

**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 COMPLAINT FOR WRIT OF MANDAMUS AND  
REQUEST FOR AN EMERGENCY 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  
Telephone: (724) 283-2200  
Facsimile: (724) 283-2298

Email: [tking@dmkcg.com](mailto:tking@dmkcg.com)

Email: [tbreth@dmkcg.com](mailto:tbreth@dmkcg.com)

*Counsel for Plaintiffs, and  
Special Counsel for the Amistad Project  
of the Thomas More Society*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DARYL D. METCALFE, RUSŚ DIAMOND, )  
DAWN W. KEEFER, THOMAS R. )  
SANKEY, III, ROBERT W. KAUFFMAN, )  
KATHY L. RAPP, STEPHANIE P. ) 636 MD 2020  
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, and Connie Williams, )

*Defendants.* )

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief

requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Dauphin County Lawyer Referral Service  
213 North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-7536

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, )

636 CD 2020

*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, and Connie Williams, )

*Defendants.*

**NOTICE TO PLEAD**

TO: ALL NAMED DEFENDANTS

You are hereby notified to file a written response to the enclosed Complaint within thirty (30) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

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

Dated: December 7, 2020

By: /s/ Thomas W. King, III  
Thomas W. King, III  
PA. I.D. No. 21580

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

636 CD 2020

*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, and Connie Williams, )

*Defendants.*

**FIRST AMENDED COMPLAINT FOR WRIT OF MANDAMUS AND  
REQUEST FOR AN EMERGENCY TEMPORARY  
RESTRAINING ORDER AND INJUNCTIVE RELIEF**

AND NOW, come Plaintiffs, by and through their counsel of the firm Dillon,  
McCandless, King, Coulter & Graham, L.L.P., per Thomas W. King, III, and Thomas

E. Breth, to file the within First Amended Complaint for Writ of Mandamus and Request for an Emergency Temporary Restraining Order and Injunctive Relief.

1. Plaintiffs are all residents of and electors within the Commonwealth of Pennsylvania.

2. Defendant Thomas W. Wolf, named in his official capacity (“**Defendant Wolf**”), is the Governor of the Commonwealth of Pennsylvania and is generally charged with enforcing the laws of the Commonwealth of Pennsylvania.

3. Defendant Kathy Boockvar, named in her official capacity (“**Defendant Boockvar**”), is the Secretary of the Commonwealth of Pennsylvania and is generally charged with enforcing the election laws of the Commonwealth of Pennsylvania.

4. Defendant Nina Ahmad is an adult Democratic presidential elector residing in Philadelphia County.

5. Defendant Val Arkoosh is an adult Democratic presidential elector residing in Montgomery County.

6. Defendant Cindy Bass is an adult Democratic presidential elector residing in Philadelphia County.

7. Defendant Rick Bloomingdale is an adult Democratic presidential elector residing in Dauphin County.

8. Defendant Ryan Boyer is an adult Democratic presidential elector residing in Delaware County.

9. Defendant Paige Gebhardt Cognetti is an adult Democratic presidential elector residing in Lackawanna County.

10. Defendant Daisy Cruz is an adult Democratic presidential elector residing in Philadelphia County.

11. Defendant Kathy Dahlkemper is an adult Democratic presidential elector residing in Erie County.

12. Defendant Janet Diaz is an adult Democratic presidential elector residing in Lancaster County.

13. Defendant Virginia McGregor is an adult Democratic presidential elector residing in Lackawanna County.

14. Defendant Charles Hadley is an adult Democratic presidential elector residing in Philadelphia County.

15. Defendant Jordan Harris is an adult Democratic presidential elector residing in Philadelphia County.

16. Defendant Malcolm Kenyatta is an adult Democratic presidential elector residing in Philadelphia County.

17. Defendant Gerald Lawrence is an adult Democratic presidential elector residing in Delaware County.

18. Defendant Clifford Levine is an adult Democratic presidential elector residing in Allegheny County.

19. Defendant Nancy Mills is an adult Democratic presidential elector residing in Allegheny County.

20. Defendant Marian Moskowitz is an adult Democratic presidential elector residing in Chester County.

21. Defendant Josh Shapiro is an adult Democratic presidential elector residing in Montgomery County.

22. Defendant Sharif Street is an adult Democratic presidential elector residing in Philadelphia County.

23. Connie Williams is an adult Democratic presidential elector residing in Delaware County.

### **JURISDICTION**

24. The Commonwealth Court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a)(1).

### **BACKGROUND**

25. 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.*

26. 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.

