

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| THE CONSTITUTION PARTY | : | CIVIL ACTION |
| OF PENNSYLVANIA, <i>et al.</i> , | : | |
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| Plaintiffs | : | |
| | : | |
| v. | : | |
| | : | |
| CAROL AICHELE, <i>et al.</i> , | : | |
| | : | |
| Defendants | : | No. 12-2726 |

**COMMONWEALTH DEFENDANTS’
MOTION TO DISMISS
PLAINTIFF’S AMENDED COMPLAINT**

Defendants Carol Aichele and Jonathan Marks (together, the “Commonwealth Defendants”) move the Court to dismiss the claims against them pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be granted. The claims should be dismissed for the following reasons:

1. The judiciary’s possible assessment of costs and fees against minor party candidates under Section 2937 (25 P.S. § 2937) does not violate their rights to equal protection under the Fourteenth Amendment.
2. The judiciary’s possible assessment of costs and fees against minor party candidates under section 2937 (25 p.s. § 2937) does not violate their rights under the First and Fourteenth Amendments.
3. Plaintiffs cannot state a claim against the Commonwealth Defendants since they are not personally involved in the challenging process.

This motion is supported by the attached memorandum of law.

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**MEMORANDUM OF LAW IN SUPPORT OF
COMMONWEALTH DEFENDANTS'
MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

I. INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of three separate parts of the Pennsylvania Election Code governing the conduct of minor political parties, political bodies, and their candidates for public office. The plaintiffs are the Constitution Party of Pennsylvania and its chair, Joe Murphy; the Green Party of Pennsylvania and its chair, Carl Romanelli; the Libertarian Party of Pennsylvania and its chair, Thomas Robert Stvens; James Clymer, a member of the Constitution Party of Pennsylvania, and Ken Krawchuk, a former candidate of the Libertarian Party of Pennsylvania. Am. Compl. ¶¶ 1-8.

In the original Complaint Plaintiff sued Carol Aichele, Secretary of the Commonwealth of Pennsylvania; Jonathan Marks, Commissioner of the Pennsylvania Department's Bureau of Commissions, Elections, and Legislation; and Linda Kelly, Attorney General of the Commonwealth of Pennsylvania.

Compl. ¶¶ 9-11. The defendants moved to dismiss the Complaint and the Court eventually granted that motion on the grounds that it lacked jurisdiction due to the Plaintiffs' lack of standing. Constitution Party v. Aichele, 2013 WL 867183 (E.D.Pa. Mar. 8, 2013) (Doc. No. 34).

Plaintiffs appealed to the Court of Appeals for the Third Circuit, which, in a 2-1 decision, held that the Plaintiffs did have standing and remanded the matter to this Court for further proceedings. Constitution Party of Pennsylvania v. Aichele, 757 F.3d 347 (3d Cir. 2014). The Third Circuit's opinion did order all claims against Attorney General dismissed because she was not a proper party to the action. Id. at 350 n.3.

Following remand, Plaintiffs filed an Amended Complaint. The Amended Complaint names only Secretary Aichele and Commissioner Marks as defendants (together, the "Commonwealth Defendants") and adds factual background on Plaintiffs' efforts to put forth candidates in recent election cycles.

The claims are unchanged. Plaintiffs allege that Pennsylvania's Election Code substantially burdens "minor party"¹ and "political body" candidates in

¹ State-wide minor political parties are political parties whose voter registration is less than 15% of the total voter registration for Pennsylvania, but who obtained at least 2% of the largest entire vote cast for a single state-wide candidate in the last preceding general election. See 25 P.S. §§ 2831(a) & 2872.2. Political organizations that do not meet this 2% threshold, as well as independent candidates, are considered "political bodies" under Pennsylvania's Election Code. At this time, the Libertarian Party meets the technical requirements to qualify as a "minor political party," while the Green Party and Constitution Party do not. Although there are some advantages to being recognized as a "minor political party," as opposed to a "political body," the

(continued on next page...)

two ways. First, they allege that 25 P.S. § 2937 (Section 977 of the Election Code),² is unconstitutional because it permits the Pennsylvania courts to impose costs against political candidates who are unable to defend their nomination petitions against a challenge by a private third-party. Plaintiffs allege that this ability to impose costs violates their First and Fourteenth Amendment rights to freedom of speech, petition, assembly and association for political purposes, and due process of law. Plaintiffs allege that this mere possibility of the imposition of costs by the courts is unconstitutional on its face (Count III) and as applied to them (Count I).

