

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOSEPH D. HAMM, individually and
as a candidate for the Pennsylvania
State House of Representatives in the
84th Legislative District; MIKE
KELLY, individually and as a
candidate for the United States House
of Representatives 16th District;
BILLY ALLRED; CHAD HORNER;
CAROLYN CONNOR; and JOAN
HAUSER,

600 m7 20 .

Petitioners,

v.

KATHY BOOCKVAR, in her official
capacity as the Secretary of the
Commonwealth of Pennsylvania,

Defendant.

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 Petition for Review 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 Plaintiff. 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

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NOTICE TO PLEAD

TO: KATHY BOOCKVAR

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

Respectfully Submitted,

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

Dated: November 3, 2020

By: /s/ Thomas E. Breth
Thomas W. King, III
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Counsel for Petitioners

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Defendant.

**PETITION FOR REVIEW
IN THE NATURE OF A COMPLAINT IN EQUITY**

INTRODUCTION

1. On November 2, 2020, a day before the date of the general election, and right before pre-canvassing was scheduled to begin, Defendant, Kathy Boockvar, sent extraordinary instructions to every county in the Commonwealth of Pennsylvania in contravention of the Election Code. The email was entitled, "Important DOS Email – Clarification regarding Ballots Set Aside During Pre-canvass." A copy is attached hereto and made a part hereof as Exhibit "A."

STATEMENT OF JURISDICTION

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

PARTIES SEEKING RELIEF

3. Petitioner, Joseph D. Hamm, is a candidate for the Pennsylvania State House of Representatives in the 84th Legislative District.

4. Petitioner, Mike Kelly, is a candidate for the United States House of Representatives 16th District.

5. Petitioner, Billy Allred, is a voter from Union County, Pennsylvania.

6. Petitioner, Chad Horner, is a voter from Jefferson County, Pennsylvania.

7. Petitioner, Carolyn Connor, is a voter from Union County, Pennsylvania.

8. Petitioner, Joan Hauser, is a voter from Lancaster County, Pennsylvania.

PARTY WHOSE ACTION IS AT ISSUE

9. Respondent, Kathy Boockvar, in her official capacity as the Secretary of the Commonwealth of Pennsylvania, issued guidance in contravention of the Election Code through her office on election day, November 3, 2020. *See* Ex. A.

STATEMENT OF MATERIAL FACTS

10. Today, November 3, 2020, is the general election.
11. Votes are currently being cast.
12. Votes are also currently being “pre-canvassed.”
13. Under Section 3146.8 of the Pennsylvania Election Code, “[t]he county board of elections shall meet no earlier than seven o'clock A.M. on election day to pre-canvass all ballots received prior to the meeting. A county board of elections shall provide at least forty-eight hours' notice of a pre-canvass meeting by publicly posting a notice of a pre-canvass meeting on its publicly accessible Internet website. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots and mail-in ballots are pre-canvassed. **No person observing, attending or participating in a pre-canvass meeting may disclose the results of any portion of any pre-canvass meeting prior to the close of the polls.**” 25 P.S. § 3146.8 (emphasis added).

14. Further, on October 23, 2020, the Pennsylvania Supreme Court stated that, “[t]hus, unlike in-person voters, mail-in or absentee voters are not provided any opportunity to cure perceived defects in a timely manner.” *In re November 3, 2020 Gen. Election*, 149 MM 2020, 2020 WL 6252803, at *6 (Pa. Oct. 23, 2020).

15. Despite the above, Respondent issued guidance on election date stating, “[t]o 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.” *See* Ex. A.

16. Respondent’s guidance is in clear contravention of 25 P.S. § 3146.8 and the Pennsylvania Supreme Court’s decision in *In re November 3, 2020 Gen. Election*, 149 MM 2020, 2020 WL 6252803, at *6 (Pa. Oct. 23, 2020) because it allows voters an opportunity to cure perceived defects.

17. Other counties in the Commonwealth of Pennsylvania; namely, Blair County, Berks County, Lancaster County, Carbon County, Clinton County, Lycoming County, Dauphin County, and Perry County all have refused to accept Respondent’s guidance because it is contravention of the Election Code.

18. Indeed, as the Supreme Court so stated, “mail-in...voters are not provided any opportunity to cure perceived defects.” *Id.*

19. Respondent’s guidance allows voters to cure their defects.

20. Respondent’s guidance creates a scenario where voters have two conflicting votes.

21. Respondent’s guidance violates the pre-canvassing provisions of the Election Code.

22. If Respondent's guidance is allowed to continue, it creates a high risk of jeopardizing the integrity of the November 3, 2020 general election.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

23. Petitioners incorporate the foregoing paragraphs as if fully set forth at length.

24. Respondent has a duty to comply with the laws of the Commonwealth of Pennsylvania.

25. Petitioners have no adequate remedy at law to redress the harm as a result of Respondent's violation of the Pennsylvania Election Code and holdings of the Pennsylvania Supreme Court.

26. Injunctive relief is necessary to prevent the substantial injury and immediate and irreparable harm that Petitioners would suffer if Respondent is permitted to violate the laws of the Commonwealth of Pennsylvania.

27. A greater injury would occur in refusing the injunction than granting it because the Respondent's actions increase the risk of jeopardizing the integrity of the November 3, 2020 general election.

WHEREFORE, Petitioners respectfully request entry of an order in their favor and against Respondent prohibiting Respondent from permitting invalidly submitted absentee and mail-in ballots to be "cured" by the submission of provisions ballots and prohibiting Respondent from disclosing identifying information about voters

who have submitted ballots that must be rejected for non-compliance with the Pennsylvania Election Code.

Respectfully Submitted,

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

Dated: November 3, 2020

By: /s/ Thomas E. Breth
Thomas W. King, III
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tking@dmkcg.com
Thomas E. Breth
PA. I.D. No. 66350
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128 West Cunningham Street
Butler, PA 16001
724-283-2200 (phone)
724-283-2298 (fax)

Counsel for Petitioners

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



ATTORNEY VERIFICATION

I, Thomas E. Breth, am authorized to make this verification. I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of perjury of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

/s/ Thomas E. Breth

Thomas E. Breth

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.

/s/ Thomas E. Breth

Thomas E. Breth