27. 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.

28. 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.

29. 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.

30. Under the Pennsylvania Election Code (the "Code"), Defendant Boockvar is granted certain powers and duties, including the power and duty:

(f) To receive from county boards of elections the returns of...elections, to canvass and compute the votes cast for candidates...as required by the provisions of this act; to proclaim the results of such...elections, and to

issue certificates of election to the successful candidates at such elections, *except in cases where that duty is imposed by law on another officer or board.* (Emphasis added). 25 P.S. § 2621(f).

31. Under the election procedures of the Code, election returns are forwarded to Defendant Boockvar by each County's Board of Elections:

After the certification of the returns of any... election, as provided by section 1404 of this act, [25 P.S. § 3154 , relating to "Computation of returns by county board; certification; issuance of certificates of election"] the county board shall retain in its office one copy of the returns so certified. In the case of elections of presidential electors...a separate certificate, showing totals of the returns cast for each of such offices respectively, shall also be forwarded by the county board to the Secretary of the Commonwealth on forms furnished by the Secretary... 25 P.S. § 3158.

32. Upon receiving the certified returns of any...election from the various county boards, the Secretary...shall forthwith proceed to tabulate, compute and canvass the votes cast for all candidates enumerated in section 1408 [25 P.S. § 3158]..., and shall thereupon certify and file in his office the tabulation thereof. 25 P.S. § 3159.

33. While 25 P.S. § 2621 and § 3159 give Defendant Boockvar the duty to certify and issue certificates of election to successful candidates, the duty to certify the election of presidential electors is exclusively granted to Defendant Wolf:

The Secretary..., on receiving and computing the returns of the election of presidential electors, shall lay them before the Governor, who shall enumerate and ascertain the number of votes given for each

person so voted for, and shall cause a certificate of election to be delivered to each person so chosen. 25 P.S. § 3166.<sup>1</sup>

34. In summary, while Defendant Boockvar has the duty to certify the tabulation of votes for all other elections, for presidential electors she only receives and computes the returns before “laying them before” Defendant Wolf, who has the duty to “enumerate and ascertain the number of votes given for each person so voted for,” and to cause a certificate of election of be delivered to the presidential electors.

35. Consequently, because § 3166 requires Defendant Wolf to “enumerate and ascertain the number of votes given for each person so voted for,” he has an express statutory duty to make his own, independent, enumeration and ascertainment of votes.

36. Likewise, § 3166 requires Defendant Wolf to independently cause a certificate of election of be delivered to the properly-elected presidential electors.

#### **ELECTION VIOLATIONS AND IRREGULARITIES**

37. The averments contained in Paragraphs 1 through 32 are incorporated herein by reference as if fully set forth.

38. By letter dated December 13, 2019, the Auditor General of the Commonwealth of Pennsylvania, Eugene A. DePasquale, issued to Defendant Wolf a

---

<sup>1</sup> 25 P.S. § 3166 is clear that the exception under 25 P.S. § 2621(f) applies to the election of presidential electors.

Performance Audit Report of the Pennsylvania Department of State's Statewide Uniform Registry of Electors. A copy of the Auditor General's Performance Audit Report is attached hereto as Exhibit "A".

39. The Performance Audit Report was conducted pursuant to an Interagency Agreement between the Pennsylvania Department of State and the Pennsylvania Department of the Auditor General.