Second, Plaintiffs allege that 25 P.S. § 2937 treats major party candidates (Democratic and Republican) differently from minor party and political body candidates. Major party candidates have their names placed on the ballot through the primary system, whereas Plaintiffs must obtain signatures on nomination papers to be placed on the ballot. Plaintiffs allege that this violates their equal protection rights under the Fourteenth Amendment and is unconstitutional as applied to them. (Count II.) Plaintiffs seek a declaration holding 25 P.S. 2911(b) and 25 P.S. § 2937 unconstitutional

candidates of both types of political organizations must file nomination papers to be placed on the ballot. 25 P.S. §§ 2872.2 & 2911.

² Plaintiffs in their complaint refer to the Election Code by the section numbers assigned in Purdon's Statutes ("P.S."). The Election Code as enacted by the Legislature has different section numbers. However, to avoid confusion and to maintain consistency with the Complaint, Defendants will refer to the Purdon's cites as appear in the statutory compilation.

as applied to them and 25 P.S. § 2937 unconstitutional on its face. Am. Complaint at ¶ 88.

Plaintiffs have not alleged sufficient facts to state a claim for which relief may be granted against them. Accordingly, the Commonwealth Defendants move to dismiss the claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. RELEVANT FACTUAL ALLEGATIONS ³

Pennsylvania has a two-track system for candidates of political parties to be placed on the General Election ballot. The first track is for major political parties. See 25 P.S. §§ 2831(a) (defining political parties) and 2861-83 (providing for nomination of political party candidates at primaries). Based on voter registrations, the Democratic Party and Republican Party are the only major political parties in Pennsylvania at this time. The Democratic and Republican parties generally place their candidates on the November ballot through the primary process. 25 P.S. §§ 2861-83.

The second track for candidates to be placed on the ballot is by filing nomination papers. All candidates who are not members of a major political party (*e.g.*, minor political parties, political bodies, and independents) must file nomination papers to have their names placed on the General or Municipal Election ballot. These candidates must obtain signatures on nomination papers equaling at least two percent of the largest entire vote cast for an

³ The relevant factual background is set forth in the Court's opinion on the initial motion to dismiss. Constitution Party, 2013 WL 867183 (Doc. No. 34).

elected candidate in the state at large at the last preceding election at which statewide candidates were voted for. *See* 25 P.S. § 2911(b).

The first day to circulate nomination papers is the tenth Wednesday prior to the primary.⁴ *See* 25 P.S. § 2913(b). Nomination papers must be filed on or before August 1st of each election year.⁵ *See* Consent Decree entered in Hall v. Davis, No. 84-1057 (E.D.Pa.); and Consent Decree entered in Libertarian Party of Pennsylvania v. Davis, No. 84-0262 (M.D. Pa.). After the filing of nomination papers, private parties have seven days to file objections challenging the validity of the signatures collected. *See* 25 P.S. § 2937. The Commonwealth Court of Pennsylvania then reviews any objections and determines whether the name of the candidate should be placed on the ballot or stricken.⁶ 25 P.S. § 2937. Any party aggrieved by the decision of Commonwealth Court may then file an appeal as of right to the Supreme Court of Pennsylvania. 42 Pa. C.S. § 723(a); Pa. R.A.P. No. 1101(a)(1).

⁴ The primary election in Presidential election years is the fourth Tuesday in April. For non-Presidential elections, the primary is the third Tuesday in May. *See* 25 P.S. § 2753(a).

