

**IN THE SUPREME COURT OF PENNSYLVANIA**

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No. 94 MAP 2008

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In re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an  
Independent Political Body for President and Vice President in the General Election of  
November 2, 2004

Ralph Nader, Petitioner-Appellant.

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**APPELLANT'S APPLICATION FOR REARGUMENT**

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On Direct Appeal from the Commonwealth Court's December 4, 2008 Order Entered at No. 568  
MD 2004

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## **APPELLANT’S APPLICATION FOR REARGUMENT**

Pursuant to Pa. R.A.P. 2544, Appellant Ralph Nader (“the Candidate”) respectfully requests reconsideration of the Court’s October 23, 2009 Order, which affirmed the December 4, 2008 Order of the Commonwealth Court. The Commonwealth Court Order declined to open the record or set aside a costs judgment in the amount of \$81,102.19 (“Judgment”), which was awarded to Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O’Connell (“Objectors”), following their challenge to the Candidate’s 2004 presidential nomination petitions. In further support of this application, the Candidate states as follows:

Reconsideration of the Court’s October 23, 2009 Order is urgently needed, because, on the same day that the Order was entered, five “Bonusgate” defendants reportedly agreed to plead guilty to numerous felony counts of criminal conspiracy, theft and conflict of interest.<sup>1</sup> The Court’s Order upholding Objectors’ Judgment thus rewards parties for participating in the same conduct for which the Attorney General of Pennsylvania is actively prosecuting a dozen others. Applnt. Br. 20-22. This conflict between the Court’s Order and a pending criminal prosecution cannot be tolerated, if the justice system in Pennsylvania is to adhere to the rule of law.

The rationale for the Court’s October 23, 2009 Order is impossible to discern, because the Court did not issue an accompanying opinion. The fiction upon which the Commonwealth Court relied, however – that the criminal conduct in connection with Objectors’ challenge is “wholly extraneous” to its decision to award litigation costs to them – cannot be maintained. Applnt. Br. 20-22. According to sworn testimony in the record, which Objectors do not dispute, the same attorney who submitted the bill of costs giving rise to Objectors’ Judgment also

coordinated the unlawful effort to prepare Objectors' challenge at taxpayer expense. Applnt. Br. 21.

Accordingly, the criminal conduct which gave rise to Objectors' Judgment is now a matter of record in this case, and leaves only one question to be decided on this appeal: Will the Supreme Court of Pennsylvania invoke its judicial power to reward such criminal conduct, or not? There is no third alternative. Either the Court will uphold Objectors' Judgment, thus awarding \$81,102.19 in litigation costs to parties who do not deny that they financed their litigation by means of a criminal conspiracy to misappropriate funds and resources from the taxpayers of Pennsylvania, or the Court will vacate Objectors' Judgment, thus taking the simple action necessary and appropriate to ensure that the highest Court in the Commonwealth does not stamp its imprimatur of approval upon such misconduct.

Given that Objectors do not and apparently cannot dispute the foregoing testimony implicating the attorney who submitted their bill of costs, the only proper disposition of this appeal is for the Court to vacate its August 22, 2006 Opinion, which affirmed the Commonwealth Court Order approving that bill of costs. Applnt. Br. 6-7. It is too plain for argument that parties cannot file litigation prepared by means of a criminal conspiracy to misappropriate taxpayer funds and resources, and then collect litigation costs for their effort. Applnt. Br. 22-23. Unless the Court reconsiders its October 23, 2009 Order, however, that is exactly what will happen in this case.

