

JUDGES OF THE COMMONWEALTH COURT OF PENNSYLVANIA, CHARLES W. JOHNS, the Prothonotary of the Supreme Court of Pennsylvania, and MICHAEL F. KRIMMEL, the Chief Clerk of the Commonwealth Court of Pennsylvania, and aver as follows:

PARTIES

1. Plaintiff Constitution Party of Pennsylvania is the Pennsylvania state affiliate of the national Constitution Party, and maintains a business address in Lancaster County, Pennsylvania. The Constitution Party was formed in 1992 under the name “U.S. Taxpayers Party,” and was formally recognized by the Federal Election Commission as a national political party in 1995. The mission of the Constitution Party is to elect candidates at all levels of government who will uphold the principles of the Declaration of Independence and the Constitution of the United States. The Constitution Party was recognized as a minor political party under Pennsylvania law until 2006, and is now recognized as a political body.

2. Plaintiff Wes Thompson presently resides in Allegheny County, Pennsylvania, and files this Complaint in his capacity as Chair of the Constitution Party of Pennsylvania. As party chair, Plaintiff Thompson has a duty to build party membership and to recruit party members to run for public office in Pennsylvania as candidates of the Constitution Party.

3. Plaintiff Green Party of Pennsylvania is a member of the Green Party of the United States, a coalition of 33 state Green Parties, and maintains a business address in Dauphin County, Pennsylvania. The mission of the Green Party of Pennsylvania is to elect candidates at all levels of government who support ten key values: Grassroots

Democracy; Social Justice and Equal Opportunity; Ecological Wisdom; Nonviolence; Decentralization; Community-Based Economics and Economic Justice; Feminism and Gender Equity; Respect for Diversity; Personal and Global Responsibility; and Future Focus. The Green Party of Pennsylvania is formally recognized as a political body under Pennsylvania law.

4. Plaintiff Hillary A. Kane presently resides in Philadelphia County, Pennsylvania, and files this Complaint in her capacity as Chair of the Green Party of Pennsylvania. As party chair, Plaintiff Kane has a duty to build party membership and to recruit party members to run for public office in Pennsylvania as candidates of the Green Party.

5. Plaintiff Libertarian Party of Pennsylvania is the third largest political party in Pennsylvania, with 30 registered members elected to public office in the state, and maintains a business address in Dauphin County, Pennsylvania. The mission of the Libertarian Party of Pennsylvania is to elect candidates at all levels of government who support maximization of civil liberty and economic liberty by shrinking Pennsylvania's state government to its true constitutional limits. The purpose of the Libertarian Party of Pennsylvania is to proclaim and implement the Statement of Principles of the National Libertarian Party by engaging in political and educational activities in the Commonwealth of Pennsylvania. The Libertarian Party of Pennsylvania is formally recognized as a minor political party under Pennsylvania law.

6. Plaintiff Michael J. Robertson presently resides in Clarion County, Pennsylvania, and files this Complaint in his capacity as Chair of the Libertarian Party of Pennsylvania. As party chair, Plaintiff Robertson has a duty to build party membership

and to recruit party members to run for public office in Pennsylvania as candidates of the Libertarian Party.

7. Defendant Pedro A. Cortes is Secretary of the Commonwealth of Pennsylvania. Secretary Cortes is the Commonwealth's chief election official and has ultimate authority over the enforcement of the Pennsylvania Election Code. Plaintiffs assert their claims against Defendant Secretary Cortes in his official capacity only, and do not assert claims against Defendant Secretary Cortes in his personal capacity. Defendant Cortes' address is One Penn Center, 2601 North 3rd Street, Harrisburg, PA, 17110.

8. Defendant Justices of the Supreme Court of Pennsylvania (hereinafter, "Defendant Justices") are members of the highest court in the Commonwealth of Pennsylvania.¹ The Supreme Court of Pennsylvania makes final interpretations of state law and has administrative authority over the entire Pennsylvania court system. Plaintiffs assert their claims against Defendant Justices in their official capacities only, and do not assert claims against Defendant Justices in their personal capacities. Further, Plaintiffs seek declaratory relief against Defendant Justices only, and do not seek any further or additional relief against Defendant Justices. The Defendant Justices' address is Supreme Court of Pennsylvania, 434 Main Capitol, Harrisburg, PA, 17108.

9. Defendant Judges of the Commonwealth Court of Pennsylvania (hereinafter, "Defendant Judges") are members of an intermediate appellate court of the Commonwealth of Pennsylvania.² The Commonwealth Court of Pennsylvania has original jurisdiction over all matters arising under the Pennsylvania Election Code.

¹ Defendant Justices are: Ronald D. Castille; Thomas G. Saylor; J. Michael Eakin; Max Baer; Debra Todd; Seamus P. McCaffrey; and Jane Cutler Greenspan.

Plaintiffs assert their claims against Defendant Judges in their official capacities only, and do not assert claims against Defendant Judges in their personal capacities. Further, Plaintiffs seek declaratory relief against Defendant Judges only, and do not seek any further or additional relief against Defendant Judges. The Defendant Judges' address is Commonwealth Court of Pennsylvania, 624 Irvis Office Building, Harrisburg, PA, 17120.

10. Defendant Charles W. Johns is Prothonotary of the Pennsylvania Supreme Court. Defendant Johns has authority to enter all court orders on the docket and to serve them upon parties. Plaintiffs assert their claims against Defendant Johns in his official capacity only, and do not assert claims against Defendant Johns in his personal capacity. The address of Defendant Johns is Supreme Court of Pennsylvania, 434 Main Capitol, Harrisburg, PA, 17108.

11. Defendant Michael F. Krimmel is Chief Clerk of the Commonwealth Court of Pennsylvania. Defendant Krimmel has authority to enter all court orders on the docket and to serve them upon parties. Plaintiffs assert their claims against Defendant Krimmel in his official capacity only, and do not assert claims against Defendant Krimmel in his personal capacity. Defendant Krimmel's address is Commonwealth Court of Pennsylvania, 624 Irvis Office Building, Harrisburg, PA, 17120.

JURISDICTION AND VENUE

12. Venue is proper in this Court because all plaintiffs are residents of Pennsylvania, and because the Defendants are state officials who maintain offices in Harrisburg, Pennsylvania. This Court has personal jurisdiction over the Defendants

² Defendant Judges are: Bonnie Brigance Leadbetter; Bernard L. McGinley; Doris A. Smith-Ribner; Dan Pellegrini; Renee Cohn Jubelirer; Robert Simpson, Jr.; Mary Hannah Leavitt; Johnny J. Butler; Rochelle S.

because they are public officials of the Commonwealth of Pennsylvania, and because they are residents of Pennsylvania in their personal capacities.

13. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because Plaintiffs' claims arise under the First and Fourteenth Amendments and Qualifications Clauses of the United States Constitution and 42 U.S.C. § 1983.

FACTUAL BACKGROUND

Introduction

14. The Pennsylvania Election Code, as authoritatively construed and applied by the Supreme Court of Pennsylvania and the Commonwealth Court of Pennsylvania, imposes unavoidable and severe burdens on any candidate for public office who is neither a Republican nor a Democrat, and thereby operates to freeze the political status quo in Pennsylvania.

15. As set forth more fully below, three components of the Pennsylvania Election Code combine to impose such burdens. First, the Election Code distinguishes between "Major Party" candidates – *i.e.*, Republicans and Democrats – and "Minor Party" candidates – *i.e.*, candidates of all other political parties – and allows Major Party candidates access to the general election ballot by means of publicly funded primary elections, but requires Minor Party and independent candidates to submit nomination petitions. Second, the Election Code authorizes private parties to challenge the validity of Minor Party and independent candidates' nomination petitions, and authorizes the court, in its discretion and without limitation, to tax litigation costs and attorneys fees against the defending candidates. Third, although the Election Code allows Minor Party and

independent candidates to avoid the taxation of such costs and fees by running as write-in candidates, the Commonwealth of Pennsylvania, by and through Defendant Secretary Cortes, does not ensure that votes cast for such candidates are counted.

