislation is simply that—legislation. *See* 2020 Ky. Acts Ch. 101. It is not part of the amendment and has not been added to the Constitution.

The Appellants are: (1) David Ward, whom the Complaint identifies as a Kentucky resident and taxpayer; and (2) the Kentucky Association of Criminal Defense Lawyers. *See* Compl., R. at 2. They began this case in Franklin Circuit Court by suing the Secretary of State, the State Board of Elections, and the Chairman of the State Board of Elections. *Id.*, R. at 1. Their Complaint sought declaratory and injunctive relief prohibiting Marsy's Law from being placed on the November 3, 2020 ballot or, in the alternative, precluding the tabulation of votes on the amendment. *Id.*, R. at 15–16. The Appellants' Complaint also challenged the constitutionality of Marsy's Law's enabling legislation. *Id.*, R. at 7–8.

The Attorney General, along with Marsy's Law for Kentucky, LLC, and Senator Whitney Westerfield—one of the legislative sponsors of the proposed amendment—moved to intervene as defendants. The Franklin Circuit Court granted those motions, and the Intervening Defendants then moved for summary judgment.

On October 16, 2020, the Franklin Circuit Court entered a final and appealable Order partially granting the Intervening Defendants' motions for summary judgment. *See* Oct. 16, 2020 Op. & Order, R. at 328–49. In particular, that court held that the amendment had been placed on the ballot properly, and so there was no justification for enjoining the vote or its certification. *See id.*, R. at 347. But the court denied the Intervening Defendants' motions on the rest of the Appellants' claims. *See id.*, R. at 344, 348. The court held those claims in abeyance and reserved ruling on them. *See id.*

The Appellants appealed the Franklin Circuit Court's refusal to enjoin the Secretary of State and the State Board of Elections from placing Marsy's Law on the ballot. The Intervening Defendants then cross-appealed the Franklin Circuit Court's refusal to grant them summary judgment on all the Plaintiffs' claims.

The Court of Appeals recommended transfer of the case to this Court, and this Court entered an Order transferring the case three days later.

ARGUMENT

The Appellants believe that Marsy's Law is bad policy. But the time and place for adjudicating that issue was last fall at the voting booth. Having failed to convince the voters that Marsy's Law is a bad idea, however, the Appellants are now effectively asking this Court to impose their policy preferences on the voters despite the voters' clearly expressed views to the contrary. Because neither the court system nor the amendment process is supposed to work in this way, the Court should reject the Appellants' arguments.

The Franklin Circuit Court correctly concluded that Marsy's Law was properly placed on the 2020 ballot. But it should have gone further. Because all the Appellants' claims are meritless, the court should have fully granted the Intervening Defendants' motions for summary judgment and dismissed the case with prejudice. *See, e.g., Caniff v. CSX Transp., Inc.*, 438 S.W.3d 368, 372 (Ky. 2014) ("Summary judgment is appropriate where the movant shows that the adverse party could not prevail under and circumstances." (quoting *Pearson ex rel. Trent v. Nat'l Feeding Sys., Inc.*, 90 S.W.3d 46, 49 (Ky. 2002))).

As explained below, there are at least four reasons why all the claims here are meritless. First, the Appellants lack standing because neither of them has alleged a particularized, concrete injury. Second, Marsy's Law was not unconstitutionally placed on the 2020 ballot. To the contrary, it was placed on the ballot in strict conformity with the requirements of Section 256 as this Court interpreted them in *Ward I*. Third, placing Marsy's Law on the ballot

did not violate Section 256's prohibition on including unrelated subject matters in a single amendment. And, fourth, there is no merit to any of the arguments that Marsy's Law and the enabling legislation are unconstitutional on their merits.

I. The Appellants lack standing.²

Kentucky's courts do not exist to opine on generalized grievances or differences of opinion. Instead, they exist solely to adjudicate the claims of those who allege to have suffered particularized, concrete injuries to legally protected interests. *See Sexton*, 566 S.W.3d at 196. Without such an injury, a plaintiff lacks standing. *See id.* And without standing, a court has no jurisdiction to adjudicate the matter. *See id.* Such is the case here.

To establish standing, a plaintiff must show: (1) injury, (2) causation, and (3) redressability. *See id.* The Appellants trip on the first step of this test. And try as they might, the Appellants cannot bypass that failure.

Just last year, this Court firmly reiterated the importance of injury, noting the "requirement of an injury in fact" acts as "a hard floor" on a Kentucky court's jurisdiction. *Overstreet v. Mayberry*, 603 S.W.3d 244, 257 (Ky. 2020) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009)). This floor "cannot be set aside by courts or legislatures," but the Appellants

² Preservation is irrelevant for the issue of standing because standing is jurisdictional, and therefore cannot be waived. *See Cabinet for Health & Family Servs., Dep't for Medicaid Servs. v. Sexton by & through Appalachian Reg'l Healthcare, Inc.*, 566 S.W.3d 185, 192, 197 (Ky. 2018).

presume to skip right over it all the same. *Id.* (citing *Summers*, 555 U.S. at 497). To be sure, the Appellants' opening Brief teems with arguments alleging Marsy's Law is unconstitutional for one reason or another. Yet the Appellants never take the time to hook their legal arguments to a concrete, particularized injury—one affecting the Appellants in “a personal and individual way.” *Id.* at 252 (quoting *Spokeo, Inc. v. Robins*, --- U.S. ---, 136 S. Ct. 1540, 1548 (2016)). The Appellants hint at individual, associational, taxpayer, and even third-party standing, but they have identified no concrete, particularized injury. And that precludes a court's exercise of jurisdiction over this case.

