

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 3:20-CV-215

JIM BOGNET, *et al.*,

Plaintiffs,

v.

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

Defendants,

DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Defendant.

**PLAINTIFFS' MOTION FOR AN  
ENLARGEMENT OF TIME TO  
COMPLETE SERVICE OF PROCESS**

For the reasons set forth below, Plaintiffs Jim Bognet, Donald K. Miller, Debra Miller, Alan Clark, and Jennifer Clark, respectfully move the Court under Fed. R. Civ. P. 6(b)(1)(A) to enlarge the time for Plaintiffs to complete service of process by 30 days.

Plaintiffs filed their complaint on October 22, 2020. Doc. No. 1. Under Fed. R. Civ. P. 4(m), which requires that Plaintiffs serve Defendants within 90 days after the complaint is filed, Plaintiffs must provide service by January 20, 2021.

Rule 6(b)(1)(A) states that “[w]hen an act may or must be done within a specific time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” “Good cause is understood to mean a legally sufficient reason, and it reflects the burden placed on a litigant . . . to show why a request should be granted or an action excused.” *Joseph v. Hess Oil V.I. Corp.*, 651

F.3d 348, 351 & n.6 (3d Cir. 2011) (internal quotation marks and brackets omitted). Courts have described Rule 6(b)(1)(A)'s good-cause standard as “non-rigorous” and have noted that a request for an extension of time pursuant to the Rule should “normally . . . be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (internal quotation marks omitted); *see also MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1097 (3d Cir. 1995); *Everett v. Hills*, No. 2:19-cv-322, 2020 WL 4368154, at \*5–6 (W.D. Pa. July 30, 2020). “The presence or absence of good cause for an enlargement of time to effect service is a matter of discretion for a district court.” *United States v. Nuttall*, 122 F.R.D. 163, 166 (D. Del. 1988) (citing *Dominic v. Hess Oil V.I. Corp.*, 841 F.2d 513, 514, 516–17 (3d Cir. 1988)).

The Court should grant Plaintiffs’ motion because (1) Plaintiffs have been diligent in their efforts to seek a waiver of service from Defendants; (2) Plaintiffs have not acted in bad faith; and (3) Defendants will not be prejudiced by a modest 30-day extension.

First, Plaintiffs have diligently attempted to seek waivers of service from Defendants Secretary Boockvar and the 67 Pennsylvania county boards of elections well before the January 20, 2021 service of process deadline, both electronically by e-mail (including a follow-up reminder after the start of the new year), and physically through the USPS. *See* Exs. 1–2 (attached to Declaration of Peter A. Patterson (“Patterson Decl.”)); *see also Shuster v. Conley*, 107 F.R.D. 755, 757 (W.D. Pa. 1985) (explaining that in the related Rule 4 good cause context “[m]ost courts have adopted the . . . diligence standard in determining when a party has shown good cause for an extension”); *cf. Braxton v. United States*, 817 F.2d 238, 241 (3d Cir. 1987) (explaining that “half-hearted efforts at service” do “not amount to good cause”). As of the date of the filing of this motion, Secretary Boockvar and 41 counties have consented to a waiver of service, but Plaintiffs

have received no response from 26 counties. *See* Patterson Decl. ¶ 5. Due to this lack of response, the imminence of the service-of-process deadline, and uncertainties regarding whether service of process will be effective in this short timeframe on certain county Defendants if their offices are closed due to the COVID-19 pandemic, a 30-day enlargement would afford Plaintiffs the ability to successfully complete service. Plaintiffs will also continue to seek waivers of service from Defendants during this period. *See* Fed. R. Civ. P. 4(d)(1)(F).

Second, Plaintiffs have not shown bad faith in their efforts to seek waivers from Defendants and to serve those Defendants who do not so consent. *See Phillips v. Household Fin. Corp.*, No. 06-cv-100, 2007 WL 1830897, at \*3 (D. Del. June 25, 2007) (finding discretionary extension proper upon finding “no evidence of bad faith or conscious disregard of the federal rules by Plaintiff”); *see also Adorno v. Colvin*, No. 15-cv-2041, 2015 WL 9027129, at \*2 (W.D. Pa. Dec. 15, 2015). The large number of Defendants in this case makes coordinating receiving an affirmative response from each one a substantial task. Furthermore, the service-of-process period overlapped with the year-end holiday period, with many offices closed for some of that time.

Third, Defendants will not be prejudiced by a modest 30-day extension. Litigation in this case has proceeded before this Court, in the Third Circuit, and in the Supreme Court, with electronic and USPS mailings of the various filings to all Defendants. *See, e.g.*, Sup. Ct. R. 12.3. Defendants will not be caught by surprise by this case. *See Nuttall*, 122 F.R.D. at 167 (“[A]ctual notice precludes any finding of . . . prejudice to[] defendant[,] notwithstanding that service of process did not comport with every detail of [the Federal Rules of Civil Procedure.]”).

Finally, a 30-day enlargement of the time to serve Defendants would enable Plaintiffs to conserve resources and avoid the unnecessary expense of attempting process on a contracted timeframe and in an expedited manner.

Accordingly, Plaintiffs respectfully request that this Court grant their motion to enlarge the time to complete service of process for 30 days.

Dated: January 19, 2021

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of January, 2021, I caused the foregoing document to be filed electronically with the Clerk of the Court through the CM/ECF System for filing and served on counsel registered to receive CM/ECF notifications in this case. I also caused the foregoing document to be e-mailed to the following counsel for Defendants who have not registered to receive CM/ECF notifications in this case at the email addresses identified below:

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