

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,

Defendants-Appellees,

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

APPELLANTS' EMERGENCY MOTION FOR EXPEDITED REVIEW

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

1. Appellants request that the Court grant expedited briefing on its appeal from the District Court’s decision denying their Motion to Amend to File a Second Amended Complaint (ECF 172) *solely* on the basis of undue delay after dismissing Appellants’ Amended Complaint with prejudice (ECF 203). Appellants’ appeal concerns only the decision denying leave to amend for the above reason, a narrow issue. Appellants will request that this Court reverse denial of the Motion to Amend and direct the District Court to promptly decide it on the merits and proceed expeditiously to a hearing to enjoin certifying the results of the Presidential Election (or order decertification if already certified) if the Second Amended Complaint (ECF 172-2) is held to state valid claims.

2. 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.¹

3. 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.

4. 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.

5. The proposed Second Amended Complaint (ECF 172-2) 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

¹ *In re Canvassing Observation*, No. 30 EAP 2020 (Pa. Nov. 17, 2020) held there is no right for candidates and parties to meaningfully observe canvassing of mail ballots, holding Defendant Philadelphia County Board of Elections could keep observers more than 25 feet from where mail ballots were processed as long as they were in the same room. This decision arrived on the heels of *In re November 3, 2020 Gen. Election*, 2020 Pa. LEXIS 5560 (Pa. Oct. 23, 2020), which *sua sponte* declared that the provision of the Pennsylvania election code providing for challenging mail ballots by observers on Election Day, 25 P.S. §3146.8(f), was no longer law because it was inadvertently not repealed by the Pennsylvania Legislature. Appellants believe these decision changing prior law in the middle of the Election violates *Bush v. Gore*, 531 U.S. 98, 104 (2000) (*per curiam*).

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 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.

6. Appellants 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.²

7. At the time of filing, Secretary Boockvar and Philadelphia, Centre, Allegheny, Montgomery, Delaware, Northampton, and Chester Counties do not consent to the proposed briefing schedule, and have not suggested any other briefing schedule.

² In the case below, the District Court directed that parties file response and reply briefs within 24 hours or less.

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' Emergency 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