

Herman	Petrone	Wansacz
Hershey	Phillips	Waters
Hess	Pickett	Watson
Hickernell	Pistella	Weber
Hutchinson	Preston	Wheatley
James	Raymond	Williams
Josephs	Readshaw	Wilt
Keller	Reed	Wojnaroski
Kenney	Reichley	Wright
Kirkland	Rieger	Yewcic
Kotik	Roberts	Youngblood
LaGrotta	Roebuck	Yudichak
Laughlin	Rohrer	Zug
Leach	Rooney	
Lederer	Ross	
Leh	Ruffing	Perzel,
Lescovitz	Sainato	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Rubley Washington

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

* * *

The House proceeded to third consideration of **SB 55**, **PA 49**, entitled:

A Joint Resolution proposing separate amendments to the Constitution of the Commonwealth of Pennsylvania, further providing for rights of accused in criminal prosecutions and for judicial administration.

On the question,

Will the House agree to the bill on third consideration?

Mr. **VITALI** offered the following amendment No. **A0026**:

Amend Title, page 1, lines 2 through 4, by striking out "further providing for rights of" in line 2 and all of lines 3 and 4 and inserting authorizing the General Assembly to enact laws relating to lobbying; and further providing for judicial administration.

Amend Sec. 1, page 1, lines 10 through 17; page 2, lines 1 through 7, by striking out all of said lines and inserting

(1) That Article III be amended by adding a section to read:

§ 17.1. Regulation of lobbying.

Notwithstanding any provision of this Constitution or law to the contrary, the General Assembly may by law define and regulate all activities related to and all persons engaged in lobbying, including attorneys at law and all persons holding professional licenses issued by any State and local entity.

On the question,

Will the House agree to the amendment?

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. **VITALI**. Thank you, Mr. Speaker.

What this amendment does is amends a different article of the Constitution to make it clear that the General Assembly has a right to regulate attorneys who lobby.

As this body is well aware, for many years this legislature, this State government, had one of the weakest lobbying laws in the country, and after many years of struggling and through the efforts of many members of this chamber, we finally passed a lobbying bill, which, although it had imperfections, was a bill that had some value.

Subsequently, about 2 years ago, the Pennsylvania Supreme Court, in a, in my view, puzzling decision, ruled the entire lobbying act which this General Assembly passed was unconstitutional, and the main reason they cited was, they had the province to regulate the conduct of lawyers. The reality, though, is that this General Assembly does have the power to regulate the powers of lobbying, and what this does is change that article of the Constitution—

The **SPEAKER**. Will the gentleman please suspend.

PARLIAMENTARY INQUIRY

The **SPEAKER**. For what purpose does the gentleman, Mr. O'Brien, rise?

Mr. **O'BRIEN**. Point of parliamentary inquiry, Mr. Speaker.

The **SPEAKER**. The gentleman will state his point.

Mr. **O'BRIEN**. Can the Speaker please inform the members of this body what effect the amending of SB 55 would have on the prior work of this General Assembly, specifically SB 211, which is now HR 1?

The **SPEAKER**. As the gentleman is probably aware, this has gone through one session of the General Assembly. This would be the second session of the General Assembly and would get it on the ballot if it were to pass the Senate. If this amendment is adopted, it would start at ground zero again and have to go through two sessions of the General Assembly.

Mr. **O'BRIEN**. Thank you, Mr. Speaker.

And that would go for any other subsequent amendments as well. Correct?

The **SPEAKER**. That is correct, Mr. O'Brien.

Mr. **O'BRIEN**. Would I be allowed to go on, Mr. Speaker?

The **SPEAKER**. Mr. Vitali had the floor, Mr. O'Brien.

Mr. **VITALI**. Thank you, Mr. Speaker.

As I mentioned, quite simply, this would make it clear that the General Assembly has the power to regulate lobbying, including attorneys who lobby. This is a very important issue, something I think the public is very concerned about. The public is very concerned about the influence of money on the legislative process, and this is a problem which occurs day in and day out—week in, week out.

I understand, if I could perhaps to some degree respond to the previous gentleman from Philadelphia's concerns, that the bill in chief deals with a different section of the Constitution; that is, the occurrence of child video is a much rarer occurrence.

I also might at this time like to point out, perhaps in response to the words of the Speaker, that there is no case law one way or the other on whether the passage of my amendment, whether or not that would delay the passage of SB 55 in chief. There is no

case that says, yes, it will; there is no case that says, no, it will not. So to simply say pointblank, passing my amendment will delay this a term, is incorrect. It is an open question.

My position is that since it involves a totally different article, it would not delay it. There is no logical reason why it should. It would not delay it because it is a totally different article of the Constitution. The wording is not interrelated in any way. The articles are not interrelated. So my position would be, no, it would not delay. That would be up to the courts to decide if in fact a challenge was made.

Mr. Speaker, I believe that our constituents want us to have the ability to regulate lobbying. Unless we have the ability to regulate lawyers, who constitute a large segment of our lobbying community, we cannot effectively regulate lobbying, and this would be a first step or a necessary step, so I would ask for an affirmative vote. Thank you.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

I am not here to challenge the gentleman's credentials as a constitutional scholar, but Legislative Reference Bureau, in my view, is the consummate authority on these issues, and they say that if we amend SB 55, then we go back to ground one and this has to be repeated.

