

Commonwealth of Pennsylvania
Senate State Government Committee
Senator Mike Folmer, Chair
Hearing Room 1
North Office Building
Harrisburg, PA 17120

September 22, 2015

STATEMENT OF RALPH NADER IN SUPPORT OF SENATE BILL 495, THE “VOTER CHOICE ACT”

In the 2004 election, I ran for President of the United States as an independent candidate, with Peter Miguel Camejo as my running mate. A primary goal of the Nader-Camejo campaign was to ensure that voters in Pennsylvania and nationwide had the choice of supporting a host of policy positions that the major party candidates either ignored or opposed, included ending the wars in Iraq and Afghanistan, cracking down on corporate crime, adopting a single payer health-care system and raising the minimum wage to keep pace with inflation, among many others. To secure our place on the ballot, we submitted nomination papers signed by more than 50,000 Pennsylvanians – nearly twice the number required by Pennsylvania law. *See* 25 P.S. § 2911(b).

Despite this substantial showing of popular support, the Nader-Camejo ticket was removed from the ballot after the Pittsburgh-based law firm Reed Smith, LLP filed a challenge to our nomination papers, purportedly on behalf of several private citizens, pursuant to 25 P.S. § 2937. In the course of the proceedings, Commonwealth Court judges invalidated more than 30,000 signatures on our nomination papers based on dubious technicalities – because signers used a nickname like “Bill” instead of the formal name “William,” for example, or because their current and registered addresses didn’t match. But for the exclusion of these signatures from real live Pennsylvanians who supported our right to run for public office – and voters’ right to a free choice of candidates – the Nader-Camejo ticket would have been on the ballot.

At the conclusion of the challenge proceedings, Judge James Gardner Colins ordered the Nader-Camejo campaign, and the candidates personally, to pay our challengers \$81,102.19 in litigation costs. This order had no precedent in Pennsylvania or any other state in the nation. Judge Colins recklessly suggested that it was justified in our case, however, by “fraud” in the nomination papers – an assertion for which there was “no evidence,” as now-Chief Justice of the Pennsylvania Supreme Court Thomas Saylor observed. *See In Re Nomination Paper of Ralph Nader*, 860 A.2d 1, 8 n.13 (Pa. 2004) (Saylor, J., dissenting). Indeed, Judge Colins’ own factual findings contradicted his hyperbolic rhetoric. What raised his ire was a handful of fictitious names like “Mickey Mouse,” but these amounted to only 1.3 percent of the total, *see id.*, and they obviously indicated not fraud but pranks or sabotage, which no candidate can completely prevent or eliminate.

Even more problematic, as Justice Saylor demonstrated, Section 2937 was never intended to authorize the imposition of costs against candidates who defend their nomination papers. *See*

In Re Nomination Paper of Ralph Nader, 905 A.2d 450, 461 (Pa. 2006) (Saylor, J., dissenting). To misconstrue the statute in this manner, Justice Saylor explained, was to misread the plain meaning of its text. *See id.* A majority of the Supreme Court nonetheless affirmed Judge Colins' unprecedented order, and simply disregarded Justice Saylor's cogent dissent in its entirety. *See id.* at 453-60. As a result, the Nader-Camejo ticket became the first candidacy in American history to be penalized financially by a state for attempting to seek public office.

What followed was a dark age for democracy in Pennsylvania, which lasted for nearly a decade. Pennsylvanians were understandably afraid to run for statewide office as minor party or independent candidates, for fear that they too would incur potentially bankrupting financial penalties. One of the few candidates who tried, Carl Romanelli of the Green Party, was also removed from the ballot and ordered to pay more than \$80,000 in costs to his challengers following the 2006 election. Thereafter, Pennsylvanians generally had no choice in statewide elections, but to vote for the Republican or Democrat.

Not even the "Bonusgate" corruption scandal of 2008, which rattled the Capitol in Harrisburg to its foundations, was enough to prompt the reforms necessary to restore voter choice and the semblance of democracy to Pennsylvania's electoral process. Even though the ensuing criminal prosecution proved that the challenges to the Nader-Camejo and Romanelli nomination papers had been prepared illegally, at taxpayer expense, by Pennsylvania state legislative staffers, the Pennsylvania courts refused to reconsider their judgments awarding more than \$80,000 in costs to the nominal challengers in each case. Meanwhile, despite the commendable efforts of Senator Mike Folmer and his co-sponsors, the Voter Choice Act would languish in committee for years to come.

A federal district court in Philadelphia has now held that Section 2911(b) and Section 2937 are unconstitutional as applied to non-major party candidates. *See Constitution Party of Pa. v. Cortes*, No. 12-cv-2726 (E.D. Pa. July 23, 2015). Pennsylvania's Legislature therefore has an obligation to take remedial action, which will protect such candidates' equal right to participate in Pennsylvania's electoral process. Fortunately, the Voter Choice Act is ready for enactment today. It is an excellent bill that deserves the support of every member of this committee. It would restore voter choice to Pennsylvania's elections by reducing the excessive signature requirements imposed on non-major party candidates and providing them a reasonable means of obtaining ballot access – without imposing the crushing financial burdens that threatened them with bankruptcy under the old, unconstitutional system. At the same time, the Voter Choice Act protects Pennsylvania's interest in maintaining an orderly ballot by establishing one reasonable signature requirement for all candidates, regardless of partisan affiliation. That signature requirement has proven sufficient to regulate ballot access for major party candidates; there is no reason it cannot be applied to all other candidates as well.

In July 2014, the Federal Court of Appeals for the Third Circuit opined, without reaching the merits, that "it would be a sad irony indeed if the state that prides itself on being the cradle of American liberty had unlawfully restrictive ballot access laws." *See Constitution Party of Pa. v.*

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Aichele, 757 F.3d 347, 357 (3rd Cir. 2014). That sad irony has come to pass. It is incumbent on this body to take action to restore voter choice to Pennsylvania's elections, by protecting the First Amendment right of all Pennsylvanians – and not just Republicans and Democrats – to seek public office. The Legislature should enact the Voter Choice Act without delay.

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