⁵ Under the terms of 25 P.S. §§ 2913(b) and (c) (Section 953(b) and (c) of the Election Code), the filing deadline is the second Friday after the primary election. For 2008, the filing deadline under the statute would have been Friday, May 2nd. However, under the two consent decrees entered in Hall v. Davis, No. 84-1057 (E.D. Pa.) and Libertarian Party of Pennsylvania v. Davis, No. 84-0262 (M.D. Pa.), the filing deadline was extended by three additional months until August 1st.

⁶ The Commonwealth Court's original jurisdiction in election matters is limited to issues relating to state offices. 42 Pa. C.S. § 764. Objections to nomination papers for local offices are reviewed by the courts of common pleas. 42 Pa. C.S. § 931.

25 P.S. § 2937 provides that “[i]n case any such petition is dismissed, the court shall make such order to the payment of the costs of the proceedings, including witness fees, as it shall deem just.” 25 P.S. § 2937. In In re Nader, 588 Pa. 450, 905 A.2d 450 (2006), *cert’ denied*, 549 U.S. 1117 (2007), the Pennsylvania Supreme Court applied this provision to a minor party candidate whose nomination papers were found to be deficient and held that, under the statute, the candidate could be assessed fees and costs incurred by the objecting parties. Ralph Nader and his running mate were assessed fees and costs of \$81,102.19 in that case. Am. Complaint ¶ 24. After the 2006 election, Green Party Senate candidate Carl Romanelli and his legal counsel were assessed fees and costs of \$80,407.56 after his nomination papers were successfully challenged in Commonwealth Court. In re: Rogers, 942 A.2d 915 (Pa. Cmwlth. 2008), *aff’d*, 598 Pa. 598, 959 A.2d 903 (2008); *see also In re: Rogers*, 914 A.2d 457,463 (Pa. Cmwlth. 2007) (finding that fees were warranted as Romanelli had been disingenuous with the court and failed to comply with the court’s order). Am. Complaint ¶ 26.

Plaintiffs allege that their candidates have been coerced into withdrawing their nomination papers by private third-parties who threatened to challenge the petitions and seek costs from the Commonwealth Court. Am. Compl. ¶¶ 34-36. The only two instances cited by Plaintiffs in which a state court has imposed fees under § 2937 occurred after the court found that the candidate engaged in fraud or bad faith conduct. *See Nader*, 588 Pa. at 455; Rogers, 942 A.2d 928-29. Although Plaintiffs do not allege that they planned to commit

fraud or act in bad faith in connection with their nomination papers, they nevertheless allege that the mere possibility of sanctions chilled their political speech. Notably, the minor party candidates may run for public office as write-in candidates. 25 P.S. § 2963(a).

Despite the existence of § 2937, the Libertarian Party and Green Party submitted nomination papers for numerous candidates this past August. The nomination papers of one of those candidates, John J. Sweeny of the Green Party, was challenged in Commonwealth Court. Am. Compl. ¶ 49. During those proceedings, the candidate conceded that 242 of the 797 signature lines submitted were invalid. Exh. 1: In Re: Nomination Petition of John J. Sweeny, 423 M.D. 2014, Sept. 24, 2014 opinion and order. The Commonwealth Court found 57 additional signature lines invalid, which resulted in the Court ordering candidate Sweeny removed from the ballot. Id. The Court rejected the challengers' request for costs. Id.

III. ARGUMENT

A. Applicable Standard

When considering a Rule 12(b)(6) motion for failure to state a claim, the Court must accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief. Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (*citing* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 562 n. 8 (2007)). The factual allegations in the complaint must be more than speculative. Phillips, 515 F.3d

at 234 (*citing Twombly*, 550 U.S. at 555). While the plaintiff need not provide detailed factual allegations, she must provide “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A pleading that offers labels and conclusions, a formulaic recitation of the elements of a claim, or naked assertions, will not suffice. *Id.* Rather, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Id.* A claim is facially plausible where the facts set forth in the complaint allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*

B. The Judiciary’s Possible Assessment of Costs and Fees Against Minor Party Candidates under Section 2937 (25 P.S. § 2937) does not Violate their Rights to Equal Protection under the Fourteenth Amendment.