40. The Performance Audit Report contained seven Findings, to wit:
- i. Finding One: As a result of the Department of State's denial of access to critical documents and excessive redaction of documentation, the Department of the Auditor General was severely restricted from meeting its audit objectives in an audit which the Department of State itself had requested.
  - ii. Finding Two: Data analysis identified tens of thousands of potential duplicate and inaccurate voter records, as well as voter records for nearly three thousand potentially deceased voters that had not been removed from the SURE system.
  - iii. Finding Three: The Department of State much implement leading information technology security practices and information technology general controls to protect the SURE system and ensure the reliability of voter registration.
  - iv. Finding Four: Voter record information is inaccurate due to weakness in the voter registration application process and the maintenance of voter records in the SURE system.
  - v. Finding Five: Incorporating edit checks and other improvements into the design of the replacement system for SURE will reduce data errors and improve accuracy.

- vi. Finding Six: A combination of a lack of cooperation by certain county election offices and PennDOT, as well as source documents not being available for seventy percent of our test sample, resulted in our inability to form any conclusions as to the accuracy of the entire population of voter records maintained in the SURE system.
- vii. Finding Seven: The Department of State should update current job aids and develop additional job aids and guidance to address issues such as duplicate voter records, records of potentially deceased voters on the voter rolls, pending applications, and records retention.

41. In addition to the Findings, the Performance Audit Report contained specific detailed Recommendations to correct the significant deficiencies identified in the Findings of the Performance Audit Report.

42. Based upon information and belief, Plaintiffs averred that Defendants failed to implement the Performance Audit Recommendations for the 2020 General Election.

43. To the contrary, in contradiction to the Recommendations, Defendant Boockvar, without statutory authorization or legal authority, provided select organizations with close ties to the Democratic Party with directly access to the Commonwealth's SURE System.

44. In 2018, Defendant Boockvar is quoted as stating "Rock the Vote's web tool was connected to our system, making the process of registering through their

online programs, and those of their partners, seamless for voters across Pennsylvania."

*Rock the Vote, 2018 Annual Report.*

45. Plaintiffs have obtained a sworn Affidavit from Jesse Richard Morgan, who is contracted to haul mail for the United States Postal Service. Mr. Morgan's Affidavit alleges that he was directed to transport from New York to Pennsylvania what he believes to be completed Pennsylvania ballots in the 2020 General Election. A copy of Mr. Morgan's Affidavit is attached hereto as Exhibit "B" and incorporated herein by reference. It is believed and, therefore, averred that this matter is currently under investigation by various entities and that such investigation is essential to the determination of whether or not approximately 200,000 ballots were delivered into the Pennsylvania System improperly or illegally. Pending such determination, there is no possible way that the validity of Pennsylvania's Presidential Election could possibly be certified by the Governor. Further, there is evidence of possible back-dating of ballots in the United States Postal facility at Erie, Pennsylvania. And, further, Plaintiff Ryan's Report evidences thousands of questionable or improper ballots cast in the 2020 Presidential Election in Pennsylvania.

46. In addition, Plaintiffs have obtained a Declaration from Ingmar Njus in support of Mr. Morgan's Affidavit. A copy of the Declaration is attached hereto as Exhibit "C" and is incorporated herein by reference.

47. In September 2020, the Pennsylvania Supreme Court arguably usurped the powers of the General Assembly when it permitted county boards of election to accept hand-delivered mail-in ballots at locations other than the respective offices of the boards of election, including through the use of drop-boxes arbitrarily located throughout the county; and, when it extended the deadline for receipt of absentee and mail-in ballots by three days from 8:00 p.m. on Election Day to 5:00 p.m. on November 6, 2020. *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at \*20 (Pa. Sept. 17, 2020); see also *In re: November 3, 2020 General Election*, 2020 WL 6252803, at \*7 (Pa. Oct. 23, 2020).

48. In the same Opinion, the Court held that "although the Election Code provides the procedure for casting and counting a vote by mail, it does not provide for the 'notice and opportunity to cure' ..." *Id. at p. 20*.

