

# An Essay on Ballot Access in Pennsylvania in the 21st Century

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## Minor Parties' and Independent candidates in Pennsylvania statewide elections

Republicans and Democrats need 2,000 signatures from several counties to place candidates on the ballot for the publicly funded primary election. Winners of the respective primary are on the November ballot.

Getting a candidate on the ballot and the rules that govern the process is ballot access. In Pennsylvania a person who wants to run for statewide office and does not want to or is unable to run as a Republican or Democrat must engage in the following process:

1. Submit PA approved nominating petitions containing signatures of currently registered PA voters who total at least 2.0% of the highest total vote of a statewide candidate in the last election with a statewide candidate (judicial retention doesn't count).
2. These signatures must conform precisely to the requirements of the state supplied form and be identical in all respects with the voter registration card on file in the voter's county.
3. Each petition page must have signatures of voters from only one county, be signed by the person who circulated it, be notarized and numbered sequentially.

This process is a nursery for mischief. It is politics in Pennsylvania.

The law requires a number of signatures far in excess of the number of registered voters who are members of the minority parties. In 2012 the number of registered voters for each of these parties was:

Green Party	15,833
Libertarian Party	42,180
Constitution Party	3,000-3,500 est.

The number of signatures required under the PA standard:

2000	21,739
2001	53,032
2002	21,028
2003	38,265
2004	25,697
2006	67,070
2007	49,411
2008	24,666
2009	66,724
2010	19,056
2011	43,455
2012	20,600
2013/14	62,511

On only a few occasions has the signature requirement been less than the number of registered voters of the Libertarian Party. This has never occurred with other parties. The very high signature requirements tend to be calculated from elections for row offices, really elected bureaucrats (Treasurer, Auditor, Attorney General), but not closely fought political battles for offices involved in policy, i.e. Governor, U. S. Senator.

Pennsylvania elects almost every public official including all judges. Judicial elections are part of the political system and candidates rely on political parties to be victorious. This can lead to internal pressure on judges to protect their party by inhibiting the electoral fortunes of third parties and independents that are seen as a threat. In re Flaherty (2001) is a good demonstration of this process on several levels. In ruling on whether candidate Flaherty had submitted enough signatures to appear on the ballot, the court states Pennsylvania public policy that

“The Election Code must . . . be liberally construed in order to protect a candidate’s right to run for office and the voters’ rights to elect the candidate of their choice.

Where the court is not convinced that challenged signatures are other than genuine, the challenge is to be resolved in favor of the candidate.”

Over the next ten pages the court proceeded to lacerate these principles by striking voters’ signatures from nominating petitions on a variety of grounds, at no time resolving a challenge “in favor of the candidate.”

While the legislature establishes the basis of calculating the number of signatures required and the method of recording signatures, the courts act as its handmaiden in cleansing troublesome third party candidates from the ballot.

In every case the courts in Pennsylvania have required absolute accuracy on the petition signature lines, allowing with reluctance the abbreviation of some cities like “Phila” for Philadelphia, “St.” for street, “Av.” for avenue, etc. Each signature line must be filled completely in the signer’s hand. There is a long discussion about handwriting experts in In Re Flaherty. This can be a fruitful line of attack because a signature written at home or in an office on a voter registration form is often quite different from one scribbled on a candidate’s nomination petition in a light mist in a grocery store parking lot.

## Poll Tax?

The person who collects the signatures must execute the affidavit at the end of each petition, and a Pennsylvania Notary Public must attest to the signature. The Notary Public statute sets a fee of \$5.00 per notarization, although it does not require a fee. If a candidate were to submit only his or her signature requirement on petitions bearing one signature per petition, the bill in 2012 could be \$103,000.00. For 2013/14 it could be \$312,505.00.

In 2004 the signature petitions of independent Ralph Nader for President and the 2006 Green Party petitions of Carl Romanelli for U. S. Senate were challenged by individuals connected to the Democratic Party. The challengers were awarded costs of \$85,000.00 and \$90,000.00 respectively. These costs were what the challengers paid for lawyers, experts, copying, and other charges for putting together a challenge. The message to future third party and independent candidates is have plenty of cash if you want to run in Pennsylvania.

## Bonusgate

Before we discuss campaigns for getting a candidate on the Pennsylvania ballot, we need to be aware of the atmosphere in political circles. Obsessed with the canard that Ralph Nader had cost Al Gore the election for President in 2000, the Democratic Party functioning as the Democratic caucus of the Pennsylvania House developed plans to utilize state workers to challenge any signature petitions of threatening candidates, namely Ralph Nader in 2004 and Carl Romanelli running as a Green in 2006.

Pennsylvania requires signature challengers to identify each challenge by page and line of the petition and the particular fault like incorrect date, printing instead of a cursive signature in the signature box, not a registered voter, incorrect address, etc.