16. The Pennsylvania Election Code thus provides Minor Party and independent candidates with only two alternatives for running for public office. Such candidates may seek placement on the general election ballot by submitting nomination petitions, or they may run as write-in candidates. If they submit nomination petitions, however, they face the threat that costs and fees will be taxed against them without limitation. In the alternative, if they run as write-in candidates, they face the threat that votes cast for them will not be counted.

17. The Pennsylvania Election Code does not merely threaten Minor Party and independent candidates with such burdens, but actually imposes them. In the 2004 General Election, the Commonwealth Court of Pennsylvania taxed more than \$80,000 in litigation costs against two independent candidates for President and Vice President of the United States, following a private party challenge to their nomination petitions. In the 2006 General Election, the Commonwealth Court taxed more than \$80,000 in litigation costs and attorneys fees against a Minor Party candidate for United States Senate, following a private party challenge to his nomination petitions. In both cases, the Supreme Court of Pennsylvania affirmed.

18. Minor Party and independent candidates who seek to avoid the taxation of such costs and fees by running as write-in candidates suffer an equally severe, although non-monetary, burden on their ability to participate in Pennsylvania's electoral process. In the 2006 General Election, elections officials in nine Pennsylvania counties did not

compute and certify votes validly cast for such candidates. In the 2008 General Election, elections officials in seven Pennsylvania counties did not compute and certify votes validly cast for such candidates and, on information and belief, elections officials in several more counties did not compute and certify complete write-in vote totals.

19. Accordingly, the burdens that the Pennsylvania Election Code imposes on Minor Party and independent candidates are both unavoidable and severe. The burdens are unavoidable because in order to run for public office, Minor Party and independent candidates must risk the taxation of substantial costs and fees against themselves, without limitation, or they must risk the disenfranchisement of their voter-supporters. These burdens are severe because they strongly deter or functionally bar Minor Party and independent candidates from participating in Pennsylvania's electoral process.

20. Plaintiffs, who are or were qualified minor political parties under Pennsylvania law,³ and the state Chairs of those parties, file this Complaint for Declaratory and Injunctive Relief pursuant to 42 U.S.C § 1983, to vindicate rights guaranteed to them by the First and Fourteenth Amendments, Qualifications Clauses and elsewhere in the United States Constitution. Plaintiffs seek declaratory relief as set forth below, in the form of a judgment holding two provisions of the Pennsylvania Election Code unconstitutional as applied. Plaintiffs further seek injunctive relief as set forth below, in the form of an Order enjoining Defendant Johns and Defendant Krimmel from entering upon the docket or serving upon any party an order or judgment of the Supreme Court of Pennsylvania or of the Commonwealth Court of Pennsylvania, which taxes costs

or fees against candidates who run for public office as nominees of Plaintiff Minor Parties. Finally, Plaintiffs seek injunctive relief as set forth below, in the form of an Order directing Defendant Cortes to take any and all measures necessary to ensure that all validly cast write-in votes are accurately and completely computed and certified for each candidate, as required by the Pennsylvania Election Code.

The Pennsylvania Election Code

21. The Pennsylvania Election Code defines a political party as:

Any party or political body, one of whose candidates at the general election next preceding the primary polled in each of at least ten counties of the State not less than two percentum of the largest entire vote cast in each of said counties for any elected candidate, and polled a total vote in the State equal to at least two per centum of the largest entire vote cast in the State for any elected candidate. 25 Pa. Cons. Stat. § 2831(a) (“Section 2831(a)”).

Pursuant to Section 2831(a), Plaintiff Libertarian Party, the Democratic Party and the Republican Party are all qualified political parties under Pennsylvania law, based upon the 2008 General Election returns. Plaintiff Constitution Party and Plaintiff Green Party were qualified political parties until 2006, but are now recognized only as political bodies, because they failed to place candidates on the General Election ballot in 2006 and 2008.

22. Pennsylvania law further defines and distinguishes a Minor Party as a:

political party . . . whose State-wide registration is less than fifteen per centum of the combined State-wide registration for all State-wide political parties as of the close of the registration period immediately preceding the most recent November election. 25 Pa. Cons. Stat. § 2872.2 (“Section 2872.2”).

³ Plaintiff Libertarian Party of Pennsylvania is formally recognized as a qualified Minor Party under Pennsylvania law, based upon the 2008 General Election returns. Plaintiff Constitution Party of Pennsylvania and Plaintiff Green Party of Pennsylvania were formally recognized as Minor Parties until 2006, when they failed to place any candidates for statewide office on the ballot during the General Election.

Pursuant to Section 2872.2, Plaintiff Constitution Party, Plaintiff Green Party and Plaintiff Libertarian Party were all Minor Parties prior to the 2006 General Election.⁴ The Republican and Democratic parties (hereinafter, “Major Parties”) are the only qualified political parties under Section 2831(a), which are not defined as Minor Parties under Section 2872.2.

23. Pennsylvania’s Major Parties place their candidates on the ballot by means of publicly funded primary elections. 25 Pa. Cons. Stat. § 2862. All other candidates, including candidates of Plaintiff Constitution Party, Plaintiff Green Party and Plaintiff Libertarian Party, as well as independent candidates, must submit nomination petitions with signatures of qualified electors equal in number to two percent of the entire vote cast for any candidate elected to statewide office in the preceding general election. 25 Pa. Cons. Stat. § 2911(b) (“Section 2911(b)”).

24. Private parties may challenge the validity of any “nomination petition or paper” that a Minor Party or independent candidate submits pursuant to Section 2911(b) by means of “a petition” setting forth objections to the candidate’s nomination petition or paper, “and praying that the said petition or paper be set aside.” 25 Pa. Cons. Stat. § 2937 (“Section 2937”). Section 2937 further provides:

In case any such petition is dismissed, the court shall make such order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just. *Id.*

Following the 2004 General Election, a divided Supreme Court of Pennsylvania invoked Section 2937 for the first time to authorize the taxation of costs not only against parties

⁴ Although the Commonwealth of Pennsylvania does not presently recognize Plaintiff Constitution Party and Plaintiff Green Party as qualified Minor Parties, based upon the 2006 and 2008 General Election returns, this Complaint refers to them as such to distinguish them from the two Major Parties.

who file a petition challenging a candidate's nomination petition or paper, "in case any such petition is dismissed," but also the taxation of costs against defending candidates themselves, in case their nomination petition or paper is dismissed. *See In re: Nomination Paper of Ralph Nader*, 905 A.2d 450 (Pa. 2006).

25. Section 2937, as authoritatively construed by the Supreme Court of Pennsylvania, provides no notice to Minor Party and independent candidates regarding the costs and fees that may be taxed against them if they defend nomination petitions that they are required to submit pursuant to Section 2911(b). In addition, Section 2937 imposes no limitation on the amount of costs and fees that a court may impose in its discretion and "as it shall deem just." *Id.*

26. Minor Party and independent candidates who seek to run for public office in Pennsylvania free from the threat that costs and fees will be taxed against them without limitation pursuant to Section 2937 have only one alternative. Such candidates may run as write-in candidates. The Pennsylvania Election Code specifically authorizes voters to vote for write-in candidates, and provides a mechanism for casting such votes. 25 Pa. Cons. Stat. § 2963(a) ("Section 2963(a)") ("To vote for a person whose name is not on the ballot, write, print or paste his name in the blank space provided for that purpose").

