
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 435 Session of
2015

INTRODUCED BY METCALFE, TALLMAN, BARRAR, DUSH, MCGINNIS,
KAUFFMAN, TRUITT, BLOOM, GROVE, ROAE, KNOWLES, EVERETT, MOUL,
WARD, SCHEMEL, GREINER, CUTLER, KRIEGER, PETRI, ELLIS,
MARSHALL, TOOHIL, WATSON AND PHILLIPS-HILL, AUGUST 10, 2015

REFERRED TO COMMITTEE ON STATE GOVERNMENT, AUGUST 10, 2015

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

1 recognition of same-sex marriages conducted in other states.

2 Section 204(a) (3) of the Commonwealth Attorneys Act, states:

3 "It shall be the duty of the Attorney General to uphold and

4 defend the constitutionality of all statutes so as to prevent

5 their 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 section 4.1 of Article IV of the Constitution of Pennsylvania 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. While the

15 United States Supreme Court in *United States v. Windsor* had

16 declared the Federal Defense of Marriage Act to be

17 unconstitutional on the grounds that the Federal Government

18 improperly intruded upon the states' "historic and essential

19 authority to define the marital relation," the Windsor decision

20 in no way adjudicated whether a state statute defining marriage

21 as exclusively between a man and a woman violates due process or

22 equal protection of law.

23 Despite her mandatory duty to uphold and defend the

24 constitutionality of a lawfully enacted statute, Attorney

25 General Kane refused to defend Act 124 of 1996 on the basis of

26 her personal opinion that the statute is "wholly

27 unconstitutional." The Commonwealth Attorneys Act allows the

28 Attorney General, "upon determining that it is more efficient or

29 otherwise is in the best interest of the Commonwealth, to

30 authorize" the Governor's General Counsel to defend any

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

7 Wherefore, Attorney General Kathleen G. Kane is guilty of an
8 impeachable offense warranting removal from office and
9 disqualification to hold any office of trust or profit under
10 this Commonwealth.

11 ARTICLE II

12 During her public press conference in Philadelphia on July
13 11, 2013, Attorney General Kane declared her opinion that Act
14 124 of 1996 is "wholly unconstitutional." Attorney General Kane
15 made this public statement two days after the filing of the
16 lawsuit challenging Act 124 of 1996 and with full knowledge that
17 several Commonwealth officials, including Attorney General Kane,
18 were named as defendants in the lawsuit.

19 Attorney General Kane's public declaration that the statute
20 is unconstitutional contravenes not only her constitutional and
21 statutory duty to uphold and defend lawfully enacted statutes,
22 but also her ethical responsibilities as an attorney in this
23 Commonwealth. Rule 3.6 of the Rules of Professional Conduct,
24 applicable to all attorneys in this Commonwealth, bars any
25 attorney associated with litigation from making an extrajudicial
26 statement that the attorney reasonably knows or should know will
27 be disseminated by means of public communication and will have a
28 substantial likelihood of materially prejudicing an adjudicative
29 proceeding. Before formally delivering the Whitewood litigation
30 to the Governor's General Counsel, Attorney General Kane made a

1 public statement that Act 124 of 1996 is "wholly
2 unconstitutional" despite the ongoing litigation and the clear
3 harm such statement would inflict on the Commonwealth officials
4 named as defendants in the Whitewood litigation and on the
5 defense of the presumptively constitutional statute.

6 Wherefore, Attorney General Kathleen G. Kane is guilty of an
7 impeachable offense warranting removal from office and
8 disqualification to hold any office of trust or profit under
9 this Commonwealth.

10 Article III

11 Office of Attorney General Case File No. 36-622 was a public
12 corruption investigation, which was initiated in October 2010.

13 The investigation focused on a number of public officials,
14 including members of the General Assembly, for alleged
15 violations of section 1634 of the Pennsylvania Election Code,
16 provisions of the Public Official and Employee Ethics Act and 18
17 Pa.C.S. § 4701 (relating to bribery).

18 Over the course of the investigation there were 113 tape
19 recording sessions involving a confidential informant and public
20 officials.

21 The three-year investigation spanned the tenures of former
22 Attorney General Tom Corbett, former Acting Attorney General
23 Bill Ryan and former Attorney General Linda Kelly.

24 Despite the extensive investigation and ample evidence that
25 elected officials accepted cash and other gifts, on March 16,
26 2014, Attorney General Kathleen Kane publicly announced that she
27 would not prosecute the offenders, all of whom are Democrats.
28 The Attorney General cited the leniency of the confidential
29 informant's cooperation agreement and the nature of the charges
30 against the informant as primary reasons for discontinuing the

1 lengthy investigation.

2 In a March 23, 2014, Op-Ed in the Philadelphia Inquirer,
3 Philadelphia District Attorney Seth Williams stated that
4 prosecutors around the nation successfully bring cases based on
5 testimony given by questionable individuals and questioned
6 Attorney General Kane's decision to drop Case File No. 36-622
7 based on the informant's actions and the nature of the
8 cooperation agreement, despite the hundreds of hours of tape
9 recordings and other evidence that was gathered. Williams took
10 over the case and has since filed charges against six public
11 officials, including four who were members of the House of
12 Representatives at the time charges were filed and one former
13 member of the House of Representatives. Two members serving in
14 the House of Representatives at the time charges were filed have
15 pleaded guilty and resigned from office. The former member of
16 the House of Representatives and a judicial official, a former
17 Philadelphia Traffic Court Judge, pleaded guilty as well.

18 Section 205 of the Commonwealth Attorneys Act gives the
19 Attorney General the power to prosecute criminal charges against
20 State officials or employees affecting the performance of their
21 public duties or the maintenance of the public trust.

