

Testimony of Alexander Gillett, chair , Green Party of Philadelphia to Presidential Commission on Election Administration.

September 4, 2013

Good afternoon, members of the commission, fellow speakers, and observers.

I am Alexander Gillett, Chair of the Green Party of Philadelphia. I also run a Political Action Committee, the Fund for Green Values that is working on promoting greater ballot access in Pennsylvania.

I would like to talk about ballot access as an element of the right to vote. The right to vote doesn't mean anything if voters don't have the opportunity to vote for the candidates they want. That happens because those candidates can't get on the ballot. Thousands of Pennsylvanians have registered as Greens, Libertarians, and independents, yet it is very difficult for third party

candidates and independents to get on the ballot in Pennsylvania.

I am a member of the Green Party. The way that ballot access laws are interpreted and enforced by Pennsylvania courts makes it very difficult for candidates who are not Republicans or Democrats to get on the ballot.

A third party like the Green Party must submit nominating petitions containing the signatures of currently registered PA voters equal to at least 2.0% of the highest total vote of a statewide candidate in the last election. Even when they are the most recent election, judicial retention elections don't count in PA; this is unfortunate since the number of votes of the highest vote getter in those elections is always much lower. Counting a judicial retention election when

it is the most recent election would allow more candidates to make it on the ballot.

The signatures on nominating petitions must be identical in all respects to the information on the voter's registration card on file in the voter's county. If someone used a middle initial on the voter registration form, but fails to print and sign with that middle initial on the nominating petition form, the signature is invalidated. If the voter uses cursive writing in the print box or prints his signature, the signature is invalidated. If the person signs a petition with her nickname (Kate), instead of her voter registration name (Katherine) - even if all the other information is precisely the same - the signature is invalidated. If the cursive signature is illegible - even if it matches the signature on the voter registration form - it is often invalidated.

Sometimes, the court reviewing petition signature challenges invalidates an entire page of signatures - dozens of signatures - because one signer on the page is not found to be properly registered. At the time of signature collection, signature gatherers have no realistic means to verify if a signer is actually registered to vote when he signs the petition. A signer who claims to be registered but is not actually registered can cause dozens of signatures on the same petition to be invalidated. This is through no fault of the candidate or the person collecting signatures.

For a third party like the Green Party, the required number of signatures almost always exceeds the number of registered Greens, so Greens must seek the approval of thousands of ruling party voters let our candidates run against theirs. How is this small “d” democratic? In 2014, Greens will have to get

62,511 signatures to get a state-wide candidate on the ballot. Presently there are about 15-16,000 Greens registered in Pennsylvania.

The ruling parties need only 2,000 signatures to place their candidate on the ballot.

To account for signing errors, unregistered voters, and other problems, a party and its candidate must gather and submit at least twice as many signatures as is required.

Commonwealth Court is the designated authority overseeing ballot access challenges. In the 2004 Nader challenge the court did the examination itself with some help from the parties, and lost most of its Fall 2004 calendar to the process. It used all its judges and courtrooms over several weeks. It is unrealistic to expect that the Court can examine all of the relevant information

carefully and issue a decision in the short window of time between the date that petitions are due and the time when ballots have to be printed.

Even though the burden of proof should be on the challengers to a candidate's nominating petitions, Pennsylvania courts actually place the burden on the candidate submitting petitions to demonstrate that the signatures are valid. Because of the limited time and enormous resources required, assignment of the burden of proof is often dispositive in signature challenge cases.

In 2006 Carl Romanelli submitted 95,000 signatures, so a minimum of 27,930 signatures would have to be disqualified to remove his name from the ballot. His submission was on 3,700 petitions with some 500,000 boxes to examine. This is a task that has to be undertaken by both the challenger

and the candidate when a challenge is mounted.

Between 2004 and 2006, the Commonwealth Court changed the procedure it used to rule on petition signature challenges. In the case challenging to Carl Romanelli's petition signatures, the Court required challengers and defenders to cooperate in examining the petitions together in front of numerous state computer terminals. The Court itself only examined a fraction of the total signatures being challenged.

In both 2004 and 2006, the candidates who lost signature petition challenges were assessed costs in excess of \$75,000 to be paid to the challenger. Assessing a candidate costs for losing a petition signature challenge has a chilling effect on citizens who want to run for public office. There are very few kinds of

lawsuits in our legal system where the loser has to pay the winner's costs, but this is the practice that has been adopted by Pennsylvania courts against those seeking to exercise one of the most important rights of citizenship: the right to participate in elections.

There are other costs involved in running for office as a third party or independent candidate. Every nominating petition must be notarized before it is submitted. Current Pennsylvania law sets the rate a notary can charge at \$5.00 per petition. Were a statewide candidate to submit their 62,511 signatures one to a page, the bill would be some \$312,505. Candidates will usually submit many more signatures than the minimum requirement. Were the submissions full pages of 35 signatures per page, the cost would still be close to \$9,000

(vs. \$285 for the Democrat and Republican candidates).