In *Rogers v. Corbett*, 468 F.3d 188 (3d Cir. 2006), the Third Circuit Court of Appeals upheld Pennsylvania’s system of requiring minor party candidates to obtain signatures on nomination papers in order to have their names placed on the ballot. It concluded that the two percent signature requirement (*see* 25 P.S. §§ 2872.2 and 2911) “was justified by Pennsylvania’s interest in preventing ballot clutter and ensuring viable candidates.” *Rogers*, 468 F.3d at 197.

To the extent that Plaintiffs are challenging the different treatment accorded minor parties and their candidates under the Election Code, their argument is foreclosed by the Court’s decision in *Rogers*.

With regard to Plaintiffs’ argument that the mere possibility of assessment of costs and fees by the judiciary if their nomination papers were

successfully challenged pursuant to 25 P.S. § 2937 unequally burdens minor party candidates, this argument is also without foundation. Plaintiffs' assertion that § 2937 treats minor party and political body candidates differently from major party candidates is simply incorrect. Section 2937 provides that in cases where objections to nomination papers are filed, the courts shall enter an "order as to the payment of the costs of the proceedings, including witness fees, as it shall deem just." 25 P.S. § 2937. The Pennsylvania Supreme Court has interpreted this provision as applying to both "nomination petitions" (filed by major party candidates) and "nomination papers" (filed by minor party candidates). In re Nader, 588 Pa. 450, 905 A.2d 450 (2006). A major party candidate must file nomination petitions to be placed on the ballot. If the candidate's nomination petitions are successfully challenged, he can be subject to costs pursuant to Section 2937. See In re Lee, 578 A.2d 1277, 1279 n.3 (Pa. 1990). As § 2937 applies equally to both major party and minor party/political body candidates alike, Plaintiffs equal protection claim (Count II) fails and should be dismissed.⁷

⁷ Further, under Rogers, the mere fact that major party candidates are not subject to the same type of assessments does not constitute a violation of the minor parties' right to equal protection. Rather, the constitutionality of the challenged statutory provisions involves balancing the state's interest against the burdens that are imposed on minor party candidates in getting their names on the ballot. Rogers, 468 F.3d at 193-94. As discussed in greater detail in the following subsection, the Commonwealth's substantial interest in ensuring that only those candidates who have met the requirements establish by the Legislature have their names places on the ballot, and the judiciary's substantial interest in being able to impose costs and fees on parties that commit fraud, act in bad faith, or ignore court orders, outweigh any burden on minor parties and their candidates. Plaintiff can proffer no instance when a

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C. The Judiciary’s Possible Assessment of Costs and Fees against Minor Party Candidates under Section 2937 (25 P.S. § 2937) does not Violate their Rights under the First and Fourteenth Amendments.

The United States Supreme Court has held that “[a]lthough these rights of voters [the right to vote and to political association] are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally-suspect burdens on voters' rights to associate or to choose among candidates.” Anderson v. Celebrezze, 460 U.S. 780, 788 (1983). Further, “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” Id. (citation omitted). The Pennsylvania Supreme Court has already reviewed the challenged section of the Election Code and found that “the cost provision in Section 2937 does not impinge upon any constitutional rights in a way that would warrant constitutional scrutiny.” Nader, 905 A.2d at 459. That decision and the Third Circuit decision in Rogers v. Corbett wisely found that the Commonwealth may impose reasonable requirements on individuals seeking to placement on the ballot. More to the point, the United States Constitution certainly does not

minor party candidate was imposed fees without a showing of either bad faith or other impropriety. Candidates do not have a reasonable interest in being able to commit election fraud, act in bad faith, or ignore court orders.

guarantee a candidate the right to commit election fraud or prohibit a state court from imposing fees and costs on a party acting in bad faith.⁸

The imposition of costs is both fair and necessary for the smooth operation of elections. Any burden on minor parties and their candidates is minimal, and outweighed by the Commonwealth's substantial interest in ensuring that only those candidates who have met the requirements established by the Legislature have their names placed on the ballot. As the Supreme Court stated in Burdick v. Takushi, 504 U.S. 428, 440 n.10 (1992), "limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable."