An injury is “an invasion of a legally protected interest.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To establish the injury in fact element of standing, litigants must show they have suffered, or soon will suffer, a concrete particularized harm. *See Sexton*, 566 S.W.3d at 196. Put in simpler terms, “the party bringing the suit must show that [an] action injures him in a concrete and personal way.” *Id.* at 197 (quoting *Summers*, 555 U.S. at 497). But here the Appellants have never explained how any legally protected interest that *they* possess will be harmed in a particularized and concrete way by Marsy's Law. Indeed, there is no explanation they can offer. The bottom line is that Marsy's Law has not caused—and will not cause—the Appellants any particularized, concrete injury.

A. The Appellants cannot show a particularized injury.

Start with the requirement that an injury involve a particularized harm. A particularized harm is one that “affect[s] the plaintiff in a personal and individual way.” *Overstreet*, 603 S.W.3d at 252 (quoting *Spokeo, Inc.*, 136 S. at 1548). It ensures that a “plaintiff personally has suffered some actual or threatened injury.” *Id.* (quoting *United States v. Richardson*, 418 U.S. 166, 177 (1974)). The key to the particularity requirement, therefore, is a showing that the alleged injury is personal to the litigant. In other words, the harm must be unique in some measure to the plaintiff. Alleged injuries that are “undifferentiated and common to all members of the public”—or “generalized grievances”—fail to satisfy the personal element of the particularity prerequisite. *Lujan*, 504 U.S. at 575 (quoting *Richardson*, 418 U.S. at 171, 176–77 (1974)). But that is all the Appellants have raised here. There is nothing about their grievance that demonstrates any harm that is unique or particularized to them. Any other Kentucky citizen could make the same claims and allege the same injury as the Appellants. Thus, the Appellants’ claims are textbook examples of “generalized grievances” that are “undifferentiated and common to all members of the public.” *Id.* (quoting *Richardson*, 418 U.S. at 171, 176–77).

This Court has likewise held that a “[p]ublic wrongs or neglect or breach of public duty cannot be redressed at a suit in the name of an individual or individuals whose interest in the right asserted does not differ from that of the public generally, or who suffers injury in common with the public

generally.” *Wegener v. Wehrman*, 227 S.W.2d 997, 998 (1950) (quotation omitted). For private citizens or entities to “maintain injunction suits against public officers,” they “must possess something more than a common concern for obedience to law.” *Carrico v. City of Owensboro*, 511 S.W.2d 677, 680 (Ky. 1974) (quotation omitted). This means “a private person who wishes to restrain an official act must allege and prove damage to himself different in character from that sustained by the public generally.” *Id.* (quotation omitted). But the Appellants have not done that.

Not once do the Appellants identify an injury affecting them in “a personal and individual way.” *Overstreet*, 603 S.W.3d at 252 (quoting *Spokeo, Inc.*, 136 S. Ct. 1548). Instead, the Appellants’ brief teems with assertions of public wrongs suffered at large by voters, citizens, legislators, and “the people.” See Br. for Appellants/Cross-Appellees at 9 (“The voters actually were asked to ratify or reject a statute they never saw”); *id.* at 17 (“voters cannot make a meaningful decision to ratify or reject”); *id.* at 26 (“A legislator or interested citizen reading Section 8 would not suspect that a favorable vote on Chapter 85(2) would have this effect”); *id.* (“There was no definition of victim for the people to ratify.”). The Appellants repeatedly stress that these wrongs flow from the General Assembly’s failure to follow the Appellants’ preferred reading of Sections 256 and 257 of the Constitution. But without a showing of personalized and individualized harm, the Appellants’ grievance amounts only to an “alleged violation of a right to have the Government act in accordance

with law.” *Lujan*, 504 U.S. at 575 (citations omitted). And “a grievance that amounts to nothing more than an abstract and generalized harm to a citizen’s interest in the proper application of the law does not count as an ‘injury in fact.’” *Carney v. Adams*, --- U.S. ---, 141 S. Ct 493, 498 (2020). Yet that is the sole grievance the Appellants present here. Thus, the Appellants cannot satisfy their obligation to show particularized injury, and so they lack standing.

B. The Appellants also cannot show a concrete injury.

Particularity is only half the battle in establishing a legally cognizable injury. Concreteness is the other half. And it is also missing here.

“For an injury to be concrete, it must actually exist.” *Overstreet*, 603 S.W.3d at 252 (quotation omitted). A concrete injury is distinct and palpable—“not abstract or conjectural or hypothetical.” *Sexton*, 566 S.W.3d at 196 (quotations omitted); *see also Spokeo, Inc.*, 136 S. Ct. at 1548 (holding that a concrete injury is “real, and not abstract.”). The Appellants never take the time to expressly identify any concrete harm they alleged to have suffered. Instead, they ask this Court to read between the lines and infer that the actions of the Kentucky General Assembly injured them in a concrete way.

But even a generous reading of the Appellants’ Brief reveals only abstract, conjectural, and hypothetical harms. The Appellants, at bottom, argue that the “General Assembly has fallen short of what the Constitution demands.” Br. for Appellants/Cross-Appellees at 1. This is so, they claim,

because the General Assembly failed to follow the plethora of requirements that the Appellants read into Sections 256 and 257. Missing, however, is a description of any real-world injuries they claim to have suffered because of the amendment's alleged constitutional deficiencies.

For instance, the Appellants contend that Marsy's Law requires "a conscientious voter to search outside sources to find out exactly what he or she is being asked to approve." Br. for Appellants/Cross-Appellees at 16. "Unless voters were especially resourceful," the Appellants maintain, "they had no way of finding out what they were being asked to make part of the Constitution." *Id.* at 10. But even if this argument had merit, it asserts a vague, informational injury on the behalf of a metaphysical group of voters. Nowhere does their Complaint—or even their Opening Brief—state that the text of Marsy's Law forced Appellant Ward or any member of KACDL to "consult outside sources" when voting yay or nay.³

Indeed, the Appellants' brief is barren of any attempt—explicit or implicit—to connect even one of the General Assembly's supposed constitutional transgressions to a real-world harm that the Appellants themselves have suffered or are on the precipice of suffering. Without a concrete, real-world harm, the Appellants' allegations add up to little more than an "interest in Government observance of the Constitution and laws."