27. The Pennsylvania Election Code also requires that county elections officials compute and certify votes cast for write-in candidates pursuant to Section 2963(a). 25 Pa. Cons. Stat. § 3155 ("Section 3155") ("The county board, in computing the votes cast at any primary or election, shall compute and certify votes cast on irregular ballots exactly as such names were written, stamped, affixed to the ballot by sticker, or

deposited or affixed in or on receptacles for that purpose, and as they have been so returned by the election officers”).

28. Notwithstanding the explicit language of Section 2963(a), which authorizes voters to vote for write-in candidates and provides a mechanism for casting such votes, and the explicit language of Section 3155, which requires county elections officials to “compute and certify” such votes, county elections officials in Pennsylvania regularly fail to count write-in votes. Defendant Secretary Cortes’ failure to ensure that county elections officials compute and certify write-in votes pursuant to Section 3155 thus operates as a functional bar to the participation of Minor Party and independent candidates who seek to run for public office in Pennsylvania free from the threat that they will be taxed with costs and fees without limitation pursuant to Section 2937.

The General Elections of 2004-2008

29. In the 2004 General Election, Ralph Nader and Peter Miguel Camejo submitted nomination petitions pursuant to Section 2911(b), seeking access to Pennsylvania’s ballot as independent candidates for President and Vice President of the United States, respectively. A petition was filed to challenge the candidates’ nomination petitions, and on October 13, 2004, the Commonwealth Court of Pennsylvania set aside the nomination petitions. *See In re: Nomination Petition of Ralph Nader*, 865 A.2d 8 (Pa. Commw. 2004).

30. On October 14, 2004, the Commonwealth Court entered an Order, without opinion, taxing costs of the challenge proceedings against Mr. Nader and Mr. Camejo. On December 3, 2004, the Commonwealth Court entered a second Order, without opinion, approving a bill of costs submitted by the challengers’ law firm in the amount of

\$81,102.19. The December 3, 2004 Order directed Mr. Nader and Mr. Camejo personally to pay such costs.

31. The Supreme Court of Pennsylvania affirmed the Orders taxing costs against Mr. Nader and Mr. Camejo in its August 22, 2006 decision adopting a novel construction of Section 2937. *See In re: Nomination Paper of Ralph Nader*, 905 A.2d 450. Prior to that decision, Section 2937 had never before been invoked to authorize the taxation of costs or fees against defending candidates in a nomination petition challenge. On April 23, 2007, the Commonwealth Court entered a final judgment against Mr. Nader and Mr. Camejo, and ordered them to pay \$81,102.19 to the parties who challenged their nomination petitions.

32. In the 2006 General Election, Plaintiff Constitution Party of Pennsylvania, Plaintiff Green Party of Pennsylvania and Plaintiff Libertarian Party of Pennsylvania were all qualified Minor Parties under Pennsylvania law. However, candidates from each of these parties either refused to submit or else withdrew the nomination petitions required of Minor Party candidates under Section 2911(b), due to the threat that they would be taxed with costs and fees pursuant to Section 2937.

33. Only one Minor Party nominee, the Green Party candidate for United States Senate Carl Romanelli, submitted nomination petitions pursuant to Section 2911(b), seeking access to Pennsylvania's 2006 General Election ballot. A petition was filed to challenge Mr. Romanelli's nomination petitions, and on September 26, 2006, the Commonwealth Court of Pennsylvania set aside the nomination petitions.

34. On October 2, 2006, the law firm that challenged Mr. Romanelli's nomination petitions submitted a bill of costs seeking \$89,668.16 in litigation costs and

attorneys fees pursuant to Section 2937. In an Opinion and Order entered on January 24, 2008, the Commonwealth Court approved the bill of costs except to the extent that it requested \$9,260.20 for tolls, mileage and travel time incurred by the challengers' attorneys. The Commonwealth Court took judicial notice of its own decision holding that Section 2937 does not authorize attorneys fees, but nevertheless approved \$48,285 in attorneys fees pursuant to Section 2503(7) of the Pennsylvania Judicial Code. 42 Pa. Cons. Stat. § 2503(7) (authorizing the award of attorneys fees to "any participant...as a sanction against another participant for dilatory, obdurate or vexatious conduct"). The principal justification for the sanction was that Mr. Romanelli was unable to ensure that nine people were present on his behalf for every day of the challenge proceedings. The court also cited unspecified "disingenuousness" by the candidate. The court therefore directed Mr. Romanelli and his attorney to pay \$80,407.56 in litigation costs and fees, including attorneys fees.

35. Minor Party candidates who sought to avoid the taxation of such costs and fees in the 2006 General Election had no alternative under the Pennsylvania Election Code but to run as write-in candidates. Thus Hagan Smith, the gubernatorial candidate of Plaintiff Constitution Party, Marakay Rogers, the gubernatorial candidate of Plaintiff Green Party, and Ken V. Krawchuk, the senatorial candidate of Plaintiff Libertarian Party, each withdrew or declined to submit nomination petitions pursuant to Section 2911(b). Each of these candidates ran instead as write-in candidates.

36. Elections officials in nine Pennsylvania counties (Armstrong, Clinton, Fulton, Jefferson, Lawrence, Monroe, Northumberland, Perry and Philadelphia) failed to count write-in votes validly cast pursuant to Section 2963(a) for candidates Smith,

Rogers and Krawchuck, in violation of Section 3155, in the 2006 General Election. Plaintiffs cannot determine the precise number of write-in votes that county elections officials failed to count, nor how many of their voter-supporters were disenfranchised as a result of such failure. However, 7,662 voters residing in the foregoing counties were registered members of Plaintiff Constitution Party, Plaintiff Green Party or Plaintiff Libertarian Party, and many of these voters did cast valid write-in votes for candidates of Plaintiff Minor Parties pursuant to Section 2963(a).

37. On July 10, 2008, Pennsylvania Attorney General Thomas Corbett charged twelve members or employees of the Pennsylvania House Democratic Caucus with numerous counts of criminal conspiracy, theft and conflict of interest. A 75-page Grand Jury Presentment filed in conjunction with these charges alleges that the challenges filed to the Nader-Camejo nomination petitions in 2004 and the Romanelli nomination petitions in 2006 were secretly prepared by employees of the Commonwealth of Pennsylvania using funds and resources misappropriated from the taxpayers of Pennsylvania.⁵ Notwithstanding the Attorney General's allegations of criminal misconduct by parties who prepared the challenges to the Nader-Camejo and Romanelli nomination petitions, the Commonwealth Court of Pennsylvania entered two unpublished opinions refusing to set aside its judgments awarding litigation costs and fees to the parties who filed these challenges. *See In re: Nomination Paper of Ralph Nader*, No. 568 M.D. 2004 (Dec. 4, 2008) (attached as Exhibit A); *In re Nomination Paper of Marakay Rogers*, No. 426 M.D. 2006 (Jan. 23, 2009) (attached as Exhibit B). Both decisions are on appeal before the Supreme Court of Pennsylvania.

⁵ The Grand Jury Presentment is incorporated herein by reference, and is available at: <http://www.attorneygeneral.gov/uploadedFiles/Press/Harrisburg-Bonus-GJ-Presentment.pdf>.

38. Attorney General Corbett's Grand Jury investigation and prosecution of the criminal charges filed on July 10, 2008 is ongoing. No challenges to any candidate's nomination petitions submitted pursuant to Section 2911(b) were filed pursuant to Section 2937 during the 2008 General Election.

39. Following the 2008 General Election, elections officials in seven Pennsylvania Counties failed to compute and certify write-in votes validly cast for Plaintiff Party candidates pursuant to Section 2963(a), and on information and belief, elections officials in several more counties computed and certified incomplete write-in vote totals, in violation of Section 3155.