Let me just remind the members of the General Assembly that repeatedly we are asked by leadership and members and lobbyists in the back of the House to please vote on this bill without amendment. I tell the ladies and gentlemen, in my humble opinion, that there has never been a more compelling reason to vote on a piece of legislation without amendment, that is more important than the bill that is before us today.

Let me just frame the issue very simply for you, Mr. Speaker. You have rapists, child molesters, and deviates who involve in involuntary deviate sexual intercourse of horrific nature. What we are asking is very simply that we change the Pennsylvania Constitution, and secondly, to provide the manner so that these children can testify in videotaped depositions and testimony when their case comes up.

Mr. Speaker, that is the issue; it is plain and simple. Any amendment to SB 55 puts this back to 2005. Let me remind you that there were only three negative votes when we considered this last session, and the voters of Pennsylvania voted 3 million to 1 million to allow the videotaping only in cases involving child victims.

Please, Mr. Speaker, recognize that this is the most compelling issue that we are going to face. We have been trying to do this for years. These issues, I am not minimizing the importance of them. They can be taken up another day. This cannot be amended.

Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Franklin, Mr. Coy. Mr. COY. Thank you, Mr. Speaker.

Mr. Speaker, the matter before us and the matter which the gentleman from Delaware attempts to amend are both matters of importance to the people of the Commonwealth; there is no doubt about it. And there are other amendments which may or may not be considered to this constitutional amendment.

The gentleman from Philadelphia, Mr. O'Brien, stated the case succinctly, I think, and that is, even though there may be a difference of opinion about whether or not the process on the

amendment, on the constitutional amendment which is already before us, which passed the last session and is now before us for passage today, whether or not an amendment to that amendment would delay the process — folks may disagree; one lawyer may tell us one thing, and one lawyer may tell us another — I, for one, Mr. Speaker, think that the matter that the original constitutional amendment which we seek to pass today and is before us is of such importance and the voters having spoken on the matter, as the gentleman from Philadelphia described and in the numbers that he described, that we should not tinker with it. As good as we feel or as bad as we feel about regulating lobbyists, whether or not we think that should be done by this Assembly as opposed to the court, I feel the matter of the constitutional amendment which was passed by the last session of the legislature and is before us again today allows for an important prosecutorial tool, but more important than that, it allows for a system of justice and a system of testimony in our judicial system which the voters of this State have told us they agree with this Assembly by a vote of around 3 to 1.

Now, I am not here to argue today whether or not lobbyists should be regulated by the Assembly or by the Governor or by the court, but I am here to say that the voters of Pennsylvania sent a message about as loudly and clearly as it could be sent that they favor the constitutional amendment which is before us, which was passed by the Assembly last session and is before us today for passage again.

I think that all of these matters should stand on their own; that if there are other amendments to be considered, they should stand on their own. And I think to mix them today or, for that matter, to mix them in the future, whether or not you may be able to say that is a constitutional matter and is constitutionally agreeable, I personally think it is wrong, and I think amendments of this sort to the Constitution should stand on their own merit, and therefore, I oppose the amendment, because I feel the constitutional amendment which is before us today outweighs it in the terms of public good and in the terms of public necessity.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence and requests a leave of absence for the gentleman from Chester, Mr. KIRKLAND. Without objection, the leave will be granted.

CONSIDERATION OF SB 55 CONTINUED

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Waters.

Before the gentleman starts, the gentleman is entitled to be heard. There is entirely too much noise. Please keep the noise levels down; please.

Mr. Waters.

Mr. WATERS. Thank you, Mr. Speaker.

Mr. Speaker, this particular subject right here that we are about to discuss is very dear to me. As you know, last week was the week that I introduced a resolution asking for the Commonwealth of Pennsylvania to work collectively in the prevention of child abduction and to promote Safety Awareness Week. The resolution passed with overwhelming support, and

the reason why it is so dear to me is because in my legislative district last year a young child, 7 years old, by the name of Erica Pratt, was kidnapped by some predators who took her and placed her in harm's way.

The experience that she went through was very traumatic, I am sure; that anyone here would understand what it must have been like just to be 7 years old and have to go through something like that and especially since the year 2002 was filled with too many cases of child abduction; very traumatizing.

But that was not the end of her trauma. Two weeks ago she had to go to court. She had to go to court to see the people and to give testimony openly in a courtroom that was filled with people, and it also had one of the accused predators in the courtroom, too.

I must hand it to her that she did the very best that she could to give the testimony that she was asked to give, but the setting was very uncomfortable for her, and in that courtroom she had to relive and go over all the stuff that happened to her last July in front of a lot of people and even in front of the person who was brought to trial and accused of being one of her captors. During the hearing she could not deal with even looking towards that man. I was in the courtroom with her. She was asked to look at certain things in the courtroom that she could not look at.

The SPEAKER. Would the gentleman suspend just for one moment.

POINT OF ORDER

The SPEAKER. The gentleman, Mr. Vitali.

Mr. VITALI. A point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. VITALI. I do not mean to be disrespectful to my colleague from Philadelphia because he is making very good points.