³ And even if it did, how is consulting outside sources an *injury*? Simply put, it is not.

Lujan, 504 U.S. at 576. And a mere “interest in seeing that the law is obeyed” presents exactly the kind of “abstract and indefinite” harm that “deprives [a] case of the concrete specificity” necessary to establish a legally cognizable injury. *Fed. Election Comm’n v. Akins*, 524 U.S. 11, 23–24 (1998).

In the end, the Appellants describe no real-world harm that Marsy’s Law has caused them. And with no concrete and particularized injury to show, the Appellants cannot even get out of the starting gate in establishing *Sexton*’s three-part test for standing.

C. The Appellants cannot substitute associational, taxpayer, or third-party standing for their missing injury.

Unwilling—or perhaps unable—to articulate a legally cognizable injury, the Appellants attempt to compensate with vague allusions to associational, taxpayer, and third-party standing. But none of these concepts is a substitute for a plaintiff’s *constitutional* obligation of showing a particularized, concrete injury. *See Sexton*, 566 S.W.3d at 196.

1. Take associational standing. The Appellants assert that KACDL “has standing to sue and be sued in its own name and to advocate on behalf of its membership.” Compl., R. at 2. But such a statement alone cannot satisfy the associational standing test this Court adopted in *Commonwealth ex rel. Brown v. Interactive Media Entertainment & Gaming Association, Inc.*, 306 S.W.3d 32 (Ky. 2010). Instead, Appellant KACDL must show: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim

asserted nor the relief requested requires the participation of the individual members in the lawsuit.” *Id.* at 38 (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

KACDL fails to satisfy even the first element. Its only identified member, Appellant Ward, has not suffered a concrete, particularized injury. Without a particularized, concrete injury, Appellant Ward lacks the standing to bring an individual suit. As a voter, he cannot show a harm undifferentiated from the public. And as a criminal defense attorney, he cannot show that Marsy’s Law harms any legally protected interest of his. Because “[a]n association can have standing only if its members could have sued in their own right,” and KACDL has not identified a single member able to satisfy that prerequisite, KACDL lacks associational standing. *Id.*

2. Next, consider taxpayer standing. Traditionally, “taxpayers in Kentucky, on behalf of themselves, have been permitted to sue government bodies or their agents to challenge the propriety of a city, county or state tax or expenditure of public funds.” *Overstreet*, 603 S.W.3d at 263. But these suits typically fall into one of three categories—*i.e.*, ones where taxpayers seek to (1) enjoin the imposition of an illegal tax, (2) enjoin the expenditure of public funds, or (3) compel compliance with certain statutory or constitutional requirements attached to a tax or expenditure. *Id.* at 263–64. This case does not fall within any of those categories.

The Appellants note that Ward and KACDL's other member attorneys pay taxes in Kentucky, but their claims here fail to fit into the taxpayer standing mold. The Appellants do not ask this Court to enjoin the imposition of an illegal tax. Nor do they seek to enjoin the expenditure of a particular fund. And though they seek to compel compliance with the Constitution, the Appellants never explicitly tie compliance to a specific tax or expenditure.

Rather than trying to explain how their claims fit within one of the three categories for taxpayer standing, the Appellants merely point to their status as taxpayers—and nothing more. But “[s]imply because a plaintiff may be a citizen and a taxpayer is not in and of itself sufficient basis to assert standing.” *Yeoman v. Commonwealth, Health Pol’y Bd.*, 983 S.W.2d 459, 473 (Ky. 1998). The Appellants’ bare assertions, without a showing that their interests “directly relate[] to the generation or expenditure of state funds,” cannot establish the Appellants’ “standing as taxpayers” in this Commonwealth. *Id.*

3. Unable to establish either associational or taxpayer standing, the Appellants next attempt to invoke third-party standing. They purport to raise the rights of potential criminal defendants, claiming the alleged ambiguities within Marsy’s Law destroy the presumption of innocence. *See Br. for Appellants/Cross-Appellees* at 42–44. But they also advocate the interests of potential crime victims, arguing that Marsy’s Law insufficiently fulfills its promise to protect victims’ rights due to supposed inconsistencies within its text. *See id.* at 40–41, 46. And the Appellants even presume to protect the

institutional interests of this Court, stating that Marsy's Law changes "the distribution of government powers" in a way that "may have an immediate impact."⁴ *Id.* at 36.

Not only are such arguments unripe, they also are not the Appellants' arguments to raise. "Before one seeks to strike down a state statute he must show that the alleged unconstitutional feature injures him." *Second St. Props., Inc. v. Fiscal Ct. of Jefferson Cnty.*, 445 S.W.2d 709, 716 (1969) (citation omitted). And "[t]he assertion of one's own legal rights and interests must be demonstrated" as "a claim to relief will not rest upon the legal rights of third persons." *Associated Indus. of Ky. v. Commonwealth*, 912 S.W.2d 947, 951 (Ky. 1995) (citing *Warth v. Seldin*, 422 U.S. 490 (1975)). Thus, this Court recognizes a general prohibition on third-party standing. And the Appellants have given no reason why the Court should depart from that general prohibition here, especially when they purport to advocate the interests of groups with such divergent and conflicting interests as criminal defendants *and* their victims.

⁴ This objection reveals that this case is really about the Appellants' policy-based objections to Marsy's Law. The amendment does not change the distribution of government powers, but even if it did, that would be acceptable. Marsy's Law is a constitutional amendment, and the only way to validly change the distribution of government powers is through a constitutional amendment. See Ky. Const. § 4. Because a constitutional amendment is part of the Constitution by definition, a complaint that Marsy's Law "changes the distribution of government powers," is not an argument that such a change is unconstitutional, but simply that it is a bad idea. And Kentucky's courts cannot adjudicate whether a proposed constitutional amendment is a good or bad idea. Only Kentucky's voters can do that.