In 2004 the Nader campaign submitted 51,273 signatures on over 1,000 petition forms. There are six blocks on each signature line so there are at least 307,638 bits of information to confirm or challenge. Challengers have seven days from the filing deadline to do this work, unless filings were made ahead of the deadline. Challengers must go to the office of the Bureau of Commissions, Elections, and Legislation (BCEL) in the North Office Building in Harrisburg and get copies of the filed petitions.

At this point it should become obvious that dozens of people would be required to sit down with petitions in front of the records of the voter registration card of every Pennsylvania voter and check, line by line, box by box, each petition. The challengers could have hired people to do this, but they did not. The Grand Jury investigating the possible improper use of public employees found that

“As many as fifty Caucus staff members participated in the challenge effort, and contributed a staggering number of man hours. . . . It was virtually a Caucus-wide endeavor. Many of the Caucus employees spent an entire week on it. . . . Since the work was being done in Caucus offices, the tradition of not taking leave was, almost invariably, honored. None of the . . . supervisors who were directing the operation ever requested or instructed any of the staffers to take [unpaid] leave.

The Caucus used the confidential Constituent Tracking Service, a computer program built solely for legislative purposes, to analyze petitions to identify challengeable entries. The computer files contained the voter registration records of citizens, officially available only at 67 county courthouses across the commonwealth.

In 2006 the campaign of Green Party candidate Carl Romanelli for U. S. Senate was given similar treatment by the Democratic Caucus of the legislature. The campaign submitted 94,544 signatures on 3,704 petitions. Democrats had a week to construct a challenge which would whittle the number of legal signatures to under the 67,070 threshold established by statute. The Caucus organized. Thirty staffers were at the first meeting where instructions were given on how to proceed with a challenge.

Working constantly on the petition copies, the Caucus was able to file a timely challenge to 69,692 signatures. Once filed, it was up to Commonwealth Court to decide on the validity of the signatures and thus, whether or not to put the candidates' names on the ballot.

In 2004 and 2006 many of the public employees who worked on these challenges for the Democratic Legislative Caucus were paid their regular wages and then were paid bonuses from public funds, thus the moniker from the press of “Bonusgate.” As of 2012 at least 22 defendants in the Bonusgate prosecution have plead guilty, and several more were found guilty after a lengthy trial. Many of these, including a former State Representative are serving prison terms.

## The Ralph Nader Campaign, 2004

Responding to the challenge of the Nader petitions of 2004, Commonwealth Court set to work and scheduled a review that would require the candidate to be present simultaneously in five separate courtrooms in five locations. Further, the candidate was required to cooperate with the Court in making volunteers available in Philadelphia and Pittsburgh (a vast majority of the petitions were from Philadelphia and Allegheny Counties) to review each challenge and agree on its validity. These reviews used computer records created by each county in its election commission offices. They did not use the more sophisticated Constituent Tracking Service.

Commonwealth Court, faced with the daunting task of reviewing over 50,000 signatures (see the discussion of the difficulties in In Re Nader) sidestepped and set aside the Nader nomination petitions on the grounds that Nader's registration as a Reform Party candidate in Michigan did not allow his Green Party candidacy in Pennsylvania.

On appeal to the Pennsylvania Supreme Court, the case was sent back with the order that it review the signatures and rule on that basis. A cranky Commonwealth Court, in an 86-page opinion detailing almost every hearing and every category of signature disability ruled against the Nader candidacy and did not place his name on the ballot.

The Court awarded the challengers costs of the challenges in the amount of \$90,000.

Commonwealth Court used all its judges and all its courts to review Nader's petitions, effectively destroying its Fall term, pushing back the regular caseload by months.

## The Carl Romanelli Campaign

In February 2006 the Green Party of Pennsylvania nominated Carl Romanelli as its candidate for U. S. Senate. He would run against Bob Casey, Democrat, Treasurer of the Commonwealth whose electoral victory the year before was the highest vote total in the state, and the basis for the signature number. It was with some trepidation that the party did this because the signature requirement (67,070) was so high. At the time the party had some 20,000 registered voters, so assuming every registered Green signed a petition, he would still have to get over 47,000 signatures of other Pennsylvania registered voters, or over three times the number of their own registered voters. Would requiring 12 million signatures for 4 million Democrats be fair?

The Romanelli campaign organized itself and worked tirelessly collecting the necessary signatures. In the end it took its message to over 200,000 citizens and collected over 125,000 signatures. Over several days in late July, 2006 it eliminated from its petitions thousands of defective signatures, and on August 2, 2006, submitted 99,000 signatures on over 3,700 petitions.

At this point putative challengers had seven (7) days to have BCEL personnel copy the petitions and put together a challenge. This would be a colossal amount of work to be done in such a short time. Of course we now know from the 2010 Bonusgate prosecutions, the mechanics were accomplished by “a veritable army” of state employees on the taxpayers’ dime. Employees of the Democratic caucus would take dozens of pages of petition copies to their offices and go over them line by line, box by box, over 594,000 pieces of data in seven days.

The Casey campaign filed a timely challenge. To avoid the disruptions that occurred with the Nader challenge, Commonwealth Court devised a new system for ruling on challenges.