COUNT I

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH AMENDMENTS AND QUALIFICATIONS CLAUSES

**(Request for Declaratory Judgment Pursuant to 42 U.S.C. § 1983 Holding 25 Pa.
Cons. Stat. § 2872.2 Unconstitutional as Applied)**

40. Plaintiffs incorporate and reassert paragraphs 1-39 as if fully set forth herein.

41. Section 2872.2 of the Pennsylvania Election Code defines any qualified political party whose membership accounts for less than fifteen percent of registered voters in Pennsylvania as a Minor Party. By distinguishing Minor Party candidates from Major Party candidates, Section 2872.2 subjects Plaintiff Parties to the burden of conducting a new petition drive for each election cycle – even if Plaintiff Party candidates win election to statewide office in the previous election – as long as Plaintiff Parties' membership accounts for less than fifteen percent of registered voters. Section

2872.2 thus arbitrarily discriminates against and imposes a severe and unnecessary burden upon Plaintiff Parties.

42. In addition, because the Pennsylvania Election Code establishes an alternative set of procedures for all non-Major Party candidates who seek to run for public office in Pennsylvania, Section 2872.2 imposes unavoidable and severe burdens on the ability of Minor Party and independent candidates to participate in Pennsylvania's electoral process, as set forth herein.

43. Specifically, Section 2937 subjects Minor Party and independent candidates to the threat that they will be taxed with litigation costs and fees, including attorneys fees, without limitation, if they submit nomination petitions as required by Section 2911(b). In the alternative, the Pennsylvania Election Code subjects Minor Party and independent candidates to the threat that votes validly cast for them pursuant to Section 2963(a) will not be counted. Because the Pennsylvania Election Code provides no third alternative for Minor Party and independent candidates to run for public office, the threat that such candidates will incur one of the foregoing burdens is unavoidable.

44. The unavoidable burdens to which Section 2872.2 subjects Minor Party and independent candidates are not speculative, but concrete and actual.

45. Specifically, Minor Party and independent candidates required to submit nomination petitions pursuant to Section 2872.2 and Section 2911(b) have been taxed with more than \$80,000 in costs and fees arising from challenges to the validity of such nomination petitions. Minor Party and independent candidates who seek to avoid the taxation of such costs and fees have suffered the disenfranchisement of their voter-supporters who cast valid votes for them pursuant to Section 2963(a), due to the failure of

Defendant Secretary Cortes to ensure that such votes are computed and certified, as required by Section 3155.

46. The unavoidable burdens that Section 2872.2 imposes upon Minor Party and independent candidates are severe, because they strongly deter or functionally bar such candidates from participating in Pennsylvania's electoral process.

47. Section 2872.2 therefore chills Plaintiffs' lawful and peaceful exercise of their freedoms of speech, petition, assembly and association for political purposes, as guaranteed to them by the First Amendment, Fourteenth Amendment, Qualifications Clauses and elsewhere in the United States Constitution. Section 2872.2 also violates Plaintiffs' right to due process of law, guaranteed to them by the Fourteenth Amendment to the United States Constitution, by subjecting them to the threat of substantial financial burdens, without notice or limitation, upon their lawful and peaceful exercise of the freedoms set forth herein.

48. WHEREFORE, Plaintiffs respectfully request that this Court enter a declaratory judgment holding Section 2872.2, independently and in conjunction with other provisions of the Pennsylvania Election Code, unconstitutional as applied to Plaintiffs, because it impermissibly burdens and chills Plaintiffs' exercise of freedoms guaranteed to them by the First Amendment, Fourteenth Amendment, Qualifications Clauses and elsewhere in the United States Constitution, and because it subjects them to such burdens without notice or limitation, in violation of their right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT II

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH AMENDMENTS AND QUALIFICATIONS CLAUSES

(Request for Declaratory Judgment Pursuant to 42 U.S.C. § 1983 Holding 25 Pa. Cons. Stat. § 2937 Unconstitutional as Applied)

49. Plaintiffs incorporate and reassert paragraphs 1-48 as if fully set forth herein.

50. Section 2872.2 and Section 2911(b) of the Pennsylvania Election Code require all candidates who are not candidates of a Major Party to submit nomination petitions in order to qualify for placement on Pennsylvania's general election ballot. Section 2937 authorizes private parties to submit petitions challenging the validity of any nomination petition or paper submitted pursuant to Section 2911(b).

51. Section 2937, as authoritatively construed by Defendant Justices for the first time following the 2004 General Election, authorizes Defendant Judges to tax costs and fees against Minor Party and independent candidates, without notice or limitation, subject only to the Defendant Judges' discretion, following a private party challenge to the candidates' nomination petitions.

52. Following the 2004 and 2006 General Elections, Defendant Judges and/or Defendant Justices have ordered Minor Party and independent candidates, pursuant to Section 2937, to pay more than \$80,000 each, arising from challenges to the candidates' nomination petitions.

53. The costs and fees taxed against defending Minor Party and independent candidates pursuant to Section 2937 are payable to the private parties who challenge such candidates' nomination petitions, or to their legal counsel. Defendant Judges taxed such costs and fees following the candidates' defense of their nomination petitions, pursuant to

the filing of a bill of costs by the challengers' legal counsel. Defendant Judges may approve such a bill of costs without limitation, subject only to the court's discretion.

54. Section 2937 neither provides Minor Party and independent candidates with notice that they may be taxed with costs and fees if they defend nomination petitions that they submit as required pursuant to Section 2911(b), nor notice as to the amount of such costs and fees that may be taxed against them, which is entirely discretionary with the court.

55. Section 2937 therefore chills Plaintiffs' lawful and peaceful exercise of their freedoms of speech, petition, assembly and association for political purposes, as guaranteed to them by the First Amendment, Fourteenth Amendment, Qualifications Clauses and elsewhere in the United States Constitution. Section 2937 also violates Plaintiffs' right to due process of law, guaranteed to them by the Fourteenth Amendment to the United States Constitution, by subjecting them to the threat of substantial financial burdens, without notice or limitation, upon their lawful and peaceful exercise of the freedoms set forth herein.

56. WHEREFORE, Plaintiffs respectfully request that this Court enter a declaratory judgment holding Section 2937, independently and in conjunction with other provisions of the Pennsylvania Election Code, unconstitutional as applied by Defendant Judges and Defendant Justices to Plaintiffs, because it impermissibly burdens and chills Plaintiffs' exercise of freedoms guaranteed to them by the First Amendment, Fourteenth Amendment, Qualifications Clauses and elsewhere in the United States Constitution, and because it subjects Plaintiffs to such burdens without notice or limitation, in violation of

their right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT III

VIOLATION OF RIGHTS GUARANTEED BY FIRST AND FOURTEENTH AMENDMENTS AND QUALIFICATIONS CLAUSES

(Request for Injunction Pursuant to 42 U.S.C. § 1983 Requiring Defendant Secretary Cortes to Take Any and All Measures Necessary to Ensure That Votes Validly Cast Pursuant to 25 Pa. Cons. Stat. § 2963(a) Shall Be Computed and Certified Completely for Each Candidate, as Required by 25 Pa. Cons. Stat. § 3155)

57. Plaintiffs incorporate and reassert paragraphs 1-56 as if fully set forth herein.

58. Section 2963(a) of the Pennsylvania Election Code authorizes voters to cast a write-in vote for any candidate for public office in Pennsylvania, and provides them with a mechanism for casting such votes.

59. Section 2963(a) establishes the only alternative that the Pennsylvania Election Code provides for Minor Party and independent candidates and their voter-supporters to associate within the electoral arena free from the financial burdens that Section 2937 threatens to impose upon such candidates.

60. In spite of the mandatory language of Section 3155, which requires county elections officials to compute and certify votes validly cast pursuant to Section 2963(a), elections officials in numerous Pennsylvania counties routinely fail to compute and certify such votes validly cast for Minor Party and independent candidates, including candidates of Plaintiff Minor Parties, by their voter-supporters.