The bottom line is this: The Appellants cannot overcome their lack of a particularized and concrete injury by relying on associational, taxpayer, or third-party standing. With no particularized, concrete injury, the Appellants simply lack standing. And without standing, the courts have no jurisdiction over the Appellants' claims. *Sexton*, 566 S.W.3d at 196. As a result, the Court should remand this case with instructions that it be dismissed.

II. The Franklin Circuit Court correctly concluded that Marsy's Law was properly placed on the 2020 ballot.

Even if the Appellants could establish standing—which they cannot—they still would be unable to prevail on the merits of their claims. Their primary contention is that Marsy's Law was not validly placed on the ballot, and thus was not legitimately ratified by the people. In particular, they claim that the entire amendment was neither published 90 days before the election nor printed on the ballot as this Court said it must be in *Ward I*. Their argument hinges on the fact that the enabling legislation—Chapter 101—defines which “victims” will possess the rights guaranteed by Marsy's Law. In the Appellants' view, the enabling legislation is effectively part of the amendment, and therefore should have been published and placed on the ballot. But that argument is wrong. The entire amendment was published and placed on the ballot in strict conformity with this Court's holding in *Ward I*. Sections 256 and 257 of the Constitution require nothing more.

A. The proposed amendment was published and placed on the ballot in strict conformity with the Constitution and this Court's holding in *Ward I*.

Every single word of the proposed constitutional amendment was published at least 90 days before the 2020 election, and every single word of the proposed amendment was then printed on the ballot. Because that is precisely what *Ward I* said is required for validly placing a proposed amendment before the people, the Appellants' argument falls apart before it even begins. *See Ward I*, 599 S.W.3d at 750–52; *see also* Ky. Const. §§ 256–57 (setting forth the requirements for publication and inclusion of the amendment on the ballot).

Perhaps recognizing this, the Appellants do not actually argue that the entire amendment was not published and placed on the ballot verbatim. Instead, they argue that because the enforcement of the amendment will be affected by the enabling legislation—Chapter 101—voters could not have understood the amendment and validly given their consent to it without the enabling legislation also being published and placed on the ballot alongside the amendment. In other words, the Appellants argue that the enabling legislation—even though it will not be a part of the Constitution—is effectively part of the amendment and therefore should have been published and placed on the ballot. That argument conflicts with the text of Sections 256 and 257 of the Constitution, as well as *Ward I*.

In *Ward I*, this Court held that “Section 256 imposes a mandatory constitutional directive on the General Assembly to submit the *amendment*, in

its entirety, to the electorate for a vote.” 599 S.W.3d at 750 (emphasis added). The Court also held that it is “impossible to read Section 256 as saying anything other than the proposed amendment itself must be placed on the ballot . . . its direction is clear: *the amendment* is to be presented to the people for a vote.” *Id.* at 749. Thus, the Constitution requires the General Assembly to publish the amendment—and only the amendment—in its entirety for the people to ratify or reject. There is no requirement that the General Assembly also publish any enabling legislation.

Here, the General Assembly did precisely what this Court said it must do in *Ward I*—it published the entire amendment for review and ratification within the required period of 90 days and then published the entire amendment on the ballot. The Appellants do not contest that. Instead, their whole argument revolves around the fact that the enabling legislation—Chapter 101—was not also published and placed on the ballot. But neither the Constitution nor *Ward I* requires that.

The enabling legislation is just that—legislation. It is not part of the Constitution, and therefore it need not be submitted to the voters. The Appellants have cited no authority to the contrary, and, in fact, there is none.

To avoid acknowledging this, the Appellants go through a set of contortions befitting world-class gymnasts. They argue that Chapter 101(2) is not enabling legislation, but is actually part of the constitutional amendment. To make this argument, they first point to the language in Marsy’s Law that

says the rights guaranteed by the amendment will be possessed by “a victim, as defined by law which takes effect upon enactment of this section and which may be expanded by the General Assembly.” Ky. Const. § 26A. Based on this language—which is not unique in Kentucky’s Constitution—the Appellants reason that the General Assembly “intended for the definition of victim to be found in a statute that became effective when Chapter 85 [*i.e.*, Marsy’s Law] was enacted on April 14, 2020.” Br. for Appellants/Cross-Appellees at 16. And from that proposition, the Appellants then make the illogical leap of concluding that because the amendment mentions a statutory definition that was to take effect upon enactment by the legislature, Section 256 “demanded [the definition’s] inclusion in the text of [the] proposed amendment.” *Id.* They contend that the timing of Chapter 101’s effective date essentially has the effect of incorporating Chapter 101 into the Marsy’s Law constitutional amendment. Thus—according to their argument—because Chapter 101 was effectively incorporated into Marsy’s Law, it was part of the amendment and therefore should have been published and printed on the ballot. That argument is a bridge too far. And it needlessly complicates the analysis.

Rather than engaging in mental gymnastics to twist Chapter 101 into something it is not, the correct analysis is simply this: Is Chapter 101 part of the Constitution and therefore alterable only by another constitutional amendment, or is it mere legislation that can be changed through the normal legislative process? The answer is obvious: It is mere legislation, not a part of

the Constitution. Thus, it did not have to be published and placed on the ballot with Marsy's Law. Chapter 101 is a statute separate from the amendment. As a statute, it was adopted by the legislature—not the people themselves—and it can be altered by the legislature. So it need not be ratified by the voters at a general election.

Chapter 101 is not constitutionalized or somehow incorporated into Marsy's Law by virtue of the fact that Marsy's Law provides for the term "victim" to be defined by law. In fact, Kentucky's Constitution—including many provisions added by amendment—contains many sections saying that the exact contours of a particular provision shall be defined by the legislation or provided "by law."⁵ For example, the 1974 constitutional amendment known as the Judicial Article—the amendment that created this very Court—provides that the justices of this Court shall be elected as provided "by law," Ky. Const.

