

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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, :
Petitioners :

v. :

No. 636 M.D. 2020

Thomas W. Wolf, in his official :
capacity as Governor of the :
Commonwealth of 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, :
Respondents :

MEMORANDUM OPINION
BY PRESIDENT JUDGE LEAVITT

FILED: December 9, 2020

Before the Court is Petitioners' First Amended Emergency Motion for a Temporary Restraining Order and Injunctive Relief (Emergency Motion), and

Respondents' responses thereto. Petitioners' Emergency Motion is ancillary to a Complaint for Writ of Mandamus they filed on December 4, 2020, as amended December 7, 2020, seeking to compel Governor Wolf to withdraw the certification of the results of the 2020 General Election and withdraw the certificates of election issued to Respondent Democratic Presidential Electors. For the reasons set forth below, the Court denies Petitioners' Emergency Motion.

It is well settled that a party seeking injunctive relief must show, *inter alia*, "that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits." *Summit Towne Centre, Inc. v. Shoe Show of Rock Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Petitioners are unable to demonstrate a clear right to relief or likelihood of prevailing on the merits because their underlying action, although styled as a complaint seeking a writ of mandamus, is really an improper and untimely election contest.

To begin, the Pennsylvania Supreme Court has stated that "[o]ur past cases have adhered firmly to the principle that the proper remedies for violations of the [Pennsylvania] Election Code¹ are to be found within the comprehensive legislative framework of the Code itself." *Brunwasser v. Fields*, 409 A.2d 352, 354 (Pa. 1979). *See also Reese v. County Board of Elections of Lancaster County*, 308 A.2d 154, 158 (Pa. Cmwlth. 1973) ("'[E]lection contest' proceedings are wholly statutory and jurisdiction over the subject matter of an election contest petition must be found in the Pennsylvania Election Code or in some other statute incorporating the Pennsylvania Election Code by reference."). Section 1711 of the Election Code, 25 P.S. §3291, identifies five "classes of nominations at primaries and elections of

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2601-3591.

public officers which may be contested in this Commonwealth.” 25 P.S. §3291. Relevant here are Class II nominations and elections of electors of President and Vice-President of the United States. *Id.* Significantly, a Class II contest must be commenced by the filing of a petition “within twenty days after the day of the primary or election, as the case may be.” Section 1756 of the Election Code, 25 P.S. §3456. Thus, the deadline for filing a Class II contest of the November 3, 2020, General Election was November 23, 2020. Plaintiffs filed their complaint on December 4, 2020, which was 11 days after the statutory deadline. This Court lacks jurisdiction over the contest and, thus, Petitioners cannot prevail on the merits.²

In short, because this Court’s jurisdiction is doubtful, Petitioners’ Emergency Motion must be denied.



MARY HANNAH LEAVITT, President Judge

² The Election Code contains additional specific procedures and requirements for contesting a Class II election. Relevant here, Section 1731 of the Election Code provides that Class II contests “shall be tried and determined by the court, *upon petition of at least one hundred electors* as hereinafter provided.” 25 P.S. §3351 (emphasis added). The petition must be verified by the affidavit of at least five of the petitioners. Section 1757 of the Election Code, 25 P.S. §3457. A bond must be filed in every class of election contest, signed by at least five of the petitioners. Section 1759 of the Election Code, 25 P.S. §3459. Petitioners have satisfied none of these requirements.

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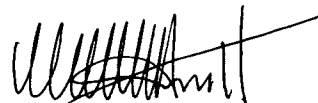
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Respondents :

ORDER

AND NOW, this 9th day of December, 2020, Petitioners' First Amended Emergency Motion for a Temporary Restraining Order and Injunctive Relief is DENIED.



MARY HANNAH LEAVITT, President Judge