61. The failure of county elections officials to count votes validly cast for Minor Party and independent candidates pursuant to Section 2963(a), as required by

Section 3155, functionally bars such candidates from participating in Pennsylvania's electoral process. Furthermore, such failure has resulted in the disenfranchisement of Plaintiff Minor Parties' voter-supporters. On information and belief, thousands of Plaintiff Minor Parties' voter-supporters are disenfranchised in each general election in Pennsylvania as a result of Defendant Secretary Cortes' failure to ensure that county elections officials accurately compute and certify votes validly cast pursuant to Section 2963(a), as required by Section 3155.

62. WHEREFORE, Plaintiffs respectfully request that this Court enter an injunction requiring Defendant Secretary Cortes to take any and all measures necessary to ensure that votes validly cast pursuant to Section 2963(a) are accurately and completely computed and certified for each candidate, as required by Section 3155.

PRAYER FOR RELIEF

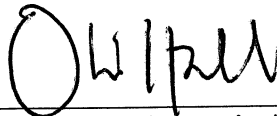
63. WHEREFORE, Plaintiffs respectfully request that this Court:
- A. Enter a declaratory judgment holding 25 Pa. Cons. Stat. § 2872.2, independently and in conjunction with other provisions of the Pennsylvania Election Code, unconstitutional as applied to Plaintiffs;
 - B. Enter a declaratory judgment holding 25 Pa. Cons. Stat. § 2937, independently and in conjunction with other provisions of the Pennsylvania Election Code, unconstitutional as applied to Plaintiffs;
 - C. Enter an injunction enjoining Defendant Johns and Defendant Krimmel from entering any order or judgment of Defendant Justices or Defendant Judges, or from serving any such order or judgment upon any party, which taxes costs or fees against candidates who ran or will run for public office in Pennsylvania as nominees of Plaintiff Minor Parties, which arise from proceedings initiated pursuant to Section 2937 to challenge the validity of the candidates' nomination petitions;
 - D. Enter an injunction requiring Defendant Secretary Cortes to take any and all measures necessary to ensure the accurate and complete computing and certifying of all votes validly cast for each candidate pursuant to 25 Pa. Cons. Stat. § 2963(a), as required by Section 3155;

E. Award any such other and further relief as the Court shall deem just and proper;

F. Award attorneys fees pursuant to 42 U.S.C. § 1988.

Dated: April 21, 2009

Respectfully submitted,



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**For Identification Purposes Only

EXHIBIT A

In re: Nomination Paper of Ralph Nader, No. 568 M.D. 2004 (Dec. 4, 2008)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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 :
: No. 568 M.D. 2004
Linda S. Serody, Roderick J. Sweets, :
Ronald Bergman, Richard Trinclisti, :
Terry Trinclisti, Bernie Cohen-Scott, :
Donald G. Brown and Julia A. :
O'Connell, :
Objectors :
: :
Ralph Nader and Peter Miguel Camejo, :
Petitioners :

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE
BONNIE BRIGANCE LEADBETTER**

FILED: December 4, 2008

Ralph Nader and Peter Miguel Camejo (Petitioners) petition to open or set aside a judgment entered on April 23, 2007. That order assessed certain costs incurred in connection with hearings on challenges to the nomination papers they filed seeking to run for the respective offices of President and Vice President of the United States in the 2004 general election.¹ They contend that opening or vacating the judgment is justified by newly discovered evidence of a criminal scheme by

¹Subsequent to the filing of the petition to open or set aside the judgment, the Court received notification of the death of petitioner Peter Miguel Camejo. Prior to his death, Camejo submitted payment of \$20,000.00 in exchange for Objector's relinquishment of all claims against him arising from the nomination challenge.

which employees and misappropriated funds and resources of the Commonwealth were used to review signatures on the nomination papers in preparing the challenge to the nominations.

In August 2004, Petitioners filed with the Secretary of the Commonwealth of Pennsylvania nominating papers to have their names listed as candidates for the offices of President and Vice President of the United States on the ballot in the general election. To qualify to be listed on the ballot for those offices, the Petitioners were required to provide nominating papers containing the signatures of 25,697 persons registered to vote in the Commonwealth. Petitioners submitted papers containing 51,273 signatures. The Objectors, as registered voters in the Commonwealth, filed this action challenging whether a sufficient number of the signatures were valid and authentic. On October 13, 2004, after three weeks of exhaustive and expedited hearings reviewing challenged signatures line-by-line, this Court issued its Consolidated Findings, Opinion and Order in which it determined that only 18,818 of the 51,273 signatures were valid and authentic, and ordered the Secretary of the Commonwealth not to certify Petitioners as candidates on the ballot. *In re Nader*, 865 A.2d 8 (Pa. Cmwlth. 2004).

Then President Judge Colins observed with respect to the proceedings and the force of the evidence heard by the Court that:

By this Court's Order of August 20, 2004, both sides were directed to be prepared to present their case in the various forums commencing Monday September 27, 2004 and were told that cooperation from both sides was necessary if the review were to be done in anything approaching a timely manner and that the Court would not tolerate intemperate or obstructionist conduct on the part of either the Candidates or the Objectors. The Candidates, through then counsel Samuel Stretton, Esq., were warned that a review of over 50,000 signatures was an ominous undertaking requiring a great deal of

manpower and expense and that the Candidates' pre-hearing cooperation in examining challenged signatures with the Objectors, such that potentially valid and invalid signatures could be stipulated to, would be essential to an efficient and timely review. The Candidates chose to ignore this Court's warning and proceeded to do as little as possible prior to the hearings, in an initial attempt to prevent an accurate tally of the signatures.

* * *

When this Court's review began on September 27, 2004, the Candidates, in total disregard of this Court's order of August 20, 2004, were unprepared to respond to the allegations set forth in the Objectors Petition and chose instead to focus on delay and obfuscation.

* * *

[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the Candidates, through their representatives (not their attorneys), shocks the conscience of the Court. In reviewing signatures, it became apparent that in addition to signing names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and the ubiquitous "Ralph Nader," there were thousands of names that were created at random and then randomly assigned either existent or non-existent addresses by the circulators.

Id. at 13-14, 18.

Following entry of the order setting aside the nomination papers, the Court entered orders assessing costs against Petitioners individually and the Nader/Camejo campaign. On October 14, 2004, the court ordered payment for the appearance of court reporters and transcript preparation and, on January 14, 2005, the court approved the Bill of Costs submitted by the Objectors, which in addition to the costs of stenographic services and transcript preparation included the costs incurred for handwriting expert witnesses. The approved costs totaled \$81,102.19. The Pennsylvania Supreme Court affirmed both the order striking the nominations

and the assessment of costs. *In re Nomination Paper of Nader*, 588 Pa. 450, 905 A.2d 450 (2006). Thereafter, Objectors entered Judgment and undertook efforts toward execution.

In July 2008, Pennsylvania's Attorney General announced the filing of criminal charges against members or employees of the Pennsylvania House of Representatives and released a Grand Jury Presentment of the investigation leading up to the filing of the charges. The Presentment and charges alleged a scheme that had been on-going for several years to use public funds, employees and resources for political campaign purposes, including to challenge nominating petitions of candidates who were political opponents of incumbents of the Pennsylvania Legislature, and to pay secret bonuses to legislative employees for their work in such campaigns. A section of the Presentment entitled "Nader Petition Challenge" noted that it was felt in Democratic Party circles that Nader's presence on the ballot would siphon votes from the Party's Presidential nominee, John Kerry, and described how as many as 50 House Democratic Caucus employees were enlisted by Caucus supervisors and worked a substantial amount of time during their regular employment hours at their Caucus workplaces, using Caucus computers and a computer program designed for legitimate legislative use, to examine Petitioners' nominating papers for improprieties that could be the basis of a challenge, and that this work produced evidence of a significant number of probably invalid signatures. Caucus members and staffers felt that, given the number of signatures on Petitioners' papers and the requirement of Pennsylvania's Election Code that a challenge to nominating documents be filed within seven days after the last day permitted for their filing, a successful challenge to Petitioners' nominating documents would not have been possible without the public

employees, funds and resources that were utilized. Many of the Caucus employees and supervisors involved received secret bonuses for 2004.