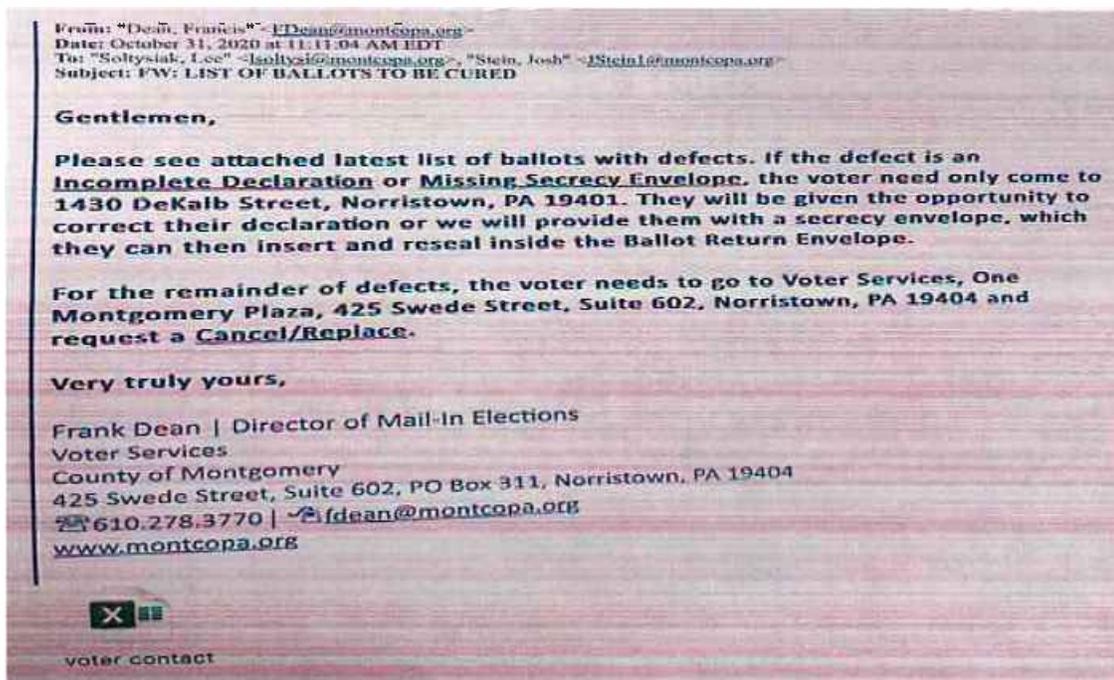
49. The Court went on to state "... we agree that the decision to provide a 'notice and opportunity to cure' procedure ... is one best suited for the Legislature." *Id. at p. 20*.

50. Of note, Defendant Boockvar agreed with the Court that the Election Code did not provide a notice and opportunity to cure procedure.

51. Despite the lack of any legal authority to permit electors an opportunity to alter their absentee or mail-in ballots, after submission to the elections boards, boards of election in democratic counties, such as, Montgomery County, routinely

helped identify, facilitate and permitted electors to alter their defective absentee and mail-in ballots in violation of the Election Code.

52. In an October 31, 2020, e-mail, Frank Dean, Director of Mail-in Elections of Montgomery County emailed the latest list of confidential elector information to two other Montgomery County election officials, Lee Soltysiak and Josh Stein, and wrote:



53. There is no authority within the Election Code that authorizes election officials to manually alter the information contained within the SURE system for the purposes described by Director Dean.

54. In order to cancel or replace an elector's absentee or mail-in ballot, election officials would be required to manually alter the information contained in the Commonwealth's Statewide Uniform Registry of Electors ("SURE").

55. There is no authority within the Election Code that authorizes election officials to cancel and/or replace an elector's absentee or mail-in ballot as described by Director Dean.

56. Further, in violation of electors' right to secrecy in their ballots, election officials in democratic counties, such as Montgomery County, used the information gathered through their inspection of the ballot envelopes to identify the names of electors who had cast defective absentee or mail-in ballot envelopes.

57. The Excel spreadsheet attached to Director Dean's October 31, 2020, e-mail notes that when mail-in or absentee ballot envelopes were found to be defective, some electors were provided with the opportunity to alter their ballot envelopes.