22 Attorney General Kathleen Kane refused to perform her
23 statutory responsibilities under section 205 of the Commonwealth
24 Attorneys Act in relation to Office of Attorney General Case
25 File No. 36-622. The offenders are members of the same political
26 party as the Attorney General and her proffered reasons for
27 dropping the prosecution have been criticized by seasoned
28 prosecutors. Her refusal to perform her duties under these
29 circumstances constitutes misbehavior in office.

30 Wherefore, Attorney General Kathleen G. Kane is guilty of an

1 impeachable offense warranting removal from office and
2 disqualification to hold any office of trust or profit under
3 this Commonwealth.

4 ARTICLE IV

5 The Thirty-Fifth Statewide Investigating Grand Jury for 2014
6 was summoned to investigate an alleged violation of grand jury
7 secrecy involving Attorney General Kathleen Kane. The Grand Jury
8 reviewed extensive evidence including testimony from numerous
9 witnesses. The Grand Jury reported that the testimony of the
10 Attorney General did not reflect "an honest account of the
11 events," as described by the testimony of witnesses and
12 supported by the evidence presented. The Grand Jury's
13 presentment indicates that the Attorney General
14 "mischaracterized events to cover-up activities undertaken at
15 her direction to unlawfully release documents subject to grand
16 jury secrecy."

17 A 2009 memorandum, which contained detailed information
18 regarding a previous grand jury investigation and which was
19 subject to grand jury secrecy protections, was released to the
20 media. This memorandum was an internal memorandum authored and
21 received by staff of the Office of Attorney General. One of the
22 individuals identified in the 2009 memorandum was J. Whyatt
23 Mondesire, former president of the Philadelphia Chapter of the
24 NAACP. Witnesses before the 2014 Grand Jury testified that the
25 release of information in the memorandum was a violation of
26 provisions of the Criminal History Records Information Act.

27 The 2014 Grand Jury presentment establishes that the Attorney
28 General met with staff to discuss the memorandum and a related
29 transcript and retained these documents. Testimony given before
30 the Grand Jury describes a chain of events that led to the

1 release of these documents to Chris Brennan, staff writer for
2 the Philadelphia Daily News. Subsequently, the Daily News
3 published an article detailing the leaked 2009 Grand Jury
4 information. Grand Jury testimony indicates that staff within
5 the Office of Attorney General encouraged the Attorney General
6 to investigate the source of the leak and that she declined to
7 pursue the matter.

8 The 2014 Grand Jury's presentment, which was unsealed by the
9 Honorable William R. Carpenter, Supervising Judge, Court of
10 Common Pleas of Montgomery County, on April 27, 2015, included a
11 recommendation that Attorney General Kathleen Kane be charged
12 with perjury under 18 Pa.C.S. § 4902. The presentment cited
13 numerous instances of false testimony, made under oath, relating
14 to the existence of the 2009 memorandum and the release of the
15 memorandum and related transcript.

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

20 ARTICLE V

21 The Thirty-Fifth Statewide Investigating Grand Jury for 2014
22 also recommended that Attorney General Kathleen Kane be charged
23 with false swearing under 18 Pa.C.S. § 4903.

24 The Grand Jury presentment cited a number of incidents in
25 which the Attorney General made statements to the Grand Jury
26 that contradicted testimony given by witnesses to the Grand
27 Jury. The incidents include statements made by Kane that she did
28 not know that the information regarding Mr. Mondesire was from a
29 previous Grand Jury investigation and statements made by Kane
30 that the release of information regarding Mr. Mondesire was not

1 related to the controversy surrounding her decision not to
2 pursue Case File No. 36-622.

3 Wherefore, Attorney General Kathleen G. Kane is guilty of an
4 impeachable offense warranting removal from office and
5 disqualification to hold any office of trust or profit under
6 this Commonwealth.

7 ARTICLE VI

8 The Thirty-Fifth Statewide Investigating Grand Jury for 2014
9 also recommended that Attorney General Kathleen Kane be charged
10 with abuse of office/official oppression under 18 Pa.C.S. §
11 5301.

12 The Grand Jury presentment indicates that Attorney General
13 Kane committed official oppression when she disclosed the 2009
14 Grand Jury information. Because Kane knew that the information
15 was subject to Grand Jury secrecy protections, her release of
16 the information infringed upon Mr. Mondesire's exercise and
17 enjoyment of his rights and privileges under the Constitution of
18 the United States and the Constitution of Pennsylvania.

19 Wherefore, Attorney General Kathleen G. Kane is guilty of an
20 impeachable offense warranting removal from office and
21 disqualification to hold any office of trust or profit under
22 this Commonwealth.

23 ARTICLE VII

24 The Thirty-Fifth Statewide Investigating Grand Jury for 2014
25 also recommended that Attorney General Kathleen Kane be charged
26 with obstructing the administration of law or other governmental
27 function under 51 Pa.C.S. § 5101.

28 The 2014 Grand Jury found that Attorney General Kathleen
29 Kane's disclosure of the 2009 Grand Jury information was a
30 "breach of her official duty and constituted an unlawful act

1 that impaired or perverted the administration of law."
2 Additionally, the 2014 Grand Jury found that by violating the
3 Criminal History Records Information Act with the release of the
4 2009 Grand Jury information the Attorney General also committed
5 obstruction of justice.

6 Wherefore, Attorney General Kathleen G. Kane is guilty of an
7 impeachable offense warranting removal from office and
8 disqualification to hold any office of trust or profit under
9 this Commonwealth.

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