

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE MIKE KELLY,
SEAN PARNELL, THOMAS A.
FRANK, NANCY KIERZEK, DEREK
MAGEE, ROBIN SAUTER,
MICHAEL KINCAID, and WANDA
LOGAN,

Petitioners,

v.

COMMONWEALTH OF
PENNSYLVANIA,

Respondents.

Docket No. 620 M.D. 2020

**MOTION FOR
EMERGENCY/SPECIAL
PROHIBITORY INJUNCTION**

Filed on behalf of Petitioners,
The Honorable Mike Kelly, Sean
Parnell, Thomas A. Frank, Nancy
Kierzek, Derek Magee, Robin Sauter,
Michael Kincaid, and Wanda Logan

Counsel of Record for Petitioners:

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Petitioners Mike Kelly, *et al.*, by and through their undersigned attorney respectfully move for the entry of an emergency/special prohibitory injunction and in support thereof states as follows:

1. Petitioners initiated this action by filing a verified Complaint for Declaratory and Injunctive Relief (“the Complaint”) on November 21, 2020, which is incorporated by reference as if fully set forth herein.
2. For the reasons set forth in the Complaint, and as further supported by Petitioners’ memorandum of law in support of this motion, Petitioners asks this

Honorable Court to enter the attached proposed order or grant such other or further relief as this Honorable Court deems proper.

RELIEF REQUESTED

3. Petitioners seek emergency/special prohibitory injunctive relief as a result of Respondents' improper and unlawful conduct.

4. To obtain emergency/special prohibitory injunctive relief, a party must establish that: (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the public interest will not be harmed if the injunction is granted. *Warehime v. Warehime*, 580 Pa. 201, 209-210, 860 A.2d 41, 46-47 (2004).

5. As more fully described in Petitioners' memorandum of law in support of this Motion, each prerequisite described in paragraph 4 has been satisfied.

6. If the requested relief is not granted, Petitioners will continue to suffer immediate and irreparable harm that cannot be adequately compensated by money damages.

7. Greater injury will occur from refusing to grant the injunction than from granting it; granting the injunction will restore the status quo as it existed prior to Respondents' unlawful and improper conduct and will not cause substantial harm to Respondents.

8. Granting the Emergency/Special Injunction will restore the parties to the status quo as it existed prior to Respondents' unlawful and wrongful conduct.

9. Petitioners' right to relief and likelihood of prevailing on the merits is clear.

10. The requested relief is narrowly tailored to abate the offending activity.

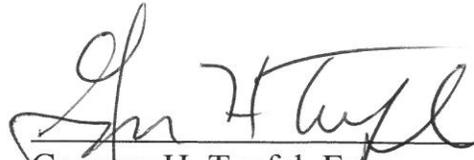
11. To the extent that the public interest is impacted, it will be served rather than harmed by granting the injunction.

12. Emergency/special prohibitory injunctive relief is necessary to ensure Petitioners' are not permanently and irreparably harmed.

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an Order, substantially in the form of the proposed Order attached hereto, granting this Motion for Emergency/Special Prohibitory Injunction.

Respectfully submitted,

OGC Law, LLC



Gregory H. Teufel, Esq.
Attorney for Petitioners

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ORDER

AND NOW, this ____ day of _____, 2020, upon due consideration of the foregoing Motion for Emergency/Special Prohibitory Injunction and any responses thereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court makes the following findings:
 - a. Petitioners possess a clear right to injunctive relief;
 - b. Injunctive relief will prevent immediate and irreparable harm to
Petitioners;
 - c. Refusing injunctive relief will result in greater harm than granting
it;

- d. Injunctive relief will not adversely affect the public interest; and
- e. The injunctive relief is narrowly tailored and restores the status quo as it existed before the Respondents' wrongful conduct.

2. Petitioners' Motion for Emergency/Special Prohibitory Injunction is GRANTED, and an Injunction is hereby entered as follows:

- a. Until further Order of this Court, Respondents shall be prohibited from taking official action to tabulate, compute, canvass, certify, or otherwise finalize the results of the November 3, 2020, General Election. Specifically, Respondents are prohibited from undertaking the following actions:

- i. Secretary Boockvar is enjoined from taking official action pursuant to 25 P.S. § 3159, 3160, 3163, 3164, 3165, 3166. Secretary Boockvar shall not receive, tabulate, compute, canvass, or lay before the Governor any certificate of election or the votes cast for any candidate or any question voted for by electors in the November 3, 2020, General Election. Further, Secretary Boockvar is enjoined from taking official action pursuant to 25 P.S. § 2621(f) "[t]o receive from county boards of elections the returns of primaries and elections, to canvass and compute the votes

cast for candidates and upon questions as required by the provisions of [the election code]; to proclaim the results of such primaries and elections, and to issue certificates of election to the successful candidates at such elections”

ii. Governor Wolf is enjoined from taking official action pursuant to 25 P.S. § 3160, 3163, 3165, 3166. Governor Wolf shall not issue any commission resulting from the November 3, 2020, General Election. Governor Wolf shall not transmit the returns of the November 3, 2020 General Election to the President of the United States Senate or the Speaker of the House of Representatives.

3. This ORDER shall become effective as soon as Petitioners file legal tender of the United States or a bond with the Court in the amount of \$_____ naming the Commonwealth of Pennsylvania as obligee in accordance with Pa.R.Civ.P. 1531(b), which Petitioners shall do forthwith.

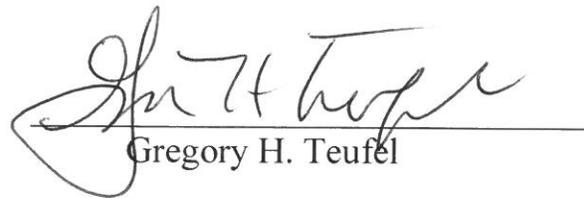
BY THE COURT:

_____, J.

CERTIFICATE OF COMPLIANCE

I 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 require filing confidential information and documents differently than non-confidential information and documents.

Date: November 22, 2020



Gregory H. Teufel

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a true and correct copy of the foregoing Motion for Emergency/Special Prohibitory Injunction via first class U.S. mail upon the following:

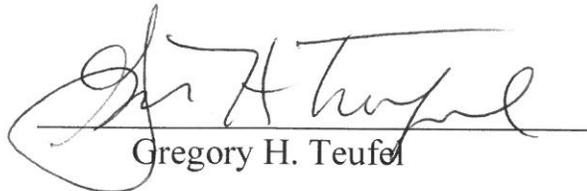
Commonwealth of Pennsylvania
Office of the Attorney General
1600 Strawberry Square
Harrisburg, PA 17120

Kathy Boockvar
Secretary of State
302 N. Office Building
Harrisburg, PA 17120

Pennsylvania General Assembly
501 N. 3rd Street
Harrisburg, PA 17120

Honorable Thomas W. Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

Date: November 22, 2020


Gregory H. Teufel