The only question I raise is, the amendment is about the regulation of lobbying, and it seems to me we can debate forever the merits of the bill in chief. It seems to me the arguments to be made now might be relevant and perhaps appealing the rule of the Chair, but this debate should be about lobbying, not about the merits of the bill itself.

The SPEAKER. I think, Mr. Vitali, the gentleman from Philadelphia is trying to make valid reasoning for why your amendment should not be put into the bill and why the bill itself, unamended, is necessary, and based on that, we believe that Mr. Waters is on the correct track and is allowed to continue speaking.

Thank you, Mr. Vitali.

Mr. WATERS. Thank you, Mr. Speaker.

I appreciate my colleague, Mr. Vitali's position, too, but I wanted my position to be respected only because I went to that court with her, and I believe that what is in the bill itself will help to make sure that little children do not have to go through reliving the trauma of their experience if we pass this bill in its original form.

I am against the amendment only because I feel as though the amendment would hamper that cause and make it so that children will once again have to deal with looking at people who they do not want to face again. They do not want to have to go to court. They do not want to have to face that person again.

I believe that the original content of the bill will help protect them from having to go through that experience again if they could go through a sidebar with a judge or if they could have the use of the video machines. I believe that she could look at a video, and she will not feel threatened if she could look at the video, and point out what they are asking her to point out. I saw this young girl shut totally down and turn her back to everyone in the courtroom, and if she would have been able to give her testimony by the use of video, she would have been more successful at doing what she knew she was going to do, but she felt threatened because of the atmosphere of the courtroom, and the person who was accused of taking her from her family, from her neighborhood, and from her friends was sitting right there looking at her. She could not look at this man. She could not look at him, and I do not blame her for not wanting to look at him, because it only would bring back the horrible experience that she went through last July of 2002.

I am totally against this amendment, and I would ask for other people to be against this amendment because we never know when something like this will happen to a family, to a friend, or someone in our legislative district.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Wayne, Mr. Birmelin.

Mr. BIRMELIN. Thank you, Mr. Speaker.

Like many others, I would like to rise in opposition to this amendment.

Having served on the House Judiciary Committee for 17 1/2 years and followed this issue from its inception many, many years ago to passing it, having the voters approve it, and then having the State Supreme Court very disappointingly strike it down, I see that perhaps we are really near the end of this battle and that this legislation should become law. And to have an amendment at this time to delay it for, you know, a few more years really is just not a bad — it is a bad thing to do; it is a bad idea.

We ought not to vote for this amendment. We ought to defeat this amendment, vote the merits of the bill on its own; get this done. This is what the Pennsylvania public wants. It is what we, I think, as legislators want, and it is something that should have been done a long time ago. Better late than never, but let us not delay the process any further.

And as the gentleman from Franklin County commented, I think that to add this at this time in the mix really is a very negative step to take and that we ought to consider it on its own merits and not throw in some other concept that is completely unrelated at this time.

So I would ask for a "no" vote.

The SPEAKER. The Chair thanks the gentleman and recognizes the gentleman from Mercer, Mr. Gruitza.

Mr. GRUITZA. Thank you, Mr. Speaker.

Just very briefly. For all the reasons that were articulated by the last few speakers, I rise to also oppose this amendment.

I thought that the gentleman from Wayne was going to also mention his role as the majority chairman of the Children and Youth Committee, and that is really why I am standing as the minority chair of that committee to endorse this legislation as it stands.

This is a bill for our children. We can take the gentleman's word that this amendment will not have an altering effect or delay this process, but I have a tendency to believe the words of

the gentleman from Philadelphia who has checked with the Reference Bureau, and they have real concerns about amending the bill. We frequently amend bills to death; we love them to death, and we go home and explain to our constituents what happened to this wonderful piece of legislation that the House was working on or the Senate and explain that, well, it got bogged down with amendments. This is just an example of that, and it is simply not the kind of bill that we want to play games with. I think we vote this amendment down and we pass this bill and send it on its way.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, as a member of the Children and Youth Committee, I strongly endorse the comments of my chair and I also endorse the comments of my colleague from Philadelphia.

Mr. Speaker, I think the record is very clear. This amendment, while it is praiseworthy and good intentioned, it is out of order. Now is not the time to tamper with SB 55. A lot of work has gone into this bill and, Mr. Speaker, it is time to move the agenda forward.

And so I urge each and every one of my colleagues on both sides of the aisle to reject the Vitali amendment and let us move on with SB 55 and provide people all across the Commonwealth of Pennsylvania with the kind of protections that they need that are embodied in SB 55. Mr. Speaker, let us move the agenda.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Vitali, for the second time on his amendment.

Mr. VITALI. I just want to make sure no other members are up to speak. I would like to have the courtesy of speaking last.

The SPEAKER. We did save you for last, Mr. Vitali.

I apologize, Mr. Vitali; I apologize.

The gentleman from Bucks, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, I did want to get a sidebar with Representative Vitali for the reason is — and to give a comfort level to the members of the House — that we are indeed working on a lobbyist disclosure bill even while we are speaking. In fact, it is going through another printing, and a memorandum is going to be sent out this week asking for cosponsorship. We have been working on this lobbyist disclosure bill for a number of weeks now. It has been very difficult to try to put the language in because of the Supreme Court ruling back in the fall, but we are at that process where we have a two-package bill that we are going to present to the members.

