

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

636 MD 2020

DARYL D. METCALFE, RUSS DIAMOND, DAWN W. KEEFER,
THOMAS R. SANKEY, III, ROBERT W. KAUFFMAN, KATHY
L. RAPP, STEPHANIE P. BOROWICZ, JAMES MOLLICK,
FRANK SCAVO, CRIS E. DUSH, FRANCIS X. RYAN

Plaintiffs,

vs.

THOMAS W. WOLF, in his official capacity as Governor of the Commonwealth
Pennsylvania, KATHY BOOCKVAR, in her official capacity as Secretary of the
Commonwealth of Pennsylvania, and, all in their capacity as Democratic
presidential electors, Nina Ahmad, Val Arkoosh, Cindy Bass, Rick Bloomingdale,
Ryan Boyer, Paige Gebhardt Cognetti, Daisy Cruz, Kathy Dahlkemper, Janet Diaz,
Virginia McGregor, Charles Hadley, Jordan Harris, Malcolm Kenyatta, Gerald
Lawrence, Clifford Levine, Nancy Mills, Marian Moskowitz, Josh Shapiro, Sharif
Street, Connie Williams,

Defendants.

**FIRST AMENDED EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND INJUNCTIVE RELIEF**

Thomas W. King, III (PA I.D. No. 21580)
Thomas E. Breth (PA I.D. No. 66350)
Dillon, McCandless, King, Coulter
& Graham, L.L.P.
128 West Cunningham Street
Butler, PA 16001
*Counsel for Plaintiffs, and
Special Counsel for the Amistad Project
of the Thomas More Society*

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SCAVO, CRIS E. DUSH, FRANCIS X. RYAN,)

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capacity as Governor of the Commonwealth)
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in her official capacity as Secretary of the)
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Nina Ahmad, Val Arkoosh, Cindy Bass, Riek)
Bloomingdale, Ryan Boyer, Paige Gebhardt)
Cognetti, Daisy Cruz, Kathy Dahlkemper, Janet)
Diaz, Virginia McGregor, Charles Hadley, Jordan)
Harris, Malcolm Kenyatta, Gerald Lawrence,)
Clifford Levine, Nancy Mills, Marian Moskowitz,)
Josh Shapiro, Sharif Street, and Connie Williams,)

Defendants.

**FIRST AMENDED EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND INJUNCTIVE RELIEF**

AND NOW, comes Plaintiffs, by and through their attorneys, Dillon McCandless King Coulter & Graham, LLP, per Thomas W. King, III, Esquire, and Thomas E. Breth, Esquire, to file the within First Amended Emergency Motion for Temporary Restraining Order and Injunctive Relief, and respectfully request that

this Court grant the within Motion for the reasons set forth in Plaintiffs' First Amended Complaint for Writ of Mandamus and Request for an Emergency Temporary Restraining Order and Injunctive Relief which is incorporated herein by reference as if fully set forth.

On December 3, 2020, Mike Kelly, U.S. Congressman, et al., filed an Emergency Application for Writ of Injunction pending the filing and disposition of a Petition for Writ of Certiorari with the United States Supreme Court. *Case 20A98 U.S. Supreme Court*. In the *Mike Kelly* case, Respondents are the Commonwealth of Pennsylvania, Pennsylvania General Assembly, Thomas W. Wolf, Governor of the Commonwealth, and, Kathy Boockvar, Secretary of the Commonwealth. The issues before the Court are whether the Elections and Electors Clauses of the U.S. Constitution permit Pennsylvania to violate its Constitution's restrictions when enacting legislation related to the conduct of Federal elections; and, whether the First and Fourteenth Amendments to the U.S. Constitution permit the dismissal of *Mike Kelly, et al.*, claims with prejudice based upon laches.

On December 6, 2020, Justice Alito entered an updated Order that requires the Respondents in the *Mike Kelly* case to file their Response to the Application by 9:00 a.m., Tuesday, December 8, 2020. It is not clear what, if any, action Justice Alito or the Court may take in the *Mike Kelly* case; however, if the Court grants Petitioners' request for Injunctive Relief, it will have a direct impact upon the relief

sought in the within Emergency Motion and the First Amended Emergency Motion for Temporary Restraining Order and Injunctive Relief filed herewith.

Respectfully Submitted,

**DILLON, McCANDLESS, KING,
COULTER & GRAHAM, LLP**

Dated: December 7, 2020

By: /s/ Thomas W. King, III
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Defendants.)

ORDER OF COURT

AND NOW, this ___ day of December 2020, the within First Amended
Emergency Motion for Temporary Restraining Order and Injunction Relief is hereby
GRANTED.

BY THE COURT,

Judge