⁵ See, e.g., Ky. Const. § 53 ("The General Assembly shall provide by law for monthly investigations into the accounts of the Treasurer and Auditor of Public Accounts..."); § 61 ("The General Assembly shall, by general law, provide" for local option elections); § 72 ("The duties of the Lieutenant Governor shall be prescribed by law . . ."); § 91 (duties of constitutional officers "shall be such as may be prescribed by law") § 93 (same); § 98 (salary of Commonwealth's attorneys "may be fixed by law"); § 106 ("The fees of county officers shall be regulated by law"); § 170 ("[T]he General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property."); § 172A ("The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land The General Assembly may provide that any change in land use from agricultural or horticultural to another use shall require the levy of an additional tax . . ."); § 186 (General Assembly "shall by general law prescribe the manner of the distribution of the public school fund"); § 244A ("The General Assembly shall prescribe such laws as may be necessary for the granting and paying of old persons an annuity or pension.").

§ 117, and it also provides that the Circuit Courts and Court of Appeals will have appellate jurisdiction as provided “by law,” *id.* §§ 111, 112. If the Appellants are correct that the “by law” portion of a constitutional amendment requires any enabling legislation to be published and placed on the ballot alongside the actual text of the constitutional amendment, then the Judicial Article and a host of other amendments might be invalid as well.

But, of course, the Judicial Article and similar amendments are not in jeopardy. When a proposed amendment provides that the way to effectuate some constitutional provision will be provided “by law,” there is no requirement that the law at issue be published and placed on the ballot along with the amendment. Why? Because the statute is not part of the Constitution—only the amendment itself is.

There is nothing novel about a constitutional provision that creates a right and leaves it to the legislature to define who gets to enjoy the right. For example, real property rights are protected by the Kentucky Constitution. *See, e.g.,* Ky. Const. §§ 1, 13. But the Constitution does not define who gets to enjoy those rights. Rather, property ownership is defined by statute. *See, e.g.,* KRS Chapters 381, 382. Thus, the definition of who gets to enjoy the property rights protected by the Constitution is provided by law, just as the definition of who possesses the rights provided by Marsy’s Law is provided “by law.” And just as the laws that define property ownership have never been considered part of the Constitution—because they are not part of the Constitution—Chapter 101

likewise should not be considered part of the Constitution. And if it is not part of the Constitution, then there was no need to publish it and print it on the ballot.

B. Marsy's Law is not void for unintelligibility.

The Appellants also argue that Marsy's Law was too unintelligible to be submitted to the voters. That argument is unavailing for two reasons: (1) the Appellants failed to raise it below; and (2) it is wrong in any event.

First, the Appellants admit that they failed to raise this claim in the circuit court. Thus, this claim is waived and cannot now be raised.

Yet the Appellants argue that they can still obtain relief on it under the palpable error rule of CR 61.02. But CR 61.02 does not allow parties to obtain relief from an appellate court based on a claim that they failed to raise in the trial court. CR 61.02 provides:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Thus, by its own terms, CR 61.02 addresses situations in which a party is entitled to relief as a result of an unpreserved *error*, not an unraised claim or argument. Here, however, the Court does not face an unpreserved error in the trial court proceedings. That is, the Appellants are not arguing that they should be granted relief from some unpreserved mistake that the trial court made—like an incorrect evidentiary ruling or jury instruction. Instead, the

Appellants are seeking relief on a previously unraised claim. This they cannot do. Palpable *error* review under CR 61.02 simply does not apply to this situation, which involves an unraised claim, not an unraised error.⁶

But even if the Court believes that review under CR 61.02 is available here, the Appellants cannot possibly meet its standard for relief. “[CR 61.02] is a rule rarely applied” *Keco v. Ayala*, 592 S.W.3d 753, 757 (Ky. App. 2019) (quoting *Mo-Jack Distributor, LLC v. Tamarak Snacks, LLC*, 476 S.W.3d 900, 907 (Ky. App. 2015)).

For error to be palpable, it must be easily perceptible, plain, obvious and readily noticeable. . . . Or, as stated differently, a palpable error is where the defect in the proceeding was shocking or jurisprudentially intolerable. Ultimately, manifest injustice is found if the error seriously affected the fairness, integrity, or public reputation of the proceeding.

Young v. Commonwealth, 426 S.W.3d 577, 584 (Ky. 2014) (citations and quotations omitted). The Appellants’ argument about the supposed unintelligibility of Marsy’s Law does not even come close to meeting this exacting standard.

There was no palpable error in the circuit court’s refusal to block the voters’ ratification of Marsy’s Law. In no way was the circuit court’s decision egregiously, plainly, obviously, shockingly, or noticeably wrong. And nothing

⁶ In *Jones v. Bailey*, however, the Court appears to have applied palpable error review under CR 61.02 to previously unraised claims. 576 S.W.3d 128, 145–47, 151 (Ky. 2019).

in the circuit court's ruling threatens the fairness, integrity, or public reputation of this proceeding.

In any event, there is nothing unintelligible about the amendment. Even the most cursory reading could inform any reasonable person as to the amendment's meaning. No reasonable person could be confused about what Marsy's Law means. And, tellingly, the Appellants do not appear to argue that there is any real confusion. Instead, their argument is based—once again—on a contorted and strained view of when the enabling legislation becomes effective. But even if they were right about the effective date of the enabling legislation, that does not affect the intelligibility of the amendment. Any reasonable person who reads the amendment can understand that it establishes rights for crime victims and leaves it to the legislature to define exactly which victims will possess those rights.