I would just share that information with you, and I, too, would ask for a “no” vote on the Vitali amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

PARLIAMENTARY INQUIRY

The SPEAKER. The Chair recognizes the gentleman from Dauphin, Mr. Buxton.

Mr. BUXTON. Thank you, Mr. Speaker.

Mr. Speaker, I would like to raise a point of personal privilege.

The SPEAKER. The gentleman will state his point of personal privilege.

Mr. BUXTON. I would like to know whether it would be in order to move at this time that the amendment is not germane to this legislation.

The SPEAKER. The gentleman can raise the question of germaneness.

GERMANENESS QUESTIONED

Mr. BUXTON. Mr. Speaker, I therefore raise the motion that the amendment — I do not have my glasses — A0026, the Vitali amendment, is not germane to the legislation at hand.

The SPEAKER. The gentleman is correct; amendment A0026.

Mr. BUXTON. So moved.

The SPEAKER. The gentleman from Dauphin, Mr. Buxton, has raised the question to whether amendment A0026 is germane.

Under House rule 27, questions involving whether an amendment is germane to the subject shall be decided by the members of the House.

On the question,

Will the House sustain the germaneness of the amendment?

PARLIAMENTARY INQUIRY

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you.

I have a parliamentary inquiry. The precedent here with regard to germaneness when you are dealing with the Constitution and you have two different, albeit, articles of the Constitution being amended, do we have precedent for that in our House history?

The SPEAKER. The question of germaneness can be brought up, basically, at any time by any member, and the gentleman has used his privilege to do that.

Mr. VITALI. I understand. My parliamentary inquiry is, is there precedent in this House that when an article of the Constitution is attempting to be amended, has an amendment to another section of that Constitution been found to be germane?

The SPEAKER. The gentleman's point, whether or not it has been done before, is, according to the Parliamentary, irrelevant, because any member at any time has the right to call and ask whether an amendment is germane to the subject, and that is a privilege each and every member has, and the gentleman has called that up.

Mr. VITALI. Well, I am just wondering, perhaps it might be irrelevant in a court of law, but just for the information of the members, has this precedent been set that we have amended different sections of the Constitution?

The SPEAKER. For the information of the members, the Parliamentarian is looking through the history books right now to see whether or not we do have that in there, but regardless of what he finds out, the question is, each member has a right to ask whether or not an amendment is germane, and the member is calling and asking whether that amendment that you have offered is germane, and he has that right.

LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence and has requested a leave of absence for the gentleman from Philadelphia, Mr. DONATUCCI. Without objection, that leave will be granted.

CONSIDERATION OF SB 55 CONTINUED

The SPEAKER. On that question of germaneness, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

I understand why House members may want to duck a very tough vote on the issue of lobbying, but I think the reality is you have to be very careful what precedent you set. It seems to me that, you know, we periodically amend the Constitution, and, for example, we attempted to do it on the cap issue just last week with Representative Turzai and a whole host of amendments were filed to that change in the Constitution, and many of you filed those amendments. And let us be honest with ourselves. If you filed amendments to the Constitution last week, and there were probably a good foot-and-a-half worth of amendments on the calendar, if you were one of them, it is inconsistent today for you to say that because this amends a different section of the Constitution, it is out of order.

I mean, germaneness has traditionally been interpreted very broadly. When we amend, for example, a bill, a freestanding—Or rather, when there is a bill considering a title, any title, any other amendment to that title is considered germane, and we are dealing now with a section of the Constitution. I mean, are we suggesting that we are going to, in this circumstance, interpret the Constitution so narrowly that only this can? That has been inconsistent with what we have done over the years.

The problem is, if we want to be consistent in this body, this voting against the germaneness vote might help you get by a tough vote, but the reality is you are setting a precedent for future votes, and I do not think that is something you want to do. If you do not like this amendment, if you do not want to vote for this amendment, I mean, simply vote "no," but I think it is inconsistent to pick and choose, you know, pick and choose your germaneness.

So my hope is that we can be intellectually honest here. This is clearly germane. I ask for a "yes" vote, and if you simply do not like the amendment, simply vote "no" on the amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

The Chair has ruled that the members in this General Assembly will decide germaneness. I say, let the members decide, and I ask that you decide in the negative.

The SPEAKER. The gentleman from Allegheny, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

I invite the gentleman, Mr. Vitali, to join me and others, who have been working on the issue of lobbying disclosure, through the process, and I would welcome you as a cosponsor of our effort to amend the Constitution in this regard.

However, as a fan of that subject, I cannot even imagine what could be less germane to lobbying disclosure than the issue of face-to-face contact between a defendant and his

accuser. They are completely unrelated, and I would ask the members of this House not to be cowed by concerns about whether a germaneness vote might be misinterpreted but to recognize this is not germane and let us deal with the subject at hand.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Those who believe the amendment is germane will vote "aye"; those who believe the amendment is not germane will vote "no."

On the question recurring,

Will the House sustain the germaneness of the amendment?

