

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.*

◆  
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' REPLY IN SUPPORT OF THEIR  
EMERGENCY MOTION FOR AN EXPEDITED BRIEFING SCHEDULE**

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Plaintiffs-Appellants (“Plaintiffs”) respectfully submit this short reply in support of their Emergency Motion for an Expedited Briefing Schedule.

*First*, Defendant-Appellee Secretary Boockvar and Intervenor-Appellee Democratic National Committee (“DNC”) contend that Plaintiffs “inexcusably delayed in bringing this action,” and therefore that this Court must not countenance that alleged delay by “awarding an expedited schedule that prejudices the parties and harms the public.” DNC Resp. at 3; *see also* Secretary Resp. at 1–2. But Plaintiffs brought this case within a reasonable time, filing only slightly more than a month after the Pennsylvania Supreme Court decided *Pa. Democratic Party v. Boockvar*, 133 MM 2020, 2020 WL 5554644 (Pa. Sept. 17, 2020), and only three days after an equally divided Supreme Court declined to issue a stay in that case on October 19. It was entirely reasonable for Plaintiffs not to file suit at a time when the stay application in *Boockvar* was pending in the Supreme Court and appeared certain to resolve the merits of most of Plaintiffs’ claims one way or the other.

*Second*, Secretary Boockvar and the DNC argue that Plaintiffs’ proposed expedited briefing schedule would “significant[ly] burden[] . . . the Commonwealth and county boards of elections personnel who are in charge of running the election.” Secretary Resp. at 4; *see also* DNC Resp. at 5 (“Plaintiffs seek to require the Secretary and every single county in Pennsylvania to turn their attention away from administering an exceptionally challenging election . . . toward immediate briefing

before this court.”). But Secretary Boockvar and the DNC never say that the lawyers who would be tasked with drafting an appellate brief on Plaintiffs’ proposed schedule are responsible for administering the election. That is the job of the named defendants in this case, not the Pennsylvania Attorney General’s Office or the DNC’s outside counsel. What is more, Secretary Boockvar and the DNC have already extensively briefed most of the issues in this appeal—both to the district court in this case and to the United States Supreme Court. Accordingly, the burden of preparing a brief for this Court on Plaintiffs’ proposed schedule would be minimal, especially given the potential need for immediate action by the Court shortly after the election.

Accordingly, Plaintiffs respectfully request that the Court grant their motion for an expedited briefing schedule.

Dated: October 30, 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 reply complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d) because it contains 382 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This reply 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 reply is identical to the paper copies being provided to the court.

3. This reply complies with Local Rule 31.1(c). Windows Defender was run on the electronic reply 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 30, 2020, I electronically filed the foregoing reply 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