To remove the burden of analysis from the Court, it ordered the parties to meet on August 14, 2006 to use the Statewide Uniform Registry of Electors (SURE) to review the challenged signatures. Each party was to supply nine people (why nine?) to sit at nine computer terminals, long into the SURE system and review each challenge, recording their agreement or disagreement with the challenge, and any disputed signature. This process was to continue from 8:30 to 5, Monday through Friday, until the review was finished.

## The Statewide Uniform Registry of Electors (SURE)

The SURE system is a curiosity. It purports to be an accurate representation on a computer database of the voter registration cards of every Pennsylvania voter, including a facsimile of the voter’s signature. It is designed to cross-reference and reverse order the data so that a voter might be found with a mere wisp of information, such as a partial name or address. When you use it for a while you notice several things. Large numbers of signature facsimiles are absent. Certain data entry idiosyncrasies appear. The data entered from Philadelphia County inserts a space between the O apostrophe and the remainder of the last name. Unless you are aware of this anomaly, searches for a name O’xxxxx will fail because the computer software demands absolute accuracy. It does the same thing with “Mc” and Mac.” In Philadelphia County this amounted to avbout 28,000 entries. Unless you are aware of these issues, an accurate search of the records is impossible.

The Department of State has refused to say how many facsimile signatures are missing, how many O’ errors are present, and other like entry anomalies there are. A review of the O’ anomaly shows that almost none appear in the other 66 counties records on SURE.

## The Romanelli Challenge Process

Using the SURE system, the eighteen representatives began their review. The sometimes tumultuous process lasted nearly three weeks. When the pace of disqualification of signatures slowed the Court permitted the challengers to add a challenge if, during the review, other errors were found. If the legibility of a signature was challenged but agreed to, and the SURE system indicated an incorrect address, a new challenge was allowed.

The actual process went like this: petition copies were bound in 50-page volumes totaling over 50 volumes. A volume would be assigned to a pair of reviewers or negotiators. They would consult the challenge list, find the page and line in the petition copies and look up the voter's record in the SURE system. Although the system had limited reverse or partial input capabilities, data from the petition would be entered. A record would appear on the screen and the two negotiators would consult and compare entries. If the challenged item seemed clearly at variance with the SURE data, the challenge would be agreed to.

If the Romanelli person did not agree (by submitting the challenge the Casey side is presumed to agree with it) the item would be marked "contested." Sometimes, as described above, there were variances from the SURE record that had not been challenged and these were amended to become new challenges and the signature denied. Missing signature facsimiles were ruled bad signatures. Signatures that the reviewers from each side disputed were not reviewed by the Court. In the end, the inability of the Green Party and Candidate Romanelli to maintain a constant nine person review entourage led the Court not only strike him from the ballot but to levy costs of \$85,000 to him and his attorney for bad faith.

## Voter I.D. in 2012

The passage of the Voter I.D. bill in Pennsylvania alerted the courts to the possibility that the standards applied to keep third party candidate off the ballot will be those used to evaluate each voter's match of I.D. with recorded registration data. Were these to be the criteria, tens of thousands of voters would be denied the right to vote. A law intended to nibble at the edges of the Democratic majority could be catastrophic.

## 2012 Challenge to Libertarian candidates

The Republican Party challenged the statewide slate of the Libertarian Party, including nominees for President and Vice President. Commonwealth Court used the same procedure it had used in Romanelli only this time the review was conducted in Philadelphia. Most of the petitions were from Philadelphia County. The party filed petitions with 49,164 signatures. The challengers had to eliminate 28,563 signatures. They came very close and the issue was decided on two questions: does an address in the same county but differing from that on the registration eliminate the signature, and does the failure to write the number 2012 on the date line do the same.

In a complete turnaround from past decisions, the court decided the address issue on Federal grounds and allowed those signatures. Pennsylvania courts have a long history of ignoring Federal district courts on ballot access issues when they involve third parties and only last year were ordered by the PA Supreme Court to follow Federal courts on another ballot access issue. It is clear that the decision was affected by the Voter I.D. controversy. This address issue could affect thousands of voters, and not just inner city voters.

The decision that put the count over the top for the Libertarians was the dates without the year 2012. Dispositive was the original dissent of Judge Colins who pointed out that due to the census requirement of reallocating U.S. House seats,

Since these forms [bearing the legend, DSBE PB (rev.) 1/12] were not and could not have been in use prior to January 2012 and all of the papers bear a notary seal indicating that the affidavit of qualified electors was executed in 2012, it is impossible for these papers to have been signed in any year other than 2012”

This is the first third party ballot access victory in this century. But it took weeks, which the Libertarians could have used to campaign instead of being tied up in court. The Republicans achieved their goal in crippling the third party effort, but of course they still lost the election.

Third parties often have their own constituencies, constituencies that are not made up of major party defectors. We are Libertarians, Greens, Working Families on principle and because we do not find our issues dealt with by the major parties.

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