A law is not unconstitutionally unintelligible unless it is impossible “to determine with any degree of certainty the meaning and intent of an act of legislature” *Folks v. Barren Cnty.*, 232 S.W.2d 1010, 1013 (Ky. 1950). And out of regard for legislative prerogatives, the Court should attempt to “draw all inferences and implications from the act as a whole and thereby, if possible, sustain the validity of the act and expound it.” *Id.* (citing *Se. Express Co. v. Robertson*, 264 U.S. 535, 539 (1924)). The Appellants' arguments go against this standard. They ask the Court not to draw inferences and implications that will allow the Court to sustain the validity of the amendment, but to do the

opposite. Rather than acknowledging that any reasonable person can understand the meaning of Marsy's Law, the Appellants want this Court to pretend that the meaning is a complete mystery because of their contorted argument about the effective date of the enabling legislation. This argument strains credulity and ignores the applicable standard for evaluating a claim of unintelligibility. *See id.*

The Appellants' unintelligibility argument also ignores what is perhaps the most important point of all—the people of Kentucky. In other words, the people of Kentucky obviously did not find Marsy's Law to be unintelligible because they overwhelmingly voted to make it a part of Kentucky's Constitution. The Appellants seem to be suggesting that Kentuckians were tricked into voting for an amendment whose meaning is incomprehensible. But the people of Kentucky deserve the opposite assumption. It is at least as likely to be true that—if the amendment were unintelligible—Kentuckians would have perceived that fact and voted against the amendment on that ground. The Appellants have given no reason to believe otherwise, and their apparent speculation on this point should not be a basis to overturn a constitutional amendment that the people overwhelmingly ratified.

One final point bears mentioning here. This Court's predecessor held in *Gatewood v. Matthews*, 403 S.W.2d 716 (Ky. 1966), that because the people of Kentucky are sovereign, their choice to amend the Constitution must be respected. "So long as the people have due and proper notice and opportunity

to acquaint themselves with any revision, and make their choice directly by a free and popular election, their will is supreme, and it is to be done.”⁷ *Id.* at 721. The Appellants’ strained arguments ignore this rule and instead seek to flout the will of the people.

III. Marsy’s Law does not violate any of the other provisions of Section 256.

The Appellants allege three more ways Marsy’s Law has violated Section 256: (1) the amendment has too many unrelated subject matters; (2) the amendment does not identify amended sections; and (3) the amendment needed separate votes because it had unrelated subjects. All these arguments are meritless because they either rely on the faulty premise that Marsy’s Law contains a subject other than crime victims’ rights, or they misinterpret the requirements of Section 256.

A. Marsy’s Law does not contain unrelated subjects.

There is a single subject in Marsy’s Law: crime victims’ rights. The Appellants clearly know this as they had no trouble identifying this single subject elsewhere in their brief when they wrote that “[t]he purpose of [Chapter] 85(2) [*i.e.*, Marsy’s Law] is to provide rights for crime victims and to give them a means to enforce these rights.” Br. for Appellants/Cross-Appellees

⁷ The Court distinguished *Gatewood* in *Ward I*, suggesting that the failure to print the amendment on the ballot had deprived the people of a true choice and had taken the process out of the people’s hands. See *Ward I*, 599 S.W.3d at 745 n.14. No such circumstances exist here as the entire amendment was published and then printed on the ballot.

at 40. Despite that acknowledgment, the Appellants still contend that Marsy's Law addresses multiple subjects in violation of Section 256. But their argument does not hold water.

Section 256 states that "an amendment may relate to a single subject or to related subject matters." Here, there is no need to examine whether Marsy's Law contains related subject matters because it only relates to the single subject of crime victims' rights. The Appellants fail to identify other subjects in the amendment and simply state—without specification—that unrelated subjects exist. In support of their argument, the Appellants point to the statement of purpose and the interpretive guidance language, but they fail to explain how either a preamble describing the purpose of protecting crime victims' rights or guidance language that describes the scope of crime victims' rights are about a subject other than crime victims' rights. The reason for that failure is simple: The only reasonable explanation is that there is no other subject. And even if one could identify some other subject in Marsy's Law, no reasonable person could deny that it is at least *related* to the subject of crime victims' rights.

Ultimately, there is no need to examine whether the subjects in Marsy's Law are related to each other because there is only *one* subject—crime victims' rights. In *Hatcher v. Meredith*, this Court's predecessor explained what it means for an amendment to address a single subject:

The question [is] whether the whole matter found in the amendment is so related to the 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. . . . [If] each provision of a proposed amendment is an integral part of a general plan, the amendment is not plural.

173 S.W.2d 665, 667–68 (Ky. 1943).⁸ Under this analysis, it could not be clearer that Marsy’s Law addresses a single subject. The “general” subject of Marsy’s Law is to grant crime victims certain enumerated rights. Whether directly or indirectly, every provision of Marsy’s Law is in service of that subject. Even if the Appellants’ interpretation of the amendment is accepted, they do not actually allege that the provisions of Marsy’s Law are related to something other than crime victims’ rights. Instead, they argue that many of its provisions are “explanations of what the proposed amendment does not mean.” Br. for Appellants/Cross-Appellees at 31. But the Appellants fail to explain how language explaining the scope of Marsy’s Law’s expansion of crime victims’ rights relates to a subject other than crime victims’ rights. No parts of the amendment are “so foreign to it as to have no bearing upon the general subject matter and the object sought to be accomplished.” *Hatcher*, 173 S.W.2d at 667.

Despite the rule from *Hatcher* and the commonsense recognition that Marsy’s Law only addresses the subject of crime victims’ rights, the Appellants argue that Marsy’s Law not only addresses multiple subjects, but that it

⁸ Before 1979, Section 256 prohibited amendments from relating to more than one subject. In 1978, the voters amended Section 256 to allow amendments to “relate to a single subject or to related subject matters” Ky. Const. § 256; see also 1978 Ky. Acts Ch. 433 § 1.

addresses multiple *unrelated* subjects. In support of this argument, they urge the Court to define the phrase “related subject matters” to include only those provisions in an amendment that substantively amend the Constitution. Using this definition, the Appellants purport to identify several provisions of Marsy’s Law that do not substantively amend the Constitution, and they argue that those provisions therefore render the entire amendment invalid. There are two obvious problems with this argument.