Petitioners' instant request that the Judgment be opened or set aside is based entirely on the information contained in the Presentment and the fact of the filing of the criminal charges. Petitioners cite Pennsylvania appellate cases for the proposition that final judgments entered in adverse proceedings should be opened or vacated where there is fraud or some other circumstance so grave and compelling as to constitute "extraordinary cause". They argue that unless the Judgment is opened or vacated, they "will be required by the Court's own judgment to reimburse parties for costs allegedly incurred in connection with criminal misconduct," and that this constitutes "extraordinary cause" justifying the relief they request. *Petition to Open the Record or to Set Aside Judgment*, ¶15.

Section 5505 of the Judicial Code, 42 Pa. C.S. §5505, restricts the power of the courts to amend, modify or vacate final orders to the 30 day period following the date the order is entered. *Ainsworth v. Department of Transportation*, 807 A.2d 933 (Pa. Cmwlth. 2002). The discretionary power of courts to open or set aside judgments after the 30 day period is very limited. *Simpson v. Allstate Insurance Co.*, 504 A.2d 335 (Pa. Super. 1986). For example, in *Department of Transportation v. Axsom*, 598 A.2d 616 (Pa. Cmwlth. 1991)², the trial judge reconsidered and vacated an order dismissing Axsom's appeal from the Department's suspension of his driving privileges more than thirty days after the order became final based on having misperceived the facts in issuing the order. This Court reversed and reinstated the order on the ground that there was not fraud

² *Axsom* was overruled in part on other grounds in *Shapiro v. Center Township*, 632 A.2d 994 (Pa. Cmwlth. 1993).

or another grave or compelling circumstance since the trial judge's misperception was not caused by the Department. In *Axson*, the court stated:

Generally, judgments regularly entered in adverse proceedings cannot be opened or vacated after they have become final, unless there has been fraud or some other circumstances "so grave or compelling as to constitute 'extraordinary cause' justifying intervention by the court." ... Such circumstances have customarily entailed an oversight or act by the court, or failure of the judicial process, which operates to deny the losing party knowledge of entry of final judgment and commencement of the running of the appeal period. (Citations omitted.)

Id. at 619.

The few cases cited by Petitioners in which a judgment was opened or vacated after the time for appeal had run indicate that, beyond matters that deny the losing party knowledge of entry of final judgment and commencement of the running of the appeal period, circumstances that constitute "extraordinary cause" to open a judgment after the time for appeal has run are those that involve gravely wrongful or flawed conduct or processes in the case before the court. See *Gasbarini's Estate v. Medical Center of Beaver County, Inc.*, 487 Pa. 266, 409 A.2d 343 (1979) (judgment opened after thirty days where plaintiff's attorney, while assuring client he was prosecuting action, had been suspended from practice and thus could not appear at hearing, resulting in dismissal of client's action); *First Union Mortgage Corp. v. Frempong*, 744 A.2d 327 (Pa. Super. 1999) (summary judgment opened after thirty days where additional damages associated with mortgage foreclosure were attributable to lengthy delays caused by defendant's extraordinary abuses of legal system); *Fredley v. Crandall Filling Machinery, Inc.*, 342 A.2d 757 (Pa. Super. 1975) (judgment on pleadings in breach of warranty

action opened after thirty days where, three days after argument and less than one month before judgment entered, Superior Court decision changed the applicable law and neither counsel nor trial court learned of decision until months after judgment entered); *Great American Credit Corp. v. Thomas Mini-Markets, Inc.*, 326 A.2d 517 (Pa. Super. 1974) (summary judgment granted on basis of trial court's belief that motion was uncontested was opened when trial court subsequently discovered that request for extension of time to answer motion had been mislaid in transmission through court processes).

Petitioners do not claim that the Presentment and criminal charges reveal that fraudulent, wrongful or flawed conduct or processes in the case then before the Court marred the Court's decision to set aside the nominations and to assess costs. They do not assert that any of the evidence upon which any of the signatures on the nominating petitions were disqualified or upon which the cost for court reporters and handwriting experts was determined was fabricated or doctored or that any part of the process by which the Court conducted the proceedings or reached and rendered its decision with respect to those matters was in any way improper or flawed.


Rather; Petitioners point to the Presentment and criminal charges indicating that public funds, personnel and resources were improperly used to marshal evidence of numerous invalid signatures on the nominating papers. They contend that inasmuch as this use of public employees, funds and resources is not only improper, but also criminal, the Judgment reimburses Objectors for costs incurred in the performance of illegal acts. This contention wrongly associates the improper/illegal conduct with the costs incurred in adjudicating the signature challenge. The Objectors did not act improperly or illegally in asserting the

challenge to the nominations. The costs assessed against Petitioners are not related to the pre-challenge review of the nominating papers; the persons accused of improper conduct during the pre-challenge period are not the Objectors to whom payment was directed. Any improper conduct or expenses associated with the pre-challenge signature review neither tainted the adjudication of the signature challenge itself, which proved meritorious, nor played any role in the Petitioners' unnecessary delay and obdurate refusal to concede the invalidity of some obviously defective signatures during the adjudication.³ Improper conduct on the part of legislative staffers involved in reviewing the nominating papers, serious and deserving of criminal prosecution as it may be, does not undermine the essential facts supporting the Judgment. The Nader/Camejo nominating papers did not contain the requisite number of valid signatures, but rather nearly two-thirds of the signatures on Petitioners' nominating papers were invalid, very many blatantly so. This wanton deficiency in the papers coupled with the actions that unnecessarily delayed and extended the adjudication of the challenge to the papers, fully justified the assessment of costs. The alleged conduct set forth in the Presentment and criminal charges is wholly extraneous to the merits of the challenge to Petitioners' nominating papers and the assessing of costs, and the process by which the challenge and cost assessment were decided. Petitioners have cited no case in which a judgment was opened after the time allowed on the basis of circumstances

³ This conclusion renders irrelevant and immaterial any disputes of fact regarding conduct prior to the filing of the challenge to the nomination papers. Hence, there appear no material disputes of fact and there is no justification for the taking of depositions under Pa. R.C.P. No. 206.7(c). Inasmuch as the Petition to Open the Record or Set Aside the Judgment is herein determined based on the averments in the Petition and Answer thereto under Pa. R.C.P. No. 206.7(b), the Objectors' Motion to Stay Discovery is rendered moot.

extraneous to the merits of the case and the judicial process by which the issues were resolved.

Accordingly, the motion to open or vacate the Judgment is denied, and the Objectors' Motion to Stay Discovery is dismissed as moot.




BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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 :
: No. 568 M.D. 2004
Linda S. Serody, Roderick J. Sweets, :
Ronald Bergman, Richard Trinclisti, :
Terry Trinclisti, Bernie Cohen-Scott, :
Donald G. Brown and Julia A. :
O'Connell, :
Objectors :
: :
Ralph Nader and Peter Miguel Camejo, :
Petitioners :

ORDER

AND NOW, this 4th day of December, 2008, the Petition to Open the Record or to Set Aside Judgment Based upon Newly Discovered Evidence of Criminal Misconduct in the above captioned matter is DENIED. Further, the Objectors' Motion to Stay Discovery is hereby DISMISSED AS MOOT.


