

In the  
**United States Court of Appeals  
for the Third Circuit**

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**JIM BOGNET, et al.,**

*Plaintiffs-Appellants,*

v.

**KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of  
Pennsylvania, et al.,**

*Defendants-Appellees,*

**DEMOCRATIC NATIONAL COMMITTEE**

*Intervenor-Appellee.*

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
Case No. 3:20-CV-215  
The Honorable Kim R. Gibson

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**PLAINTIFFS-APPELLANTS' EMERGENCY MOTION  
FOR AN EXPEDITED BRIEFING SCHEDULE**

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## **EMERGENCY MOTION FOR ENTRY OF AN EXPEDITED BRIEFING SCHEDULE**

Plaintiffs-Appellants respectfully request that this Court enter an expedited briefing schedule in this appeal from the denial of a preliminary injunction. In *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020), the Pennsylvania Supreme Court extended by three days the deadline by which absentee ballots must be received to be counted in the upcoming general election. Plaintiffs-Appellants contend that the counting of any such late-arriving ballots would violate the federal Constitution's Equal Protection Clause, Elections Clause, Presidential Electors Clause, and federal statutes establishing a single, uniform, federal election day, *see* 2 U.S.C. §§ 1, 7; 3 U.S.C. § 1. Yesterday evening, the district court ruled that Plaintiff-Appellants are likely to succeed on the merits of their Equal Protection Clause claim but declined to issue a preliminary injunction so shortly before the election based upon the balance of equities and public interest, citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*).

The Elections Clause and Presidential Electors Clause claims presented in this case are also presented in *Republican Party of Pennsylvania v. Boockvar*, a case in which a petition for a writ of certiorari is currently pending in the United States Supreme Court. Yesterday the Court declined to rule in that case before the election, but three Justices have signaled that the Court may take up the case shortly after the election if circumstances warrant. *See Republican Party of Pa. v. Boockvar*, No. 20-

542, 2020 WL 6304626, at \*2 (U.S. Oct. 28, 2020) (statement of Alito, J.). Notably, *Republican Party of Pennsylvania* does *not* present the Equal Protection Clause theory on which the district court ruled that Plaintiffs-Appellants in this case are likely to prevail.

Given the limited time that remains, Plaintiffs-Appellants do not ask this Court to decide their appeal before the November 3 election. If the election in Pennsylvania is close, however, there may be an overwhelming public interest in this Court resolving the appeal very quickly thereafter. Under these circumstances, prudence dictates that the Court should enter an expedited briefing schedule that would ensure that the Court will have before it all the information it needs to rule as soon as may be appropriate after polls close on November 3. Should the factual developments necessitate this Court to move immediately, the Court will be aided by already having the parties' arguments before it.

Accordingly, pursuant to Local Appellate Rule 4.1, Plaintiffs-Appellants respectfully request that the Court enter the following expedited briefing schedule, which has not been consented to by Defendants-Appellees:

- Plaintiffs-Appellants' Opening Brief – due by 5:00 p.m., Friday, October 30, 2020
- Defendants-Appellees' Response Brief – due by 5:00 p.m., Monday, November 2, 2020

- Plaintiffs-Appellants' Reply Brief – due by 5:00 p.m., Tuesday, November 3, 2020

Dated: October 29, 2020

Respectfully submitted,

/s/ David H. Thompson

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## CERTIFICATE OF COMPLIANCE

In accordance with the Federal Rules of Appellate Procedure and this Court's Rules, I certify the following:

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d) because it contains 462 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font. This brief is identical to the paper copies being provided to the court.

3. This motion complies with Local Rule 31.1(c). Windows Defender was run on the electronic brief and no viruses were detected.

4. David H. Thompson, Peter A. Patterson, and Brian W. Barnes are admitted to practice in the Third Circuit Court of Appeals and are members in good standing.

/s/ David H. Thompson  
David H. Thompson

## **CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d) and Local Rule 27.2, I hereby certify that on October 29, 2020, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. Service on counsel for all parties has been accomplished via ECF.

/s/ David H. Thompson  
David H. Thompson