58. The photograph below shows some of the thousands of absentee and mail-in ballots pre-canvassed by the Montgomery County Board of Elections in violation of the Election Code.<sup>2</sup> These defective ballots were not secured in any way and were easily accessible to the public.

---

<sup>2</sup> This "Ballots for Sale" photo was taken on 11/01/2020 by Robert Gillies during a tour of the Montgomery County mail-in ballot storage and canvass facility.



Commissions, just hours before Election Day directing county boards of elections to provide electors who have cast defective absentee or mail-in ballots with provisional ballots and to promptly update the SURE system.

61. The Deputy Secretary for Elections and Commissions issued an email which stated:

**Sent:** Monday, November 2, 2020 8:38 PM  
**To:** Marks, Jonathan  
**Subject:** Important DOS Email - Clarification regarding Ballots Set Aside During Pre-canvass

\*\*\* This is an external email. Please use caution when clicking on links and downloading attachments \*\*\*

Dear County Election Directors,

The Department of State has been asked whether county boards of elections can provide information to authorized representatives and representatives of political parties during the pre-canvass about voters whose absentee and mail-in ballots have been rejected. The Department issued provisional ballot guidance on October 21, 2020, that explains that voters whose completed absentee or mail-in ballots are rejected by the county board for reasons unrelated to voter qualifications may be issued a provisional ballot. To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvass that identifies the voters whose ballots have been rejected and should promptly update the SURE system.

Kind regards,

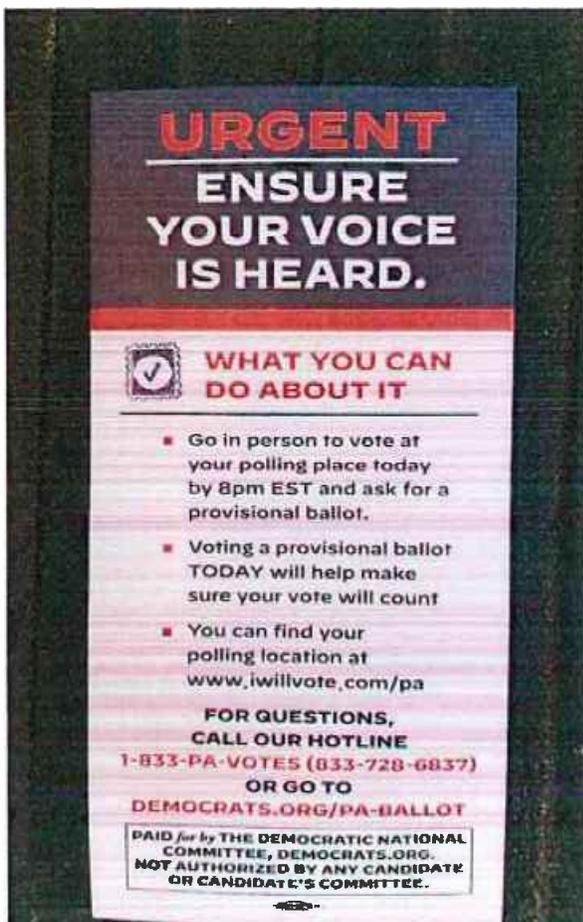
Jonathan M. Marks  
Deputy Secretary for Elections & Commissions  
Pennsylvania Department of State  
302 North Office Building | Harrisburg, PA 17120  
☎ 717.783.2035 📠 717.787.1734  
✉ [jmarks@pa.gov](mailto:jmarks@pa.gov)



62. In order to obtain a provisional ballot on Election Day, an elector who previously requested an absentee or mail-in ballot must sign an affidavit stating "I do solemnly swear or affirm that my name is ... and that this is the only ballot that I cast in this election." 25 P.S. §3146.8; 25 P.S. §3050.

63. If an elector has already submitted an absentee or mail-in ballot and that ballot was received by his or her county board of elections, the elector cannot truthfully affirm that the provisional ballot is the only ballot cast by them in the election. The provisional ballot would in fact be a second ballot cast by the elector.

64. Defendant Boockvar's actions appear conveniently timed with the actions of the Democratic Party who apparently considered the matter URGENT.