First, it relies on an illogical definition of the phrase “related subject matters.” Whether particular provisions of the amendment share a related subject matter must be determined solely by examining the provisions’ *subject matters*, not by asking whether those provisions substantively amend the Constitution. And—at the very least—it is undeniable that every single provision of Marsy’s Law relates to the subject of crime victims’ rights.

Second, even if the Appellants were correct that provisions in Marsy’s Law can only be viewed as having “related subject matters” if they individually amend the Constitution in a substantive way, they still would not prevail. Every provision in Marsy’s Law adds something meaningful that did not previously exist in the text of the Constitution.

The Appellants’ argument to the contrary stems from a distorted reading of *Stovall v. Gartrell*, 332 S.W.2d 256 (Ky. 1960). There, this Court’s predecessor held that it has the power to “prevent the encumbrance of our Constitution by legislative matters which in no way affect, alter or add to the

Constitution.” *Id.* at 262–63. In *Stovall*, this Court’s predecessor struck down a constitutional amendment that failed to substantively amend the Kentucky Constitution in any measure. *Id.* According to the Appellants, this Court should apply *Stovall* by identifying provisions of Marsy’s Law that do not substantively amend the Constitution by themselves and then strike down the entire amendment because of those isolated provisions. This interpretation of *Stovall* is meritless.

The amendment at issue in *Stovall* “was in form and substance a legislative enactment.” *Id.* at 261. All the amendment did was state that the General Assembly “shall by law provide for the issuance and sale of bonds” to pay bonuses to veterans. *Id.* The Court held that aside from the fact that the proposal was labeled a constitutional amendment, nothing about it actually resembled a constitutional amendment. *Id.* at 262–63. The Court observed:

There is nothing in the Act which even suggests a change in our organic law. It grants no new or additional power to the legislature or to anyone else. It amends no section of the Constitution. It creates no rights under the Constitution. In substance it does no more than authorize the legislature for a specified purpose to exceed the debt limit fixed at \$500,000 by section 49 of the Constitution. As we shall see, a constitutional amendment is neither necessary nor proper to accomplish this result.

Id. at 262. This reasoning is inapplicable here. Unlike the amendment at issue in *Stovall*, Marsy’s Law does in fact create new rights under the Constitution. Those rights are substantive additions to the Constitution, and that makes this case different from *Stovall*.

The holding of *Stovall* is clear: Only when an amendment as a whole fails to substantively amend the Constitution will there be a basis to strike down that amendment. Distorting that holding, the Appellants suggest that this Court must read every constitutional amendment for *any* language that does not substantively alter the Constitution and then throw out the entire amendment just because of that isolated language. But that interpretation of *Stovall* lacks merit or logic. It is also judicially unmanageable. How, for example, is the Court supposed to determine when there are provisions in an amendment that do not substantively amend the Constitution? What is the applicable standard? Should the Court examine each individual sentence in a vacuum to determine whether the sentence on its own adds anything “substantive” to the Constitution? What about each individual word? Or even syllables? The answer is that the Court should not arbitrarily break down amendments into constituent parts and analyze them in a vacuum. Instead, the Court should view an amendment as a whole, as it did in *Stovall*. And, under that mode of analysis, Marsy’s Law does not address unrelated subjects—or even multiple subjects.

Furthermore, by asking this Court to apply *Stovall* to Marsy’s Law, the Appellants subtly shift their focus from the *subject* of Marsy’s Law to the *effects* of Marsy’s Law’s provisions. Because there is only one subject in Marsy’s Law, the Appellants want this Court to focus on the different *effects* of the various parts of the amendment. Their argument relies on an attempt to distinguish

between the parts of Marsy's Law that identify crime victims' rights and the parts that address the scope of those rights. But even after that distinction, there is still a single subject—crime victims' rights.

This Court's predecessor held in *Hatcher* that if "each provision of a proposed amendment is an integral part of a general plan, the amendment is not plural." *Hatcher*, 173 S.W.2d at 668. The "general plan" achieved by Marsy's Law is to grant crime victims certain enumerated rights. Different provisions of Marsy's Law having different effects does not change their role in the "general plan." The amendment addresses this subject by declaring that victims have rights, enumerating those rights, qualifying those rights, mandating that the legislature secure those rights, and giving victims the ability to enforce those rights. There is thus no basis to conclude that the amendment improperly addresses unrelated subjects.

B. The Appellants' argument about the amendment's purported failure to identify amended sections of the Constitution is meritless.

The Appellants also argue that Marsy's Law violates Section 256 because it amends Sections 109, 110(2)(a), 116, and 124 of the Constitution without identifying that it does so. Simply put, the Appellants are wrong again. Marsy's Law does not repeal, suspend, or modify any sections of the Constitution. But even if it did, constitutional amendments may implicitly repeal, suspend, or modify any other provision of the Constitution without saying so. "The fact that an amendment impliedly repeals sections not

mentioned therein does not thereby render it unconstitutional.” *Hatcher*, 173 S.W.2d at 668 (citations omitted).

The Appellants cite no authority to support the idea that Section 256 requires amendments to the Constitution to identify expressly the sections to be amended. The Appellants’ argument is no more than an attempt to get this Court to add language to the Constitution. That is, the Appellants want this Court to hold that when Section 256 says an amendment “may amend or modify,” what it really means is that an amendment may amend or modify *if it expressly identifies any sections that it amends or modifies*. That interpretation strains credulity for many reasons, not the least of which is its inconsistency with the text of Section 256. It would also require this Court to ignore prior holdings on the same subject. In *Mitchell v. Knox County Fiscal Court*, for example, this Court’s predecessor held that “Section 157a, being an amendment to the Constitution, necessarily annuls any and all former provisions of that instrument which conflict with it; and, since it permits the state to give its aid to the building of county roads, it cannot be said to violate section 177, which was intended to be changed in this respect.” 177 S.W. 279, 282 (Ky. 1915).