The following roll call was recorded:

YEAS—19

Belardi	Hanna	Pallone	Surra
Curry	Josephs	Rieger	Tigue
Daley	Levdansky	Roberts	Vitali
Dermody	Manderino	Roebuck	Wheatley
Freeman	Mundy	Stetler	

NAYS—175

Adolph	Egolf	Leh	Samuelson
Allen	Evans, D.	Lescovitz	Santoni
Argall	Evans, J.	Lewis	Sather
Armstrong	Fabrizio	Lynch	Saylor
Baker	Fairchild	Mackereth	Scavello
Baldwin	Feese	Maher	Schroder
Bard	Fichter	Maitland	Scrimenti
Barrar	Fleagle	Major	Semmel
Bastian	Flick	Mann	Shaner
Bebko-Jones	Forcier	Markosek	Smith, B.
Belfanti	Frankel	Marsico	Smith, S. H.
Benninghoff	Gabig	McCall	Solobay
Biancucci	Gannon	McGeehan	Staback
Birmelin	Geist	McGill	Stairs
Bishop	George	McIlhattan	Steil
Blaum	Gergely	McIlhinney	Stern
Boyd	Gillespie	McNaughton	Stevenson, R.
Browne	Gingrich	Melio	Stevenson, T.
Bunt	Godshall	Metcalfe	Sturla
Butkovitz	Goodman	Micozzie	Tangretti
Buxton	Gordner	Miller, R.	Taylor, E. Z.
Caltagirone	Grucela	Miller, S.	Taylor, J.
Cappelli	Gruitza	Myers	Thomas
Casorio	Habay	Nailor	Travaglio
Causar	Haluska	Nickol	True
Cawley	Harhai	O'Brien	Turzai
Civera	Harhart	Oliver	Vance
Clymer	Harper	O'Neill	Veon
Cohen	Harris	Payne	Walko
Coleman	Hasay	Petrarca	Wansacz
Cornell	Hennessey	Petri	Waters
Corrigan	Herman	Petrone	Watson
Costa	Hershey	Phillips	Weber
Coy	Hess	Pickett	Williams
Crahalla	Hickernell	Pistella	Wilt
Creighton	Hutchinson	Raymond	Wojnaroski
Cruz	James	Readshaw	Wright
Dailey	Keller	Reed	Yewcic
Dally	Kenney	Reichley	Youngblood
DeLuca	Kotik	Rohrer	Yudichak
Denlinger	LaGrotta	Rooney	Zug
DeWeese	Laughlin	Ross	
DiGirolamo	Leach	Ruffing	Perzel,
Diven	Lederer	Sainato	Speaker
Eachus			

NOT VOTING—1

Preston

EXCUSED—5

Donatucci
Horsey

Kirkland

Rubley

Washington

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was declared not germane.

On the question recurring,
Will the House agree to the bill on third consideration?

The SPEAKER. Does the gentleman, Mr. Vitali, have any further amendments?

Mr. VITALI. Yes, Mr. Speaker. Amendment 1949.

On the question recurring,
Will the House agree to the bill on third consideration?

Mr. VITALI offered the following amendment No. A1949:

Amend Title, page 1, line 1, by striking out "separate amendments" and inserting

an amendment

Amend Title, page 1, lines 2 and 3, by striking out "rights of accused in criminal prosecutions and for"

Amend Sec. 1, page 1, line 7, by striking out "separate amendments" and inserting

amendment

Amend Sec. 1, page 1, line 8, by striking out "are" and inserting

is

Amend Sec. 1, page 1, lines 10 through 17; page 2, lines 1 through 8, by striking out all of lines 10 through 17 on page 1 and all of lines 1 through 7 and "(2)" in line 8, page 2 and inserting

(1)

Amend Sec. 1 (Sec. 10), page 2, line 27, by inserting after "of"

section 9 of Article I and

Amend Sec. 2, page 3, line 4, by striking out "these" and inserting

this

Amend Sec. 2, page 3, line 4, by striking out "amendments" and inserting

amendment

Amend Sec. 2, page 3, line 10, by striking out "these" and inserting

this

Amend Sec. 2, page 3, line 10, by striking out "amendments" and inserting

amendment

Amend Sec. 2, page 3, line 11, by striking out "these" and inserting

this

Amend Sec. 2, page 3, line 12, by striking out "amendments" and inserting

amendment

Amend Sec. 2, page 3, line 16, by striking out "advertisements" and inserting

advertisement

Amend Sec. 2, page 3, line 18, by striking out "these" and inserting

this

Amend Sec. 2, page 3, line 18, by striking out "amendments" and inserting

amendment

Amend Sec. 2, page 3, line 19, by striking out "amendments" and inserting

amendment

Amend Sec. 2, page 3, line 21, by inserting after "as"

a

Amend Sec. 2, page 3, line 21, by striking out "questions" and inserting

question

Amend Sec. 2, page 3, line 23, by striking out "amendments" and inserting

amendment is

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Mr. Speaker, I think it is clear or I think it should be very clear to the members or rather I want to make it very clear to the members that SB 55 before you is actually two changes to the Constitution, and if you read the language carefully, you will see two changes. One change is the language we have all or you all have been impassionately imploring the passage of; that is the language in the bottom part of the bill that allows children to testify by videotape. But that is only — and I understand the sentiment of this House that there is near unanimous support for that — but you have to be very, you need to understand there is a second part to this, and I do not think a lot of you quite get that yet. That occurs in the beginning of this amendment. That deal with removing the right of face-to-face confrontation, the right the accused has to confront his accusers face to face. That removes that section, too, and that section is not limited to children. That applies to everyone, adults in any circumstance. That is a very broad amendment, and that is a very important change to a Constitution that has served us well for the past 200 years.