65. Deputy Secretary Marks issued his email at 8:38 p.m. on November 2, 2020, on the Eve of Election Day. Under the Election Code, provisional ballots are

only used on Election Day. Less than twelve hours after Deputy Secretary Marks' email, the Democratic Party had printed handbills telling electors "Public records show that your ballot had errors and was not accepted." and to "Go in person to vote at your polling place today by 8:00 EST and ask for a provisional ballot."

66. The effect to utilize provisional ballots to "cure" defective absentee and mail-in ballots is in clear violation of the Election Code. The number of provisional ballots cast in Pennsylvania is in the tens of thousands.

67. Further, it is not clear what Deputy Secretary Marks intended when he stated "To facilitate communication with these voters, the county boards of elections should provide information to party and candidate representatives during the pre-canvassing that identifies the voters whose ballots have been rejected and should promptly update the SURE system."

68. The Election Code makes no provision for the acceptance or rejection of ballots during the pre-canvassing process, nor does the Election Code provide boards of elections with the authority to "update the SURE system" so that an electors who previously submitted an absentee or mail-in ballot may vote with a provisional ballot.

69. The Pennsylvania Supreme Court ruled that county boards of elections are prohibited from using signature comparison to challenge and reject absentee or mail-in ballots. *In Re: November 3, 2020, General Election, 149 MM 2020 (Oct. 23, 2020)*.

70. The Pennsylvania Supreme Court ruled that county boards of elections could prevent and exclude designated representatives of the candidates and political parties, who are authorized by the Election Code to observe the pre-canvassing and canvassing of ballots, from being in the room during pre-canvassing and canvassing of ballots. See, *In Re: Canvassing Observation*, 30 EAP 2020 (Nov. 17, 2020).

71. In predominantly Democratic counties, such as Philadelphia, Delaware and Montgomery Counties, authorized representative of the candidates and the Republican Party attempted to observe the actions of election officials; however, the authorized representatives were routinely denied the access necessary to properly observe the handling of ballot envelopes and ballots during the pre-canvassing and canvassing process.

72. Plaintiffs have obtained a sworn Affidavit from Gregory Stenstrom, who was appointed by the Delaware County Republican Party to observe the election process within Delaware County. Mr. Stenstrom attests to numerous election code violations by the Delaware County Board of Elections. Plaintiffs have numerous other Declarations regarding similar election code violations in other predominantly Democratic counties. A copy of the Declaration is attached hereto as Exhibit "D" and is incorporated herein by reference.

73. Absentee and mail-in ballots are required to be canvassed in accordance with subsection (g) of Section 3146.8 - Canvassing of official absentee and mail-in ballots. 25 P.S. §3146.8(g) (1)(i-ii) & (1.1).

74. The Election Code defines the term "pre-canvass" to mean "the inspection and opening of all envelopes containing official absentee ballots or mail-in ballots, the removal of such ballots from the envelopes and the counting, computing and tallying of the votes reflected on the ballots. The term does not include the recording or publishing of the votes reflected on the ballots." 25 P.S. § 2602(q.1).

75. Prior to any pre-canvassing meeting, the county board of elections is required to provide at least forty-eight hours' notice by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. 25 P.S. § 3146.8(g)(1.1).

76. Each candidate and political party is entitled to have one designated and authorized representative in the room any time absentee and mail-in ballots are being canvassed by a board of elections. 25 P.S. §3146.8(g)(2).

77. The candidates' watchers or other representatives are permitted to be present any time the envelopes containing absentee and mail-in ballots are opened. 25 P.S. §3146.8

78. The candidates and political parties are entitled to have watchers present any time there is canvassing of returns. 25 P.S. §2650(a).

79. In predominantly Democratic counties, such as Montgomery, election would weigh absentee and mail-in ballot envelopes to determine whether secrecy envelopes were contained within the outer envelopes. Election officials would also review and inspect the absentee and mail-in ballot envelopes to determine whether they complied with the requirements of the Election Code.