Without the cost assessment provisions contained in § 2937, there would be nothing to prevent the filing of frivolous, fraudulent, and/or patently deficient nomination papers by minor party candidates. While minor party candidates do have a constitutionally protected right to have their names placed on the ballot, other candidates and the voters at large have a similar right to make sure that the election laws are complied with. Section 2937 is fair to both minor party candidates and those who challenge their nomination

⁸ Plaintiffs fail to proffer even a single example where a candidate was assessed costs under § 2937 without a corresponding finding of either bad faith or refusal to comply with the court orders. But even if the Commonwealth were to enact a statute that forced candidates who lose a challenge to pay the reasonable costs and fees of the challenger (akin to the English Rule), such a rule would not offend the United States Constitution. Rather, it would merely encourage candidates to ensure that their nomination papers were in proper order before submission and discourage a flippant attitude towards the high honor of running for office.

papers. It gives the courts the authority to award costs to those who successfully challenge the filing of nomination papers as well as costs to the candidate if the challenge is unsuccessful.

The authority granted to Pennsylvania's courts under Section 2937 is similar to powers that both federal and state courts already possess. Rule 11 provides for the imposition of sanctions in federal court, including attorney's fees, for making claims or arguments that are frivolous or lack any reasonable evidentiary support. Fed. R. Civ. P. No. 11. The Pennsylvania Rules of Civil Procedure have a similar provision. *See* Pa. R. Civ. P. No. 1023.1. Moreover, the courts have an inherent authority under our constitutional system to control proceedings before them as necessary for the efficient operation of the judiciary, outweighing any minimal chilling effect on the First Amendment rights of minor party candidates. In Chambers v. Nasco, Inc., 501 U.S. 32 (1991), the United States Supreme Court stated that a court may – even absent any statutory authority – “assess attorney’s fees when a party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons.’” Id. at 45-46 (*quoting* Alyeska v. Pipeline Sercice Co. v. Wilderness Society, 421 U.S. 240, 258-259 (1975)). *See also* Gillette Foods Inc. v. Bayernwald-Fruchteverwertung, 977 F.2d 809, 813 (3d Cir. 1992).

There is no question that minor party candidates seeking to be placed on the ballot are engaged in protected activity under the First Amendment. Moreover, there is a general right to access the courts and petition the government which gives First Amendment protection to all citizens. *See*

Anderson v. Davila, 125 F.3d 148, 161 (3d Cir. 1997). Accordingly, if the plaintiffs' position were correct, the ability of the courts to impose sanctions in all cases would be undermined and rendered impotent since they might create a "chilling" effect for others who seek to enforce their rights before the courts. However, the courts' power to impose sanctions has been upheld even where it has been claimed that the plaintiff's constitutional rights have been violated. See Napier v. Thirty or More Unidentified Federal Agents, Employees or Officers, 855 F.2d 1080, 1091 (3d Cir. 1988) (upholding sanctions of attorneys fees under Rule 11 in Bivens action as not "violat[ing] public policy concerns by chilling attorney incentives to file civil rights cases" where complaint was legally frivolous). There is simply no reason why courts should be foreclosed from imposing sanctions or costs in election cases while they are permitted to do so in all other types of cases.

Plaintiffs point to two cases in which attorney fees have been awarded pursuant to Section 2937 to show the chilling effect posed to minor party candidates. See Nader and Rogers. However, in Nader, the imposition of costs was based on the factual determination that the campaign's signature gathering "involved fraud and deception of massive proportions."⁹ Nader, 588 Pa. at 466, 905 A.2d at 460. Similarly, in Rogers, the Commonwealth Court

⁹ The Commonwealth Court found that in addition to the nomination papers containing many obviously fictitious names such as "Mickey Mouse" and "Fred Flintstone", thousands of other names were "created at random and then randomly assigned either existent or non-existent addresses by the circulators." Nader, 588 Pa. at 458, 905 A.2d at 455.

found that candidate Romanelli, through his attorneys, was disingenuous and failed to act in good faith to comply with the court's prior orders regarding certification of signatures. Rogers, 914 A.2d at 469 ("Candidate's cumulative disingenuousness in these proceedings has crossed the line into bad faith on the part of Candidate and his counsel.").