Essentially what my amendment would do would be to take out the provision of SB 55 which reduces, rather, which takes away that face-to-face confrontation for adults, and my amendment leaves in the allowance of children to testify by videotape, and I think this is very important, because in our society it is vitally important that citizens have the peace of mind to know that if they have not committed a crime, they will not be falsely incarcerated. We put in these safeguards in place of face-to-face confrontation to ensure that, to ensure that someone accused of a crime has all the protections necessary at his disposal to prove his innocence, and every time you take away one of these important safeguards, you increase the chances that an innocent person, maybe your neighbor, maybe a family member, is going to be imprisoned falsely. The importance of the right to face-to-face confrontation is this; it is based on the principle: it is more difficult to lie about someone when you are looking them face to face, when you are standing in the same room as them.

If you were falsely accused of a crime as an adult, it is very important that you and your attorney have the right to be in the same room as the person who is saying you did this criminal act, because by that face-to-face confrontation, you can increase your chances of showing this person is lying. It goes back

when you were a kid and your dad said, look me in the eye. Did you really do that? Are you really telling the truth? It is that face-to-face thing. It is the same psychology at work here.

That is what this amendment is about. The amendment is about keeping provisions in the Constitution for that face-to-face confrontation. If we disallow this, if we take this out of the Constitution, it could be possible perhaps to pass legislation, ill-considered legislation, to allow perhaps police officers to testify from their police station or perhaps to have someone accused of a crime be forced to testify at some hearing from a prison. It is very important that we keep these constitutional safeguards intact.

So by voting "yes" for this amendment, you are allowing the protections for children but you are keeping that 200-year provision, that safeguard in the Constitution that protects all of us from false incarceration. So I ask for a "yes" vote.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

For the information of the members, the question of germaneness on a constitutional question was brought up on June 25, 1980, page 1845, and that question was found, the "yeas" were 56, the "nays" were 127. So the question of germaneness has come up before on constitutional amendments, for the information of the gentleman.

The Chair recognizes the gentlelady from Montgomery, Ms. Weber.

Ms. WEBER. Thank you, Mr. Speaker.

I rise and request the members to vote "no" to the Vitali amendment for two reasons. The first reason that has been set forth quite clearly in the previous debate is that any change to this amendment — a semicolon, a period, a word, a preposition — any change to this amendment as it is currently written will defeat what we are trying to accomplish and what members of this General Assembly have been trying to accomplish long before I came here.

The second reason I stand to request the members to vote "no" to this amendment is to respond directly to comments made by my colleague from Delaware County. The attempt to create in the minds of the members here the impression that there is a slippery slope so that we are going to move away from just protecting child victims and allowing just child victims to testify via in camera or through a closed-circuit television will not lead us down the path so that any witness or any victim will be able to testify in that format, and there are two very significant reasons why. One is our United States Constitution and two is our Pennsylvania State Constitution. Embodied in both those Constitutions is a litany of case law both from the Pennsylvania Supreme Court and our United States Supreme Court.

What the bill seeks to do and what this amendment by Mr. Vitali will defeat is to make Pennsylvania constitutional law, the words, the exact same as what is in the United States Constitution. Therefore, the case law will govern the slippery slope that Mr. Vitali is attempting to create. The only exception that will be permitted is this which we are carving out here today and was already passed last session by the members of the Assembly, and that is for child victims and child material witnesses. We all know the brunt of this is to protect those that have been sexually assaulted by, typically, a relative, and for

Mr. Vitali to stand and to suggest that a child should be able to face their parent when acknowledging that that parent has engaged in sexual misconduct on their body is a little incredulous, and my experience as a prosecutor for 6 1/2 years who handled these types of cases is exactly that — the child will break down before going into the courtroom, will break down when they are sitting on the witness stand, and then will be in therapy up until they are an adult and well into their adult years.

So this amendment will kill what needs to happen in the Commonwealth of Pennsylvania. We need to protect our children who are victimized, whether sexually and/or physically, from testifying when there is going to be traumatic damage done to that child. So that is why I urge all members to stay focused on what this amendment that Mr. Vitali suggests is doing. It will defeat any constitutional amendment to protect our children.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Montgomery, Mr. Leach.

Mr. LEACH. Thank you, Mr. Speaker.

I just want to start off by saying that I support the concept of allowing children to testify by videotape, and I voted "no" on the germaneness question on Mr. Vitali's previous amendment, but on this amendment Mr. Vitali is dead on.

Let me just amplify what he said and respond to some of the points that were made. This amendment could have said that we have a right— There are two questions. The first question, which changes the Constitution to get rid of the right to confront our people who accuse us face to face, could have said that we are changing it to get rid of the right to confront people face to face in cases of juveniles when there is a sexual charge, but it does not say that. This case gets rid of the right to confront your accuser face to face in every kind of case and in every kind of victim. Now, what does that mean?

Question number two on the Constitution says that we are allowed as the legislature to deal with it on child sex cases only. Fine, but that means it is up to the courts. The courts retain the power to deal with this issue in every other context.