BONNIE BRIGANCE LEADBETTER,
President Judge

Certified from the Record
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and Order Exit

EXHIBIT B

In re Nomination Paper of Marakay Rogers, No. 426 M.D. 2006 (Jan. 23, 2009)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Paper of Marakay	:	
Rogers, Christina Valente and Carl J.	:	
Romanelli as Candidates of an Independent	:	
Political Body for Governor, Lieutenant	:	
Governor and U.S. Senator in the General	:	
Election of November 7, 2006	:	No. 426 M.D. 2006
	:	
William R. Caroselli, Fred R. Levin, Daniel	:	
J. Anders and Peter D. Winebrake,	:	
Petitioners	:	

BEFORE: HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY**

FILED: January 23, 2009

On November 3, 2008, Carl J. Romanelli and Lawrence M. Otter, Esquire, filed a Motion to Stay Imposition of Costs and Petition to Reopen the Hearing on this Matter¹ (Motion to Stay and Reopen Hearing) requesting that this Court: (1) grant a motion to stay the imposition of costs imposed in the above-captioned matter upon Romanelli and his counsel, Attorney Otter, by final order of this Court of January 24, 2008,² which approved, in part, and disapproved, in part,

¹ The full title of the motion is "Motion to Stay Imposition of Costs and Petition to Reopen the Hearing on this Matter Pending Outcome of the Attorney General's Criminal Prosecution of 'Bonus Gate Scandal' that Directly Alleged Criminal Conspiracy and Misappropriation and Theft of Taxpayer Funds to Illegally Fund the 2006 Court Challenge to United States Senate Candidate Carl Romanelli."

² See In Re: Nomination Paper of Rogers, 942 A.2d 915 (Pa. Cmwlth. 2008) (single judge opinion by Kelley, J.). By order of October 21, 2008, the Supreme Court affirmed this Court's January 24, 2008 order, denied Romanelli's Request to Reopen the Record and

(Continued....)

the Bill of Costs and Related Fees and Expenses filed by William R. Caroselli, Fred R. Levin, Daniel J. Anders and Peter D. Winebrake (hereinafter collectively referred to as "Petitioners"); and (2) reopen the record in light of the Attorney General's criminal proceedings that bear a direct relationship to this matter and that were unknown to the Courts and Romanelli prior to July 10, 2008. On November 20, 2008, Petitioners filed a Motion to Quash Request for Stay of Costs and Petition to Open Record (Motion to Quash). On December 3, 2008, Romanelli and Attorney Otter filed an answer to Petitioners' Motion to Quash.

By order of December 17, 2008, this Court temporarily stayed, until further order of this Court, this Court's January 24, 2008 order. This Court further ordered, *inter alia*, that:

Romanelli shall file a brief on or before January 15, 2009, in support of his Motion to Stay Imposition of Costs and Petition to Reopen the Hearing. It is further ordered that said brief shall address what relevance the allegations contained in the aforementioned Motion have in relation to the specific reasons for this Court's order of January 24, 2008 granting Petitioners' Bill of Costs and Related Fees and Expenses. Specifically, Romanelli is directed to address how each and every specific reason as set forth in this Court's January 24, 2008 order granting Petitioners' Bill of Costs and Related Fees and Expenses would be affected by any of the allegations, if proven, of the Motion to Stay Imposition of Costs and Petition to Reopen the Hearing.

Romanelli and Attorney Otter filed a brief with this Court on January 14, 2009, and Petitioners' timely filed a brief in response thereto. However, contrary to this Court's order of December 17, 2008, Romanelli and Attorney Otter

dismissed a Motion to Quash. See In Re: Nomination Paper of Rogers, __ Pa. __, 959 A.2d 903 (2008).

have failed to address in their brief in support of the Motion to Stay and Reopen Hearing what relevance the allegations contained in said motion have in relation to the specific reasons for this Court's January 24, 2008 order approving, in part, Petitioners' Bill of Costs. Romanelli and Attorney Otter also utterly fail to address how each and every specific reason as set forth in this Court's January 24, 2008 order approving, in part, the Bill of Costs would be affected by any of the allegations, if proven, of the Motion to Stay and Reopen Hearing. In fact, Romanelli and Attorney Otter fail to even mention in the brief the reasons why this Court approved, in part, Petitioners' Bill of Costs as set forth in this Court's January 24, 2008 order. As such, the Court points out the obvious. Romanelli and Attorney Otter have once again ignored the directions of this Court and any directives to which they are ordered to comply. The Court finds Romanelli's and Attorney Otter's conduct as disingenuous. Notwithstanding Romanelli's and Attorney Otter's aforementioned conduct, this Court will deny the Motion to Stay and Reopen Record outright.

On September 26, 2006, this Court filed an opinion and order granting the Petition to Set Aside the Nomination Paper of Carl J. Romanelli as Candidate of an Independent Political Body for U.S. Senator of the United States (Petition to Set Aside) filed by Petitioners. See In Re: Nomination Paper of Rogers, 914 A.2d 457 (Pa. Cmwlth.) (single judge opinion by Kelley, J.), aff'd, 589 Pa. 86, 907 A.2d 503 (2006). In its October 4, 2006 disposition, at docket number 108 MAP 2006, of this Court's September 26, 2006 order, the Supreme Court affirmed the September 26, 2006 order without prejudice to Romanelli to seek review of the pending order of this Court imposing a final order of costs.

After an evidentiary hearing on January 9, 2007, this Court filed a memorandum opinion and order on January 24, 2007, approving, in part, and

disapproving, in part, Petitioners' Bill of Costs. This Court directed Romanelli and Attorney Otter to pay \$80,407.56 to Petitioners within thirty days of the date of the order.

Romanelli and Attorney Otter appealed this Court's January 24, 2007 order to the Supreme Court. By order of November 20, 2007, the Supreme Court affirmed in part and reversed and remanded in part. See In Re: Nomination Paper of Rogers, 594 Pa. 20, 934 A.2d 696 (2007). In remanding, the Supreme Court directed this Court to issue a final order which included in its text an assessment of costs referenced by category and amount assessed, as well as a statement of rationale behind the imposition of these costs. Id. Accordingly, by order of January 24, 2008, the order which originally accompanied this Court's January 24, 2007 opinion was amended in accord with our Supreme Court's orders of October 4, 2006 and November 20, 2007. See In Re: Nomination Paper of Rogers, 942 A.2d 915 (Pa. Cmwlth. 2008) (single judge opinion by Kelley, J.), aff'd, ___ Pa. ___, 959 A.2d 903 (2008).

After the affirmance of this Court's January 24, 2008 order by the Supreme Court, Romanelli and Attorney Otter filed the instant Motion to Stay and Reopen Record. Romanelli and Attorney Otter state therein that they filed the motion in light of the ongoing criminal prosecution of the so called "Bonus Gate Scandal" in which the Attorney General alleges that taxpayer money was used unlawfully to fund the challenge to Romanelli's Nomination Petition for United States Senate. Romanelli and Attorney Otter allege that the grand jury presentment laid out information that the challenge to his Nomination Petition was done with state employees, on a state time, in state offices, and using state equipment. They allege further that the state employees were paid their normal state salaries to perform political work and that those state employees received taxpayer money as

a bonus payment for this illegal political work. Romanelli and Attorney Otter allege that the Attorney General specifically stated in a press release that the petition challenge to Romanelli's candidacy for United State Senate was an outstanding example of misappropriation of taxpayers' resources.

Romanelli and Attorney Otter allege further that they learned of the foregoing "Bonus Gate Scandal" and the Attorney General's investigation and criminal prosecution connected therewith after they appealed this Court's January 24, 2008 order approving, in part, Petitioners' Bill of Costs.³ They allege that they and the Courts of this Commonwealth were unaware of the alleged illegal activity and misappropriation of taxpayer money which directly impacted the challenge to Romanelli's Nomination Petition before the Courts. Romanelli and Attorney Otter allege that it is now a matter of record in the Courts of this Commonwealth that the petition challenge to Romanelli's candidacy for United States Senate was the fruit of illegal activities and misappropriation of taxpayer resources conceived, instigated, and approved by former State representatives among others in the Democratic Party leadership of the State House.