80. This pre-canvassing of ballot envelopes is in direct violation of the Election Code.

81. Under the Election Code, county boards of elections are required, upon receipt of sealed official absentee and mail-in ballot envelopes, to "safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections." *25 P.S. §3146.8(a)*.

82. County boards of elections are prohibited from pre-canvassing absentee and mail-in ballots prior to 7:00 a.m. of Election Day. *25 P.S. § 3146.8(g)(1.1)*

83. As such, from the time ballot envelopes are received by county boards of elections through 7:00 a.m. on Election Day, the ballot envelopes are to be safely kept in sealed or locked containers. *25 P.S. §3146.8(a)*. Stated in a different way, county boards of elections are not permitted to remove absentee and mail-in ballot envelopes from their sealed or locked containers until the ballots are pre-canvassed at 7:00 a.m. on Election Day.

84. Upon information and belief, it is averred that in many predominantly Democratic counties, such as Montgomery County, county election officials routinely violated these provisions of the Election Code.

85. The Pennsylvania Supreme Court ruled that county boards of elections were not required to enforce or follow the Election Code requirements for absentee and mail-in ballot envelopes, including the requirements related to elector signatures, addresses, dates, and signed declarations. *In Re: Canvass of Absentee and Mail-in Ballots of November 3, 2020 General Election, 31 EAP 2020 (Nov. 23, 2020)*.

86. During pre-canvassing, county boards of elections are required to examine each ballot cast to determine if the declaration envelope is properly completed and to compare the information with the information contained in the Registered Absentee and Mail-in Voters File. *25 P.S. § 3146.8(g)(3)*.

87. Only then are county boards of elections authorized to open the outer envelope of every unchallenged absentee or mail-in envelope in such a manner so as not to destroy the declaration executed thereon. *25 P.S. § 3146.8(g)(4)(i)*.

88. In predominantly Democratic counties, such as Allegheny County, election officials disregarded the requirements of the Election Code and counted absentee and mail-in ballot ballots with defective elector signatures, addresses, dates, and signed declarations. *In Re: Canvass of Absentee and Mail-in Ballots of November*

3, 2020 General Election, 31 EAP 2020 (Nov. 23, 2020). In other counties, such as Westmoreland, such ballots were not counted.

89. In addition to substantial evidence of the violations of the Election Code, as set forth above, Plaintiffs have produced an expert report authored by Francis X. Ryan who will testify and identify significant and dispositive discrepancies and errors which call into questions the results of the Presidential Election in Pennsylvania. A copy of Representative Ryan's Report and attachments are attached hereto at Exhibits "E, E-1, E-2, E-3, E-4, E-5, E-6, E-7 and E-8" and incorporated herein by reference.

90. As described above, the 2020 General Election in Pennsylvania was fraught with numerous violations of Pennsylvania's Election Code perpetrated by predominantly Democratic county election officials. In addition, there are countless documented election irregularities and improprieties that prevent an accurate accounting of the election results in the Presidential election.

91. Many of the irregularities directly relate to the county boards of elections' handing of absentee and mail-in ballots; the pre-canvassing and canvassing of ballots; the failure to permit legally appropriate and adequate oversight and transparency of the process; and, the failure to maintain and secure ballot integrity and security throughout the election process.

92. As such, the 2020 General Election results are so severely flawed that it is impossible to certify the accuracy of the purported results.

## COUNT I – MANDAMUS

93. The averments contained in Paragraphs 25 through 87 are incorporated herein by reference as if fully set forth.

94. It is well-established that an action in mandamus may lie where the exercise of a public official's discretion is involved.

95. The Commonwealth Court has the authority to review a public official's discretion where the official's exercise is arbitrary or, fraudulent or, is based upon a mistaken view of the law. *Nadar v. Hughes*, 643 A.2d 747, 753 (Pa.Cmwlt.1994), citing: *Garratt v. Philadelphia*, 127 A.2d 738 (Pa. 1956).<sup>3</sup>

96. Plaintiffs submit that, where the returns of the election of presidential electors laid before Defendant Wolf violates the Code, Defendant Wolf has no discretion to determine whether to enumerate and ascertain the illegal returns. Instead, the illegal returns must be rejected.