Submitting multiple signatures per page in order to lower notary costs carries a big risk though. Pennsylvania courts have a propensity to invalidate the entire page of signatures when one signature is found lacking.

Another major issue that third party and independent candidates face in getting on the ballot is that Pennsylvania's own voter registration records are incomplete, inaccurate, and inconsistent.

Petition signatures must conform precisely with the voter's registration card. These are entered electronically into the Statewide Uniform Registry of Electors (known as S.U.R.E.), which purports to be the accurate electronic reproduction of the voter

registration form held at each county elections office. In about 10% of all voter records, the S.U.R.E. system does not contain a facsimile of the voter's signature. This results in a voter's petition signature to being invalidated.

Also, the S.U.R.E files cannot be searched easily (or sometimes at all) because of idiosyncrasies in the way that different counties enter data. For instance, Philadelphia county is the only county to insert a space between the Mc, Mac, and O' and the rest of the name. In 2006 this happened on 28,000 voters records. Many of these signatures will be invalidated because the parties, as part of the signature challenge procedure, will not be able to located the name unless they are fully aware of these idiosyncrasies. Given that challenge examinations take place in numerous locations and the candidates are often

represented by inexperienced volunteers, this fact alone represents a substantial lack of due process in the signature challenge mechanism.

The exclusion machinery cannot be operated in most statewide elections when a party makes a serious effort at putting a candidate on the ballot. A serious effort means submitting double the required number of signatures. A challenger would have one week to have thousands of pages of petitions copied by the Department of State at their pace on their machines. The copies would have to be organized, inventoried, packaged and distributed to examiners or volunteers. These people had to have been recruited and trained weeks or months before. Offices would have to have been rented or otherwise acquired. Supplies would have had to have been on hand. How many signatures would the candidate file? 62,800? In this case one

person could do the examination. Or 120,000 on 6,000 petitions which would require as many as 100 workers. Who has that kind of money to spend on speculation that a candidate will file?

Bonusgate illustrates the dangers to democracy represented by the enormity of mounting a challenge to a serious campaign and the difficulties of responding to that challenge. Bonusgate is the name that the press gave for the Democratic Party's misuse of state employees -- doing political work on government time -- in its challenges to Ralph Nader's 2004 campaign for President and Carl Romanelli's 2006 campaign for U.S. Senate. The Democrats mounting those petition signature challenges were initiated and led by the Democratic Legislative Caucus and several legislators such as Rep. Mike Veon (D). Both those challenges were

successful in getting Nader and Romanelli kicked off the ballot.

The people who organized the challenges and examined the signature petitions on behalf of the challengers were state employees working on state time using state offices and equipment and being paid state salaries and bonuses. The only thing not done by state workers was the 6-7 weeks of sitting in a Department of State office in front of a terminals examining and negotiating petition entries. Elected judges of both major parties awarded the challengers tens of thousands of dollars of costs to be paid by the unsuccessful candidates.

Many of these people involved in Bonusgate, including Rep. Veon, were convicted of corruption charges and served or are serving prison sentences. Nonetheless, Pennsylvania voters were wrongly deprived of an

opportunity to vote for Nader or Romanelli - candidates whom tens of thousands of Pennsylvanians wanted to see on the ballot, as demonstrated by the tens of thousands of signatures gathered on their petitions. The corruption convictions do nothing to remedy that wrong.

Greens can get on the ballot in the current environment occasionally, but the cost is enormous. A small party has to pay professionals to gather signatures. Costs to duplicate petitions, notarize them and defend them run into the tens of thousands of dollars. The most important cost is the potential award to the challengers in the event that the challenge to petition signatures is successful. Very few potential candidates have the personal or the party resources to pay \$100,000 or more to just get on the ballot. And of course a candidate can be buried in costs and still NOT get on the

ballot, which is a more likely outcome in a high-profile election.

My right and the rights of my fellow Greens -- all of us registered voters -- to vote for candidates of our choice has been taken from us in Pennsylvania because of the ballot access laws and, more importantly, the way those laws have been interpreted and enforced by Pennsylvania courts.

Finally I would point out that the criteria used to nullify a voter's signature on a Green Party nominating petition should be applied the same way in the Voter I.D. process to ensure fairness, equal protection, and consistency. This would include reliance on a defective and deficient S.U.R.E. system, exact replication of data such as address, house number, signature (nick names, middle or first initial, Jr., Sr., II, III), and signature facsimile, even as voters age and

penmanship changes. Those are the standards that are used to keep third party and independent candidates off the ballot. They should be used against voters voting for major political party candidates as **well**.