Romanelli and Attorney Otter state that due to the Supreme Court's affirmance of this Court's January 24, 2008 order approving, in part, the Bill of Costs, this matter is now properly before this Court in its original jurisdiction. They allege that they are seeking to reopen the record so that the full extent of the criminal fraud and misuse of taxpayer funds can be discovered and further to

³ Romanelli and Attorney Otter filed an appeal of this Court's January 24, 2008 order on February 1, 2008. While that appeal was pending, they filed with the Supreme Court a "Petition to Open the Record for Taking Additional Testimony Due to Newly Discovered Evidence of Fraud and Misuse of Taxpayers Funds in this Election Challenge and/or to Remand the Case for Evidence." By order of October 21, 2008, the Supreme Court denied the foregoing petition as noted in footnote 2 herein.

permit this evidence to be used to negate any findings of misconduct and any award of costs and fees against Romanelli and Attorney Otter. Romanelli and Attorney Otter contend that in view of the massive fraud and misconduct by those challenging the Nomination Petition, it is clear that neither one of them should have been sanctioned by this Court. Romanelli and Attorney Otter contend further that if there is going to be any fines and costs, they should be reserved for those who misused government offices and taxpayer funds in mounting the challenge to Romanelli's Nomination Petition in gross violation of the First Amendment of the United States Constitution.

In response to the Motion for Stay and Reopen Record, Petitioners filed a Motion to Quash. Therein, Petitioners allege that assuming *arguendo* that the matters alleged in the Motion for Stay and Reopen Record are true, they are completely irrelevant to the award of costs and fees in the present matter. Petitioners' contend that the alleged matters relate to the process before the challenge to Romanelli's Nomination Petition was filed, specifically, the time period from August 1, 2006 to August 8, 2006. Petitioners' contend further that, in assessing costs and fees against Romanelli and Attorney Otter, this Court looked to their conduct with respect to their failure to comply with this Court's orders. Therefore, Petitioners allege, the relevant time period with regard to the instant matter is August 9, 2006 to September 26, 2006, the time period in which the conduct of Romanelli and Attorney Otter is specifically referenced by this Court in its order of January 24, 2008. Petitioners' also contend that the criminal conduct and misappropriation alleged by Romanelli and Attorney Otter has not been proven and more importantly has nothing to do with the proceedings before this Court which gave rise to the award of costs and fees. Finally, Petitioners contend that

since the Supreme Court has already denied an essentially identical motion in this matter, the Motion for Stay and Reopen Record should be quashed.

As pointed out by Petitioners, Romanelli and Attorney Otter wrongly associate the alleged improper/illegal conduct that occurred prior to the filing of the challenge to Romanelli's Nomination Petition with the costs incurred as a result of their conduct during the adjudication of the Petition to Set Aside. The reasons for approving, in part, Petitioners' Bill of Costs are set forth in detail in this Court's January 24, 2008 order. Romanelli and Attorney Otter make no attempt to address those reasons in relation to the Motion for Stay and Reopen Record other than asserting that they should not be sanctioned due to alleged improper/illegal conduct and that if there is going to be any fines and costs, they should be reserved for those who misused government offices and taxpayer funds in mounting the challenge to Romanelli's Nomination Petition.

This Court agrees that the person or persons responsible for the alleged misappropriation of taxpayer funds and misuse of government property during the pre-challenge time period should face the consequences of their actions if the allegations are proven to be true. However, once the Petition to Set Aside was properly filed with this Court, it was bound by its constitutionally and statutorily mandated authority to adjudicate the Petition to Set Aside on its merits. There was no evidence at the time the Petition to Set Aside was adjudicated that the Petitioners acted improperly or illegally in asserting the challenge to Romanelli's Nomination Petition.

Moreover, as can be gleaned from this Court's January 24, 2008 order, the costs and fees assessed against Romanelli and Attorney Otter are not related to the pre-challenge review of the Nomination Petition. In addition, the

persons accused of improper conduct during the pre-challenge period are not the Petitioners to whom payment was directed.

It is clear to this Court that any alleged criminal conduct or misappropriation of taxpayer funds associated with preparing the challenge to Romanelli's Nomination Petition neither tainted the adjudication of the Petition to Set Aside, which proved meritorious, nor played any role in Romanelli's and Attorney Otter's conduct which gave rise to the assessment of costs and fees. Specifically, their failure to comply with this Court's August 9, 2006 order resulting in the review process taking longer than was anticipated or necessary, and their failure to comply with this Court's September 15, 2006 order with regard to Romanelli's intended rehabilitation of specific stipulated invalid signature lines, was the primary basis for the Court's imposition of costs and fees. As this Court stated in the January 24, 2008 order:

Candidate was not cooperative, often times disingenuous to the process. There is a duty and obligation upon the parties, counsel and this Court to advance the proceedings because of the Court's mandate under the Election Code to resolve these matters expeditiously. It must be recognized in the election process that there is the right of a candidate to participate and the right to challenge the validity of a candidacy. The parties must proceed with the greatest candor to ensure that the process moves quickly and efficiently. A candidate who is cooperative does not delay in such important matters.

In Re: Nomination Paper of Rogers, 942 A.2d at 932 (quoting In Re: Nomination Paper of Rogers, 914 A.2d 457, 468-69 (Pa. Cmwith.), aff'd, 589 Pa. 86, 907 A.2d 503 (2006)). While Romanelli and Attorney Otter argue otherwise, the conduct alleged by Romanelli and Attorney Otter in the Motion for Stay and Reopen record is wholly extraneous to the merits of the Petition to Set Aside filed with this Court

that challenged Romanelli's Nomination Petition and to the process by which the Petition to Set Aside and the assessment of costs and fees were decided.

Accordingly, the Motion for Stay and Reopen Record is denied and the Motion to Quash is dismissed as moot.



JAMES R. KELLEY, Senior Judge

JAN-27-2009 13:11 From:

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P.11/13

Jan. 23. 2009 11:25AM

Commonwealth Court of PA

No. 1872

P. 11/13

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Paper of Marakay	:	
Rogers, Christina Valente and Carl J.	:	
Romanelli as Candidates of an Independent	:	
Political Body for Governor, Lieutenant	:	
Governor and U.S. Senator in the General	:	
Election of November 7, 2006	:	No. 426 M.D. 2006
	:	
William R. Caroselli, Fred R. Levin, Daniel	:	
J. Anders and Peter D. Winebrake,	:	
Petitioners	:	

ORDER

AND NOW, this 23rd day of January 2009, it is hereby ordered as follows:

1. The Motion to Stay Imposition of Costs and Petition to Reopen the Hearing on this Matter Pending Outcome of the Attorney General's Criminal Prosecution of "Bonus Gate Scandal" that Directly Alleged Criminal Conspiracy and Misappropriation and Theft of Taxpayer Funds to Illegally Fund the 2006 Court Challenge to United States Senate Candidate Carl Romanelli is DENIED.

2. The Motion to Quash Request for Stay of Costs and Petition to Open Record is DISMISSED AS MOOT.

3. The temporary stay of the Court's order of January 24, 2008 approving in part and disapproving in part Petitioners' Bill of Costs and Related Fees and Expenses is VACATED.

4. Carl J. Romanelli and Lawrence M. Otter, Esquire, are directed to comply with this Court's order of January 24, 2008 within ten (10) business days

Jan. 23. 2009 11:25AM Commonwealth Court of PA

Vo. 1872 P. 13/13

of the date of this order. Proof of compliance and payment of the assessed costs, fees and expenses in the amount of \$80,407.56 shall be filed by Carl J. Romanelli and Lawrence M. Otter, Esquire, with the Chief Clerk within ten (10) days thereafter.



JAMES R. KELLEY, Senior Judge