Now, I believe the Representative who shares Montgomery County with me said we have the Federal Constitution and that will prevent other kinds of cases, because my concern is that one day a judge is going to look at a defendant and he is going to say, he is going to look at a defendant in a burglary case, an adult defendant in a burglary case, and say, you know, burglary is a traumatic crime; this defendant should not have to sit in the same room, this victim should not have to sit in the same room as the defendant; she should be able to testify by video; I find as a factual matter that she is traumatized by the burglary. And maybe she is. This woman is a victim of identity theft; this man was robbed at gunpoint. None of these people should have to sit in the same room as the horrible person who did that to them. We have a constitutional right that says that cannot happen, and we are giving up that constitutional right today.

Now, it was said the Federal Constitution is still there. I just want to make two quick points on that. First of all, that is true, but that is not a right to give up our independent constitutional right in Pennsylvania. That is like saying, let us repeal the free-speech right in Pennsylvania because there is still a First Amendment. Now, would anyone in this room, I am asking rhetorically and hopefully, would anyone in this room

support repealing our free-speech clause of — the Representative from Lehigh County — would anyone support, anyone other than Doug, support repealing the free-speech provision of the Constitution of Pennsylvania just because there is a Federal concurrent right? No. We cannot vote on Federal constitutional law. We do not have a vote in Congress and we do not have a vote on the Supreme Court. All we can do is vote on what the constitutional rights are in Pennsylvania, and like the Federal Constitution, our Constitution is sacred, and to say that the only reason we cannot correct this — because this is easily corrected; the Vitali amendment corrects this.

We are not giving up our right to confront our accused as adults in nonsex cases if we pass the Vitali amendment. The only argument I have heard not to do that is it will delay the process. I think, with all due respect, that is a shoddy reason to not do it right. It is more important to do it right than to do it expeditiously.

The Supreme Court case that first allowed this with a brilliant dissent by Justice Scalia was, what? Fifteen years ago. This has been going on for 15 years. This will delay it 1 year. If we do it wrong, it will be wrong for the next hundred years or the next thousand years, however long this Commonwealth is in existence, because once constitutional rights are given up, they are extremely difficult if not impossible to get back.

And so I request the members really think about, read the language. I always say, read the language of the proposed amendment. The language says currently you have a right to confront your accuser face to face. The new language gets rid of face to face. It does not say just for children; it does not say just for victims. It says for all of us, and before we give up this constitutional right to do something quickly, why do we not do it right?

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

Very simply, 44 States have adopted the Maryland v. Craig standard; that is the seminal case.

I believe that this is a bad amendment. It will put the Maryland v. Craig standard in conflict with the second part of the constitutional question.

Very simply stated, as Melissa Weber stated earlier and other members have stated, if we change anything in this amendment, we are keeping this important question from the voters. I say, let us send it on to the voters and protect the child victims in Pennsylvania.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Roebuck.

Mr. ROEBUCK. Thank you, Mr. Speaker.

I rise out of concern about the course of this particular argument on the constitutional amendment. The Constitution is essential to our form of government, and when we make changes, then we ought to be very careful about what we do.

Now, the lady from Montgomery tells us if we make any change at all, somehow we will negate the process moving forward, but if the amendment that we are proposing is wrong or flawed, we ought to look at it, and if it means we slow the process down and do not disrupt the basic fabric of our structure of government, then we ought to do that.

It is also suggested that somehow we are on a slippery slope, but the reality is, read what the language of the amendment says. It takes away your right to a face-to-face confrontation in a courtroom, not as a child, and I certainly support allowing children the option of video testimony, but it takes it away from everyone, everyone. Think of yourself. Suppose you are accused of a crime; suppose you have a vindictive neighbor who wants to accuse you of something; suppose you are brought into court and you are told you cannot confront the person who has accused you. Is that right? No, that is not right as an adult, and we all know that is not right, but that is what this amendment proposes to do.

Look very carefully at what we are doing here. Understand it is not just children that we are talking about, it is every member of this Commonwealth. Understand that you lose your right to a face-to-face confrontation in a courtroom, the right to look at who has accused you and challenge them as one adult to another. Understand if we do this, we waive a basic right that we all enjoy as American citizens. It sends us down a very, very slippery slope towards something that we say that we do not want to be. Understand we need to look at what we are doing and understand that there is something fundamentally wrong with merely pushing this forward under the guise that we are protecting children when we are doing much more than that. We are in fact beginning to erode our basic constitutional framework.

I would urge that we adopt the Vitali amendment. Thank you, Mr. Speaker.

PARLIAMENTARY INQUIRY

The SPEAKER. The gentleman from Montgomery, Mr. Leach, for the second time.

Mr. LEACH. Thank you, Mr. Speaker.

I just have an inquiry, and I am not sure if our Parliamentarian would know, but if he would, does he know when the face-to-face clause of the Pennsylvania Constitution was first in the Constitution? Does that date back to the original Constitution of Pennsylvania?

The SPEAKER. To the best of his knowledge, he does not have an answer for you, but we will look that up.

Mr. LEACH. Thank you.

