

No. 18-2574

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

SHARONELL FULTON, ET AL.,

*Plaintiffs-Appellants,*

v.

CITY OF PHILADELPHIA, ET AL.,

*Defendants-Appellees.*

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On Appeal from the U.S District Court for the  
Eastern District of Pennsylvania,  
No. 2:18-cv-02075-PBT (Hon. Petrese B. Tucker, U.S.D.J.)

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**Appellants' Motion to Expedite Appeal**

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**MOTION TO EXPEDITE APPEAL  
UNDER 3D CIR. L.A.R. 4.1**

Appellants Sharonell Fulton, Toni Simms-Busch, Cecelia Paul, and Catholic Social Services (“Catholic”) (collectively, “Appellants”) respectfully move to expedite their appeal pursuant to 3d Cir. L.A.R. 4.1.

**FACTUAL AND PROCEDURAL BACKGROUND**

Appellants filed their complaint in the District Court on May 17, 2018. On June 5, they filed a motion for a temporary restraining order and preliminary injunction, seeking an order that would resume foster care placements with Appellants and prevent Catholic from being forced to close its foster care operations while the case was pending. The District Court held a three-day evidentiary hearing on that motion June 18, 19 and 21. On July 13, 2018, the District Court denied Appellants’ motion. That same day, Appellants filed their notice of appeal, which was docketed in this Court on July 16. Appellants immediately moved for an injunction pending appeal before this Court, which was denied on July 27, without opinion.

**ARGUMENT**

This Court permits expedited appeals in “exceptional” cases. 3d Cir. L.A.R. 4.1. This is just such a case. Here, foster care intake has been shut

down for months and Catholic currently has more than two dozen available homes for foster children, homes that the City refuses to fill. Appx.245.<sup>1</sup> At the same time, the City has put out an “urgent” call for 300 new foster families, a number it admits it has not met. Appx.128-130, 293-94. The City also admits that it has 250 children currently in group homes who could be placed with families like the individual Appellants and other similar families already certified by Catholic. Appx.128-130, 293-94. Doing so is in accordance with the best interests of children as defined by state law, which requires that foster children be placed in the “most family-like setting” possible. 11 Pa. Stat. § 2633(4). Therefore, the harm to both foster parents and children is ongoing and will only grow worse during the pendency of this appeal.

As detailed in Appellants’ prior motion, Catholic has had no choice but to begin the process of closing its foster care program. It will have to lay off some staff members in August and will close completely within a matter of months. Appx.80, 247-48. If the program closes, the District Court acknowledged that Appellants Fulton, Paul, and Simms-Busch will be placed in a “difficult, uncertain, and emotionally challenging”

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<sup>1</sup> “Appx.” references are to the appendix filed on July 16 with Appellants’ motion for injunction pending appeal.

situation of determining how and whether they can continue their foster care work without Catholic's support. Appx.60.

Appellants sought a preliminary injunction to prevent these ongoing harms and closure of the agency. But on a traditional appellate schedule, it is likely that Catholic will have no choice but to close its doors before this Court can even decide Catholic's appeal. Such dire consequences make this an "exceptional" case.

The parties and this Court have demonstrated that this matter can be briefed and considered expeditiously. The motion for temporary restraining order or preliminary injunction at issue here was fully briefed by the parties and an evidentiary hearing held within the space of three weeks. The transcripts are already on file with the District Court. This Court has also acted expeditiously in this matter by ordering responsive briefing on Appellants' motion for stay pending appeal on an expedited schedule and issuing an order on that motion less than two weeks after its filing.

Given the immediacy of the harm and the ongoing violation of the First Amendment, Appellants believe that expedited consideration is necessary. Appellants request that this Court issue the following briefing schedule:

- Opening brief due Aug. 17
- Response brief due Sept. 7
- Reply brief due Sept. 14

Appellants also request that this Court expedite its consideration of their appeal. Appellants have conferred with Appellees, who oppose the motion to expedite. Although Appellants hoped to reach agreement, Appellees proposed a schedule very similar to the ordinary appellate schedule, which would not meaningfully expedite this appeal.

### **CONCLUSION**

Appellants respectfully request that this Court grant their motion for expedited briefing and consideration of this appeal.

Respectfully submitted,

Respectfully submitted,

/s/ Mark L. Rienzi

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: July 27, 2018

/s/ Mark L. Rienzi  
Mark L. Rienzi

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE  
OF APPELLATE PROCEDURE 32(A) AND  
LOCAL RULE 31.1**

I hereby certify that the following statements are true:

1. This brief complies with the type-volume limitations imposed by Federal Rules of Appellate procedure 29(d) and 32(a)(7)(B). It contains 680 words, excluding the parts of the brief exempted by Federal Rule 32(a)(7)(B)(iii) and by Local Rule 32.
2. This brief complies with the typeface and typestyle requirements of Federal Rule 32(a)(5) and 32(a)(6). It has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook font.
3. This brief complies with the electronic filing requirements of Local Rule 25. The text of this electronic brief is identical to the text of the paper copies, and the latest version of Bitdefender Endpoint Security Tools has been run on the file containing the electronic version of this brief and no virus has been detected.

Executed this 27th day of July, 2018.

/s/ Mark L. Rienzi  
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