

No. 20-3371 IN THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

DONALD J. TRUMP FOR PRESIDENT, INC. et. al,

Plaintiffs-Appellants,

v.

KATHY BOOCKVAR, in her capacity as Secretary of the Commonwealth of

Pennsylvania; et. al,

On Appeal from the United States District Court
For the Middle District of Pennsylvania
Case No. 4:20-cv-02078
The Honorable Matthew W. Brann

Defendants-Appellees,

APPELLANTS' AMENDED MOTION FOR EXPEDITED REVIEW

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Appellants Donald J. Trump Campaign, Inc. (“**Campaign**”) and two individual voters hereby move, pursuant to Local Rule 4.1, for expedited review of the instant appeal and in support thereof aver the following:

1. On November 22, 2020 Appellants filed a Notice of Appeal of the Order of the District Court dated November 21, 2020.
2. On November 22, Appellants filed Appellants’ Motion for Expedited Review.
3. On November 22, Appellants file the within Amended Motion for Expedited Review to amend and clarify the Motion for Expedited Review.
4. Appellants appeal the denial of claims they raised in the District Court, including *inter alia*, the District Court’s denial as moot Appellants’ Motion for Leave to File Second Amended Complaint (Doc. 172).
5. However, Appellants do not believe that this is a “case or controversy” over the aspect of the Order dated November 21, 2020 dismissing the Amended Complaint because they do not intend to prosecute it, and, instead, seek to prosecute the Second Amended Complaint, as they informed the Court on November 17.
6. Further, Plaintiffs believe that the Second Amended Complaint cures any deficiencies noted by the District Court regarding, *inter alia*, standing, equal protection, and remedy because its allegations are very different than those in the

Amended Complaint. Plaintiffs have specifically pled claims based on this Court's decision in *Marks v. Stinson*. However, to be clear, Plaintiffs do not intend to waive any claim that any part of the District Court's decision may have been wrongly decided, including, *inter alia*, the District Court's denial of Appellants' claim for standing and Equal Protection, and can provide supplemental briefing on any such issues if the Court requests.

7. Appellants request that the Court grant expedited briefing on its appeal from the District Court's decision denying Appellants' Motion to Amend to File a Second Amended Complaint solely on the basis of undue delay after dismissing Appellants' Amended Complaint with prejudice. Appellants will, *inter alia*, request that this Court reverse denial of the Motion to Amend, direct the District Court to promptly decide it on the merits, decide Appellants' motions regarding discovery (Docs. 118 and 171) and proceed expeditiously to a hearing to enjoin certification of the results of the Presidential Election (or order decertification of already certified) if the Second Amended Complaint is held to state valid claims.

8. Appellants' underlying action relates to the integrity of election procedures in the 2020 Presidential General Election in the Commonwealth of Pennsylvania, particularly as those procedures relate to the enormous quantity of mail-in ballots cast in Pennsylvania and the ascertainment of these ballots'

compliance with the detailed requirements for demonstrating the authenticity of such votes and the eligibility of those purportedly casting such ballots to vote in Pennsylvania, including requirements that voters sign and date the mail ballots, *see* 25 P.S. §§ 3146.8; 3150.16. This action also concerns a Due Process claim that Pennsylvania's mail ballot scheme, as interpreted by its Supreme Court, is porous and lacking in safeguards, given that there is no right to inspect mail ballots or challenge them for deficiencies before they are opened, mixed, and counted.

9. This action is of nationwide importance because of the consequences of flawed election processes on the election for the President of the United States in the Commonwealth could turn the election in favor of either candidate.

10. It is critically important for Appellants' claims to be heard before the December 8, 2020 "safe harbor" date under 3 U.S.C. §5 of Pennsylvania certifying its Presidential electors, which is only 16 days away. This is the operative and legally binding deadline, not the date of November 23, 2020, which is the last day to file an Election Contest, and after which, if no Election Contest has been filed and all the counties have certified their returns to the Defendant Secretary of State, the Secretary may then certify the elections returns. Thus, there is more time for discovery and a hearing on Appellants' Second Amended Complaint.

11. The proposed Second Amended Complaint asserts claims under the Civil Rights Act for violation of the Equal Protection and Due Process clauses

because Defendants, the Secretary of the Commonwealth, and seven County Boards of Elections, controlled by Democrats, engaged in an intentional scheme to count defective mail ballots which they knew would favor Joseph Biden over Presidential Donald J. Trump. In *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994), *on remand*, 1994 U.S. Dist. LEXIS 5273 (E.D. Pa. April 26, 1994), this Court held such a scheme violates Equal Protection and Due Process and affirmed the decertification of candidate William Stinson and the certification of Marks by disallowing illegal absentee ballots. Similarly, Appellants seek to exclude the defective mail ballots which overwhelmingly favored Biden, which may turn the result of the Election. Appellants do *not* seek to exclude any legally cast votes.

12. Appellants have contacted counsel for the Defendants and Intervenors to seek agreement to Appellants' proposed briefing schedule, namely, that Appellants' opening brief shall be due by **November 23, 2020 by 4:00 p.m.**; and that Appellees' briefs shall be due by **November 24, 2020 by 4:00 p.m.**, with oral argument to be held on November 25, 2020 if desired by the Court.

13. At the time of filing, Appellees Secretary Boockvar and Philadelphia, Allegheny, Montgomery and Chester Counties do not consent to the proposed briefing schedule.

WHEREFORE, Appellants respectfully request that the Court establish

an expedited schedule for the disposition of the instant appeal according to the above deadlines.

Respectfully submitted,

/s/ Brian C. Caffrey

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November 22, 2020

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CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of ***Plaintiffs'/Appellants' Amended Motion for Expedited Review***, in the above-captioned action, upon all parties via CM/ECF.

Date: November 22, 2020

/s/ Deborah A. Black
Deborah A. Black, Paralegal
For Marc A. Scaringi, Esquire and
Brian C. Caffrey, Esquire