

**AMERICANS
UNITED**

*for Separation of
Church and State*

518 C Street, N.E.

Washington, D.C. 20002

(202) 466-3234 phone

(202) 466-2587 fax

americansunited@au.org

www.au.org

September 19, 2005

Marcia M. Waldron, Clerk
United States Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *Kitzmiller, et al. v. Dover Area Sch. Dist., et al.*, No. 05-4100

Dear Ms. Waldron:

Enclosed for filing in the above-referenced matter are the following materials:

1. An original and three copies of Plaintiffs' -Appellees' Correction of Caption and Statement with Respect to Possible Jurisdictional Defect in *Kitzmiller, et al. v. Dover Area Sch. Dist., et al.*, No. 05-4100;
2. Notice of appearance of counsel of record on behalf of plaintiffs-appellees;
3. An original and four copies of plaintiffs' -appellees' Corporate Disclosure Statement and Statement of Financial Interest.
4. Certificate of service.

Please file-stamp the extra copies of those documents and return them to me in the enclosed, self-addressed envelope.

Thank you for your assistance in this matter.

Very truly yours,

Richard B. Katskee

Enclosures

Your voice in the battle to preserve religious liberty

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

Eric Rothschild
direct dial: 215-981-4813
rothsche@pepperlaw.com

September 19, 2005

Marcia M. Waldron, Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Plaintiffs-Appellees' Correction of Caption and Statement with
Respect to Possible Jurisdictional Defect in *Kitzmilller, et al. v. Dover*
Area Sch. Dist., et al., No. 05-4100

Dear Ms. Waldron:

In accordance with this Court's orders issued September 8, 2005, this letter will serve both as plaintiffs-appellees' correction of the caption in the above referenced matter and as plaintiffs-appellees' statement of position with respect to whether this Court should dismiss the instant appeal for lack of jurisdiction.

This Court's docket lists James Cashman, Marsha Cashman, Michael Hied, Sheree Hied, Cynthia Mummert, and Raymond Mummert as intervenors in the district court. By order dated May 10, 2005, however, the district court denied those non-parties' motion to intervene. Hence, they have never been parties to the case and should not appear in the caption. For the same reason, plaintiffs-appellees have not served copies of any materials in this appeal on counsel for the Cashmans, Hieds, and Mummerts.

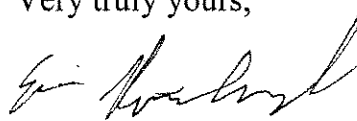
As for whether this Court should dismiss the instant appeal (filed by Joseph Maldonado and Heidi Bernhard-Bubb), the Court has raised the question *sua sponte* whether under *Nelson v. Pilkington PLC (In re Flat Glass Antitrust Litig.)*, 288 F.3d 83, 87 (3d Cir. 2002), the Court lacks jurisdiction because the order challenged in this appeal

Marcia M. Waldron, Clerk
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September 19, 2005

is not final within the meaning of 28 U.S.C. § 1291. Plaintiffs-appellees agree with the Court's suggestion that *In re Flat Glass* is the pertinent authority and that it precludes the court from exercising jurisdiction over Maldonado and Bernhard-Bubb's appeal at this time.

If you have any questions, please contact me at the above number.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric Rothschild", written in a cursive style.

Eric Rothschild

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 05-4100(dmm)

Kitzmilller, et al. vs. Dover Area Sch. Dist., et al.

The Clerk will enter my appearance as Counsel of Record for (please list names of all parties represented, using additional sheet(s) if needed): Tammy J. Kitzmilller; Bryan Rehm; Christy Rehm; Deborah F. Fenimore; Joel A. Lieb; Steven Stough; Beth A. Eveland; Cynthia Sneath; Julie Smith; Aralene D. Callahan, a/k/a Barrie; Frederick B. Callahan

who IN THIS COURT is (please check only one):

Petitioner(s) Appellant(s) Intervenor (s)
 Respondent(s) Appellee(s) Amicus Curiae

(Type or Print) Name Eric Rothschild
Mr. Ms. Mrs. Miss

Firm PEPPER HAMILTON LLP

Address 3000 Two Logan Sq., 18th & Arch Sts.


City & State Philadelphia, PA

Zip Code 19103

Phone (215) 981-4000

Fax (215) 981-4750

PLEASE TYPE E-Mail Address rothsche@pepperlaw.com

SIGNATURE OF COUNSEL: 

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE AND ONLY THAT ATTORNEY WILL BE THE ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT OR WHO HAVE SUBMITTED A PROPERLY COMPLETED APPLICATION FOR ADMISSION TO THIS COURT'S BAR MAY FILE AN APPEARANCE FORM. (BAR ADMISSION IS WAIVED FOR FEDERAL ATTORNEYS.)

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED AND THAT COUNSEL SIGN THE FORM IN THE APPROPRIATE AREA.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 05-4100(dmm)

Kitzmiller, et al. vs. Dover Area Sch. Dist., et al.