Reconsideration is also necessary because the Court appears to have overlooked landmark decisions of the Supreme Court of the United States, as well as numerous decisions of the federal courts, which hold that states may not require candidates and voters to incur a

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<sup>1</sup> See Tracie Mauriello, *Five Reach Deal in Bonuses Scandal*, PITTSBURGH POST-GAZETTE (Oct. 24, 2009). The Court may take judicial notice of newspaper articles. See *Watson v. Pennsylvania Turnpike Commission*, 125

financial burden in order to participate in elections. *See Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (holding poll taxes unconstitutional); *Bullock v. Carter*, 405 U.S. 134 (1972) (holding non-trivial filing fees for candidates unconstitutional); *Lubin v. Panish*, 415 U.S. 709 (1974) (holding filing fees for candidates unconstitutional in the absence of non-monetary alternatives); *see also Belitskus v. Pizzingrilli*, 343 F.3d 632 (3rd Cir. 2003) (enjoining enforcement of Pennsylvania’s filing fees against candidates unable to pay them); *Republican Party of Arkansas v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995) (holding that Arkansas cannot require political parties to hold and pay for primary elections); *Fulani v. Krivanek*, 973 F.2d 1539 (11th Cir. 1992) (declaring unduly burdensome signature verification fees for minor party candidates unconstitutional); *Dixon v. Maryland State Bd. of Elections*, 878 F.2d 776 (4th Cir. 1989) (declaring mandatory filing fee of \$150 for non-indigent write-in candidates unconstitutional); *McLaughlin v. North Carolina Board of Elections*, 850 F. Supp. 373 (M.D. N.C. 1994) (holding five-cent per signature verification fee unconstitutional); *Clean-Up ’84 v. Heinrich*, 590 F. Supp. 928 (M.D. Fl. 1984) (holding ten-cent per signature verification fee unconstitutional). Objectors’ Judgment, which requires the Candidate to pay more than \$80,000 in costs to his nominal challengers, grossly exceeds the constitutional limitations established by the foregoing cases. Therefore, the Court should reconsider its October 23, 2009 Order, to ensure that Pennsylvania law conforms with the United States Constitution.

As Justice Saylor recognized in his dissent from this Court’s August 22, 2006 Opinion, in which Justice Eakin joined, the relevant provision of the Pennsylvania Election Code, 25 P.S. § 2937 (“Section 2937”), properly construed, does not authorize the assessment of costs against candidates who defend their nomination petitions. *See In re: Nomination Paper of Ralph Nader*, 905 A.2d 450, 461 (Pa. 2006) (Saylor, J., dissenting). The majority never addressed Justice

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A.2d 354, 362 (Pa. 1956).

Saylor's rigorous textual analysis, but it remains unassailable. Further, Justice Saylor's analysis avoids constitutional infirmity under *Harper*, *Bullock*, *Lubin* and the federal cases cited herein, and it conforms with the clear intent of the legislature, which never intended Section 2937 to impose draconian burdens upon minor party candidates who seek to run for public office in Pennsylvania.<sup>2</sup>

The errors in the Commonwealth Court Order are thoroughly documented in the Candidate's Brief of Appellant. Not only did the Commonwealth Court rely upon a demonstrably false factual premise, Applnt. Br. 20-22, but it also denied the Candidate's right to present evidence regarding disputed issues of material fact, and to be heard at oral argument, in plain violation of the Pennsylvania Rules of Civil Procedure. Applnt. Br. 17-22. Rather than affirming such a patently flawed decision, thereby rewarding criminal conduct and rendering a provision of the Pennsylvania Election Code unconstitutional, this Court should reconsider its October 23, 2009 Order. Further, the Court should dispose of this matter by vacating its August 22, 2006 Opinion.

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<sup>2</sup> See, e.g., S. 3<sup>rd</sup> Cons. Cal. 58 (Pa. 1985) (statement of Sen. Williams) (Section 2937 should not be drafted so as to "have a chilling effect on the average person who may want in this democracy to run for office"); S. Supp. Cal. No. 1, 1483 (Pa. 1998) (statement of Sen. Kukovich) ("Do you remember how embarrassed we all were when [a bill] passed at the last minute last year...[would have] made it virtually impossible for a third party candidate to gather enough names on a petition to place her or his name on the ballot?").

## **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 6<sup>th</sup> day of November, 2009, I served a copy of the foregoing Application for Reargument, upon the following via First Class Mail:

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