The Appellants believe that the 1978 amendment to Section 256 prohibits implied modification and that only “inept legislators” would allow implied modification without saying so. The latter objection is simply not a legal argument. And the former takes a view of Section 256 that is implausible

given history and the text of the amendment. Before the 1978 amendment, this Court had consistently upheld implied amendments. See *Hatcher*, 173 S.W.2d at 668 (“The fact that an amendment impliedly repeals sections not mentioned therein does not thereby render it unconstitutional.”); *Mitchell*, 177 S.W. at 282 (“Section 157a, being an amendment to the Constitution, necessarily annuls any and all former provisions of that instrument which conflict with it”). Given the longstanding interpretation allowing implicit modifications of constitutional provisions, the 1978 amendment would have specifically said that implicit modifications were no longer allowed if that had been its intent. Indeed, it is more than a little ironic that the Appellants are arguing that the 1978 amendment implicitly means that implicit changes are no longer allowed. In any event, there is no requirement in Section 256—or elsewhere—that amendments identify the sections they alter. The plain language of Section 256 simply does not require that a proposed amendment expressly identify every existing constitutional provision that it will affect.

The Appellants also argue that Marsy’s Law amends several sections of the Constitution by giving the legislature the ability to protect crime victim’s rights, thereby taking that power away from the judiciary. This supposed shift in power has not occurred. But even if it had, there is no problem with that because Section 4 of the Constitution allows the people to change their form of government. It provides:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety,

happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem proper.

Ky. Const. § 4. “The government” includes the judiciary, and the people may alter its composition and authority if they so choose. As this Court’s predecessor held in *Gatewood*:

The right of each generation to choose for itself is inalienable, as it was recognized and said from the very beginning. Being thus inalienable, that right cannot be cut down or subjected to conditions any more than it could be completely denied by one generation to another. So long as the people have due and proper notice and opportunity to acquaint themselves with any revision, and make their choice directly by a free and popular election, their will is supreme, and it is to be done.

Gatewood, 403 S.W.2d at 721. Thus, if the people of Kentucky want to change the distribution of governmental power through a constitutional amendment, it is their right to do so.

C. Marsy’s Law is a single amendment with a single subject and did not need to be split into two distinct amendments.

The Appellants’ final argument on Section 256 is that Marsy’s Law should have been separated into two distinct amendments that should have been voted on individually. This argument relies again on the same two faulty premises of the Appellants’ previous arguments: (1) that Marsy’s Law has a subject other than crime victims’ rights; and (2) that giving the legislature the authority to protect crime victim’s rights is an unrelated subject by itself. As explained above, those arguments are meritless.

Marsy's Law addresses only one subject: crime victims' rights. Even if some of its provisions have different functions, they are still a part of the same "general plan" to create and protect crime victims' rights. *See Hatcher* 173 S.W.2d at 668.

Giving the legislature authority to define which crime victims will possess the particular rights guaranteed by the amendment is not an unrelated subject because that grant of authority is part of the "general plan" of protecting crime victims' rights. *See id.* The Appellants contend otherwise on the basis that it is really a transfer of authority away from the judiciary, but they are wrong. It is not such a transfer of authority. But even if it were, that would not matter. The Appellants are once again arguing that different *effects* of Marsy's Law are actually unrelated *subjects*. That argument is just an illogical sleight of hand. That an amendment might have different effects on different government actors, or even individuals, does not mean that it has different, unrelated *subjects*. No matter what effects Marsy's Law has on various constituencies, it still has one "general plan" of protecting crime victims' rights. *See id.* Thus, it is one, unified amendment, not distinct, unrelated amendments that should have been submitted to the people separately.

IV. The Appellants' arguments challenging the merits of Marsy's Law and its enabling legislation are also unavailing.

Along with their arguments under Section 256 that are directed at the procedure for placing amendments on the ballot, the Appellants also make

various arguments claiming that Marsy's Law and its enabling legislation are unconstitutional on their merits. The circuit court reserved ruling on these issues. It should not have done so. Instead, it should have granted the Intervening Defendants' motions for summary judgment in their entirety and found that Marsy's Law was not only properly placed on the ballot, but also that the amendment and its enabling legislation suffer from no constitutional defects on their merits. This Court should reverse the circuit court's decision on these issues.⁹ These matters are fully addressed in the Brief of Senator Whitney Westerfield and Marsy's Law for Kentucky, LLC, and the Attorney General adopts them and incorporates them by reference in this Brief.

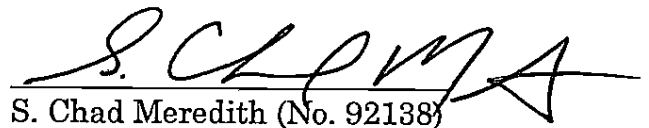
CONCLUSION

The General Assembly meticulously followed this Court's holding in *Ward I* when it placed Marsy's Law on the 2020 ballot. It did precisely as the Constitution and this Court have instructed by publishing every single word of the proposed amendment at least 90 days before the election and then printing every single word again on the ballot. And on top of that, the amendment addresses but one subject—crime victims' rights. Given these circumstances, there is no basis to do anything but affirm the Franklin Circuit Court's conclusion that the amendment was properly placed on the ballot. As to the rest of the Franklin Circuit Court's decision, this Court should remand this

⁹ The Cross-Appellants preserved this issue in their motions for summary judgment. See Intervening Defendants' Motions for Summary Jud., R. at 248–49, 266–79.

case with instructions for summary judgment to be granted in favor of the Cross-Appellants. Just as there is no valid basis for concluding that the amendment was invalidly placed on the ballot, there is likewise no basis for concluding that the amendment and its enabling legislation are unconstitutional on their merits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Chad Meredith', is written over a horizontal line.

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