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who IN THIS COURT is (please check only one):

Petitioner(s) Appellant(s) Intervenor (s)
 Respondent(s) Appellee(s) Amicus Curiae

(Type or Print) Name Richard B. Katskee

Mr. Ms. Mrs. Miss

Firm Americans United for Separation of Church and State

Address 518 C St., NE

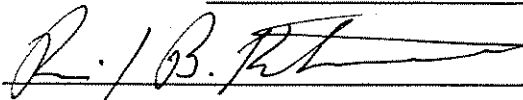
City & State Washington, DC

Zip Code 20002

Phone (202) 466-3234

Fax (202) 466-2587

PLEASE TYPE E-Mail Address katskee@au.org

SIGNATURE OF COUNSEL: 

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 05-4100(dmm)

Kitzmiller, et al. vs. Dover Area Sch. Dist., et al.

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who IN THIS COURT is (please check only one):

Petitioner(s) Appellant(s) Intervenor (s)
 Respondent(s) Appellee(s) Amicus Curiae

(Type or Print) Name Ayesha N. Khan

Mr. Ms. Mrs. Miss

Firm Americans United for Separation of Church and State

Address 518 C St., NE

City & State Washington, DC

Zip Code 20002

Phone (202) 466-3234

Fax (202) 466-2587

PLEASE TYPE E-Mail Address akhan@au.org

SIGNATURE OF COUNSEL: Ayesha N. Khan

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE AND ONLY THAT ATTORNEY WILL BE THE ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 05-4100(dmm)

Kitzmiller, et al. vs. Dover Area Sch. Dist., et al.

The Clerk will enter my appearance as Counsel of Record for (please list names of all parties represented, using additional sheet(s) if needed): Tammy J. Kitzmiller; Bryan Rehm; Christy Rehm; Deborah F. Fenimore; Joel A. Lieb; Steven Stough; Beth A. Eveland; Cynthia Sneath; Julie Smith; Aralene D. Callahan, a/k/a Barrie; Frederick B. Callahan

who IN THIS COURT is (please check only one):

Petitioner(s) Appellant(s) Intervenor (s)
 Respondent(s) Appellee(s) Amicus Curiae

(Type or Print) Name Alex J. Luchenitser

Mr. Ms. Mrs. Miss

Firm Americans United for Separation of Church and State

Address 518 C St., NE

City & State Washington, DC

Zip Code 20002

Phone (202) 466-3234

Fax (202) 466-2587

PLEASE TYPE E-Mail Address luchenitser@au.org

SIGNATURE OF COUNSEL: 

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United States Court of Appeals for the Third Circuit

**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 05-4100

Kitzmiller, et al.

v. Dover Area Sch. Dist., et al.

Joseph Maldonado; Heidi Bernhard-Bubb, Appellants

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, Tammy J. Kitzmiller, et al., plaintiffs-
makes the following disclosure: (Name of Party) appellees

1) For non-governmental corporate parties please list all parent
corporations: N/A

2) For non-governmental corporate parties please list all publicly held
companies that hold 10% or more of the party's stock:


N/A

3) If there is a publicly held corporation which is not a party to the
proceeding before this Court but which has as a financial interest in the outcome of the
proceeding, please identify all such parties and specify the nature of the financial
interest or interests:

N/A

4) In all bankruptcy appeals counsel for the debtor or trustee of the
bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the
members of the creditors' committee or the top 20 unsecured creditors; and, 3) any
entity not named in the caption which is active participant in the bankruptcy proceeding.
If the debtor or trustee is not participating in the appeal, this information must be
provided by appellants.

N/A



(Signature of Counsel or Party)

Dated: Sept. 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September 2005, I caused to be served to each of the following addresses by first-class U.S. Mail, postage pre-paid, two copies each of (1) Plaintiffs'-Appellees' Correction of Caption and Statement with Respect to Possible Jurisdictional Defect in *Kitzmilller, et al. v. Dover Area Sch. Dist., et al.*, No. 05-4100; (2) notice of appearance of counsel of record on behalf of plaintiffs-appellees; and (3) plaintiffs'-appellees' Corporate Disclosure Statement and Statement of Financial Interest:

Niles S. Benn
Terence J. Barna
Christian J. Dabb
BENN LAW FIRM
103 East Market St.
P.O. Box 5185
York, PA 17405-5185

Counsel for Appellants

Robert J. Muise
Richard Thompson
Patrick T. Gillen
Edward L. White III
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106

Ron Turo
TURO LAW OFFICES
28 South Pitt Street
Carlisle, PA 19312

Counsel for Defendants-Appellees

Because they represented non-parties whom the district court denied intervenor status, I have not served the following counsel or the persons or entities they formerly represented in the proceedings below:

John B. Dempsey

Steven A. Serfass

Leonard G. Brown III


Richard B. Katskee

Date: September 19, 2005