
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 572 Session of
2013

INTRODUCED BY METCALFE, BLOOM, EVERETT, MCGINNIS, SWANGER AND
TALLMAN, DECEMBER 19, 2013

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 19, 2013

A RESOLUTION

1 Impeaching Kathleen G. Kane, Attorney General of Pennsylvania,
2 for misbehavior in office.

3 BE IT RESOLVED, That Kathleen G. Kane, Attorney General of
4 Pennsylvania, be impeached for misbehavior in office and that
5 the following Articles of Impeachment be exhibited to the
6 Senate:

7 ARTICLE I

8 On July 11, 2013, Attorney General Kane held a public press
9 conference at the National Constitution Center in Philadelphia
10 to announce that she would not defend a Federal lawsuit
11 challenging a lawfully enacted Pennsylvania statute. Only two
12 days earlier, a civil action captioned as *Whitewood v. Corbett*
13 was filed in the United States District Court for the Middle
14 District of Pennsylvania. The civil action challenged the
15 constitutionality of Act 124 of 1996, which defined "marriage"
16 in this Commonwealth as "a civil contract by which one man and
17 one woman take each other for husband and wife" and which denied
18 recognition of same-sex marriages conducted in other states.

1 Section 204(a)(3) of the act of October 15, 1980 (P.L.950,
2 No.164), known as the Commonwealth Attorneys Act, states: "It
3 shall be the duty of the Attorney General to uphold and defend
4 the constitutionality of all statutes so as to prevent their
5 suspension or abrogation in the absence of a controlling
6 decision by a court of competent jurisdiction." This is a
7 mandatory duty imposed on the Attorney General, who under
8 Article IV, Section 4.1 of the Pennsylvania Constitution is
9 required to "exercise such powers and perform such duties as may
10 be imposed by law."

11 No court of competent jurisdiction ruled that the definition
12 of marriage contained in Act 124 of 1996 is unconstitutional
13 before Attorney General Kane announced that she refused to
14 defend the civil action challenging the statute. The United
15 States Supreme Court in *United States v. Windsor* declared the
16 Federal Defense of Marriage Act, which similarly defined a
17 marriage as a contract between a man and a woman, to be
18 unconstitutional on the grounds that the Federal Government
19 improperly intruded upon the states' "historic and essential
20 authority to define the marital relation." The Windsor decision
21 in no way adjudicated whether a state statute defining marriage
22 as exclusively between a man and a woman violates due process or
23 equal protection of law.

24 Despite her mandatory duty to uphold and defend the
25 constitutionality of a lawfully enacted statute, Attorney
26 General Kane refused to defend Act 124 of 1996 on the basis of
27 her personal opinion that the statute is "wholly
28 unconstitutional." The Commonwealth Attorneys Act allows the
29 Attorney General, "upon determining that it is more efficient or
30 otherwise is in the best interest of the Commonwealth, to

1 authorize" the Governor's General Counsel to defend any
2 particular litigation. Attorney General Kane never consulted
3 with the Governor's General Counsel with regard to efficiency or
4 the best interest of the Commonwealth before refusing to defend
5 Act 124 of 1996 and there is no reason why the Governor's
6 General Counsel is better equipped to defend the Whitewood
7 litigation than the Office of Attorney General.

8 After Attorney General Kane's public announcement in
9 Philadelphia, the Montgomery County Register of Wills began to
10 issue marriage licenses to same-sex couples, citing Attorney
11 General Kane's announcement to support his lawful authority to
12 do so.

13 Wherefore, Attorney General Kathleen G. Kane is guilty of an
14 impeachable offense warranting removal from office and
15 disqualification to hold any office of trust or profit under
16 this Commonwealth.

17 ARTICLE II

18 During her public press conference in Philadelphia on July
19 11, 2013, Attorney General Kane declared her opinion that Act
20 124 of 1996 is "wholly unconstitutional." Attorney General Kane
21 made this public statement two days after the filing of the
22 lawsuit challenging Act 124 of 1996 and with full knowledge that
23 several Commonwealth officials, including Attorney General Kane,
24 were named as defendants in the lawsuit.

25 Attorney General Kane's public declaration that the statute
26 is unconstitutional contravenes not only her constitutional and
27 statutory duty to uphold and defend lawfully enacted statutes,
28 but also her ethical responsibilities as an attorney in this
29 Commonwealth. Rule 3.6 of the Rules of Professional Conduct,
30 applicable to all attorneys in this Commonwealth, bars any

1 attorney associated with litigation from making an extrajudicial
2 statement that the attorney reasonably knows or should know will
3 be disseminated by means of public communication and will have a
4 substantial likelihood of materially prejudicing an adjudicative
5 proceeding. Before formally delivering the Whitewood litigation
6 to the Governor's General Counsel, Attorney General Kane made a
7 public statement that Act 124 of 1996 is "wholly
8 unconstitutional" despite the ongoing litigation and the clear
9 harm such statement would inflict on the Commonwealth officials
10 named as defendants in the Whitewood litigation and on the
11 defense of the presumptively constitutional statute.

12 Wherefore, Attorney General Kathleen G. Kane is guilty of an
13 impeachable offense warranting removal from office and
14 disqualification to hold any office of trust or profit under
15 this Commonwealth.

16 The House of Representatives hereby reserves to itself the
17 right and ability to exhibit at any time hereafter further
18 Articles of Impeachment against Attorney General Kathleen G.
19 Kane, to reply to any answers that Attorney General Kathleen G.
20 Kane may make to any Articles of Impeachment which are exhibited
21 and to offer proof at trial in the Senate in support of each and
22 every Article of Impeachment which shall be exhibited by them.