---

<sup>3</sup> See also: *Cmwlt. ex. Rel Davis v. Pa. Bd. of Parole*, 398 A.2d 992 (Pa. 1997) (holding that a proceeding in mandamus is available to compel a public official to correct a mistake in applying the law when interpreting commitment papers); *Brown v. Dept. of Corrections*, 686 A.2d 919 (Pa.Cmwlt.1996) (holding that a writ of mandamus can be used to compel an official to compute a prisoner's sentence properly, but may not be used to compel an illegal act); *Bald Eagle Area S.D. v. Centre Co. Bd. of Ass. Appeals*, 745 A.2d 689 (Pa.Cmwlt.1999) (holding that the Board's arbitrary exercise of discretion resulted in its failure to perform its statutorily mandates duty), *appeal denied*, 792 A.2d 1254 (Pa. 2000).

97. Defendants Wolf and Boockvar have failed and refused to perform their respective legal obligations under Pennsylvania's Election Code, including, but not limited to, their obligation to enforce and comply with the same.

98. As Pennsylvania residents, Plaintiffs have a direct interest in ensuring that only lawfully-cast votes are included in Defendant Wolf's enumeration and ascertainment of votes for presidential electors.

99. Plaintiffs have no other adequate remedy at law.

WHEREFORE, Plaintiffs request the Honorable Court issue a Writ of Mandamus directing Defendant Wolf to withdraw the certification of the 2020 Presidential election; and, to withdraw the certificates of election issued to the Democratic electors as a result thereof; and, granted the relief requested herein and any other relief deemed appropriate by the Court.

**COUNT II – TEMPORARY AND PERMANENT  
INJUNCTION RELIEF**

100. The averments contained in Paragraphs 25 through 94 are incorporated herein by reference as if fully set forth.

101. Plaintiffs have demonstrated that by and through Defendant Wolf's and Defendant Boockvar's failure and refusal to perform their respective legal obligations under Pennsylvania's Election Code including, but not limited to, their obligation to enforce and comply with the same, Plaintiffs are likely to succeed on the merits.

102. Plaintiffs will be irreparably harmed if Defendant Wolf certifies inaccurate election results obtained in direct violation of Pennsylvania's Election Code and prior to final judicial determination of the contested ballots and actions of the various county boards of elections.

103. Prior to any certification of the election results, the United States Supreme Court must rule upon the legal claims pending before the Court and directly related to the validity of a decisive number of ballots.

104. A temporary injunction is necessary to immediately prohibit Defendants from casting votes for President in the Electoral College based upon election results that cannot be certified as accurate.

105. Plaintiffs' right to relief in this matter is clear.

106. The need for a temporary injunction is immediate.

107. The ongoing injuries to Plaintiffs are irreparable if the injunction is not granted.

108. Greater injury will result if injunctive relief, including an emergency temporary restraining order is not granted by the Court.

109. Plaintiffs have no other adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter a Temporary Restraining Order and Injunctive Relief against Defendants, and any other relief deemed appropriate by the Court.

Respectfully Submitted,

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

Dated: December 7, 2020

By: /s/ Thomas W. King, III  
Thomas W. King, III  
PA. I.D. No. 21580  
tking@dmkcg.com  
Thomas E. Breth  
PA. I.D. No. 66350  
tbreth@dmkcg.com

128 West Cunningham Street  
Butler, PA 16001  
724-283-2200 (phone)  
724-283-2298 (fax)  
*Counsel for Plaintiffs, and  
Special Counsel for the Amistad  
Project of the Thomas More Society*

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, )

636 CD 2020

*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, and Connie Williams, )

*Defendants.*

VERIFICATION

I, Francis X. Ryan, verify that the statements contained in the foregoing **FIRST AMENDED COMPLAINT FOR WRIT OF MANDAMUS AND REQUEST FOR AN EMERGENCY TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF** are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Francis X. Ryan

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: December 7, 2020

By: /s/ Thomas W. King, III  
Thomas W. King, III  
PA. I.D. No. 21580