That is all I have, Mr. Speaker.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—46

Belardi	Fabrizio	Myers	Stetler
Bishop	Frankel	Pallone	Sturla
Buxton	Freeman	Petrarca	Surra
Cohen	Gergely	Petrone	Thomas
Corrigan	Haluska	Readshaw	Veon
Costa	James	Rieger	Vitali
Curry	Josephs	Roberts	Walko
DeLuca	Leach	Roebuck	Wheatley
Dermody	Levdansky	Scrimenti	Williams
DeWeese	Manderino	Shaner	Wojnaroski
Diven	Melio	Steil	Yewcic
Evans, D.	Mundy		

NAYS—149

Adolph	Egolf	Leh	Ruffing
Allen	Evans, J.	Lescovitz	Sainato
Argall	Fairchild	Lewis	Samuelson
Armstrong	Feese	Lynch	Santoni
Baker	Fichter	Mackereth	Sather
Baldwin	Fleagle	Maher	Saylor
Bard	Flick	Maitland	Scavello
Barrar	Forcier	Major	Schroder
Bastian	Gabig	Mann	Semmel
Bebko-Jones	Gannon	Markosek	Smith, B.
Belfanti	Geist	Marsico	Smith, S. H.
Benninghoff	George	McCall	Solobay
Biancucci	Gillespie	McGeehan	Staback
Birmelin	Gingrich	McGill	Stairs
Blaum	Godshall	McIlhattan	Stern
Boyd	Goodman	McIlhinney	Stevenson, R.
Browne	Gordner	McNaughton	Stevenson, T.
Bunt	Grucela	Metcalfe	Tangretti
Butkovitz	Gruitza	Micozzie	Taylor, E. Z.
Caltagirone	Habay	Miller, R.	Taylor, J.
Cappelli	Hanna	Miller, S.	Tigue
Casorio	Harhai	Nailor	Travaglio
Causar	Harhart	Nickol	True
Cawley	Harper	O'Brien	Turzai
Civera	Harris	Oliver	Vance
Clymer	Hasay	O'Neill	Wansacz
Coleman	Hennessey	Payne	Waters
Cornell	Herman	Petri	Watson
Coy	Hershey	Phillips	Weber
Crahalla	Hess	Pickett	Wilt
Creighton	Hickernell	Pistella	Wright
Cruz	Hutchinson	Preston	Youngblood
Dailey	Keller	Raymond	Yudichak
Daley	Kenney	Reed	Zug
Dally	Kotik	Reichley	
Denlinger	LaGrotta	Rohrer	Perzel,
DiGirolamo	Laughlin	Rooney	Speaker
Eachus	Lederer	Ross	

NOT VOTING—0

EXCUSED—5

Donatucci	Kirkland	Rubley	Washington
Horsey			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—191

Adolph	Evans, D.	Lewis	Samuelson
Allen	Evans, J.	Lynch	Santoni
Argall	Fabrizio	Mackereth	Sather

Armstrong	Fairchild	Maher	Saylor
Baker	Feese	Maitland	Scavello
Baldwin	Fichter	Major	Schroder
Bard	Fleagle	Manderino	Scrimenti
Barrar	Flick	Mann	Semmel
Bastian	Forcier	Markosek	Shaner
Bebko-Jones	Frankel	Marsico	Smith, B.
Belardi	Freeman	McCall	Smith, S. H.
Belfanti	Gabig	McGeehan	Solobay
Benninghoff	Gannon	McGill	Staback
Biancucci	Geist	McIlhattan	Stairs
Birmelin	George	McIlhinney	Steil
Bishop	Gergely	McNaughton	Stern
Blaum	Gillespie	Melio	Stetler
Boyd	Gingrich	Metcalfe	Stevenson, R.
Browne	Godshall	Micozzie	Stevenson, T.
Bunt	Goodman	Miller, R.	Sturla
Butkovitz	Gordner	Miller, S.	Surra
Buxton	Grucela	Mundy	Tangretti
Caltagirone	Gruitza	Myers	Taylor, E. Z.
Cappelli	Habay	Nailor	Taylor, J.
Casorio	Haluska	Nickol	Thomas
Causar	Hanna	O'Brien	Tigue
Cawley	Harhai	Oliver	Travaglio
Civera	Harhart	O'Neill	True
Clymer	Harper	Pallone	Turzai
Coleman	Cohen	Payne	Vance
Cornell	Hasay	Petrarca	Veon
Corrigan	Hennessey	Petri	Walko
Costa	Herman	Petrone	Wansacz
Coy	Hershey	Phillips	Waters
Crahalla	Hess	Pickett	Watson
Creighton	Hickernell	Pistella	Weber
Cruz	Hutchinson	Preston	Wheatley
Dailey	James	Raymond	Williams
Daley	Keller	Readshaw	Wilt
Daley	Kenney	Reed	Wojnaroski
Dally	Kotik	Reichley	Wright
DeLuca	LaGrotta	Rieger	Yewcic
Denlinger	Laughlin	Roberts	Youngblood
Dermody	Leach	Rohrer	Yudichak
DeWeese	Lederer	Rooney	Zug
DiGirolamo	Leh	Ross	
Diven	Lescovitz	Ruffing	Perzel,
Eachus	Levdansky	Sainato	Speaker
Egolf			

NAYS—4

Curry	Josephs	Roebuck	Vitali
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NOT VOTING—0

EXCUSED—5

Donatucci	Kirkland	Rubley	Washington
Horsey			

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same without amendment.