In both of these cases, attorney's fees were imposed, but only after Commonwealth Court determined that the conduct of the minor party candidates was egregious and that they had not acted in good faith. If a candidate is reckless in filing facially deficient nomination papers or repeatedly fails to comply with court orders, he cannot use the First Amendment as a shield from sanctions imposed pursuant to Section 2937, the court's general powers created by the Legislature, or its inherent powers to control judicial proceedings.¹⁰ There is nothing suggesting that candidates who use due diligence in collecting signatures and file nomination papers that in objective good faith comply with the requirements of the Election Code will fall victim to sanctions under Section 2937. Furthermore, as demonstrated by both the Nader and Rogers cases, candidates are given a full hearing and the right to

¹⁰ The Supreme Court's balancing of the First Amendment in the context of defamation demonstrates that there are legitimate limitations on an individual's constitutional rights. Accordingly, some statements are protected as free speech under the First Amendment while others which are made recklessly are not. See, e.g., New York Times v. Sullivan, 376 U.S. 254 (1964) (protecting negligently false statements to avoid a chilling effect on constitutionally valuable speech); Marcone v. Penthouse International Magazine for Men, 754 F.2d 1072 (3d Cir. 1985) (same). Similarly, while minor party candidates have a definite right to run for public office, they do not have a right to file documents (required in order to be placed on the ballot) that on their face are obviously deficient.

appeal to the Pennsylvania Supreme Court before attorney fees or other costs are imposed pursuant to Section 2937. Even if the minor party candidates believe that these cases were wrongly decided, the procedures provided by the Pennsylvania Election Code are more than sufficient to protect their First and Fourteenth Amendment rights.

Plaintiffs allege that Section 2937 “chills” candidates from filing nomination papers because of the possibility that they will be subjected to sanctions. Yet, the only two cited examples of costs and fees being assessed by the courts are in cases where the candidates were found to have engaged in egregious conduct. The First Amendment does not entitle minor party candidates to a declaratory judgment which allows them to file nomination papers in bad faith and prohibits the judiciary from imposing sanctions for such conduct. Section 2937 permits judges to consider such things as the good faith basis of filing the nomination papers, as well as the candidate’s financial ability to pay any sanctions imposed. As in all instances where judges impose sanctions, established principles of due process were observed. Plaintiffs cannot demonstrate through their allegations that Section 2937 is unconstitutional as applied to them or that the procedural safeguards under Pennsylvania’s Election Code are not sufficient to protect their rights. See Aiello v. City of Wilmington, 623 F.2d 845 (3d Cir. 1980) (“If [the frequency of impermissible applications] is relatively low, it may be more appropriate to guard against the statute’s conceivably impermissible applications through case-by-case adjudication rather than through facial invalidation.”). This

Court should not declare Section 2937 invalid based on the presumption that Pennsylvania's courts will not interpret it in accordance with the Fourteenth Amendment.¹¹

For the above reasons, sections 2911(b) and 2937 do not violate the First or Fourteenth Amendments, and Counts I and III of the Complaint should be dismissed.

D. Plaintiffs cannot state a claim against the Commonwealth Defendants since they are not personally involved in the challenging process.

The Plaintiffs allege that their rights under the First and Fourteenth Amendments are being violated by the application of § 2937 to them.

Assuming *arguendo* that this is true, Defendants have no involvement in the matters complained of. Objections to nomination papers are filed with the

¹¹ Comity also requires that it accept the factual determinations made by the Commonwealth Court in Nader and Romanelli unless vacated by the Pennsylvania Supreme Court or the United States Supreme Court. To the extent that Plaintiffs are attempting to use this case to collaterally attack those decisions, this Court should abstain from involving itself in those cases. See Guarino v. Larsen, 11 F.3d 1151, 1156-57 (3d Cir. 1993) ("Just as federal courts should presume that pending state court proceedings can correctly resolve federal questions, they should also presume that completed state court proceedings have correctly resolved these questions"). In particular, it is unclear why the criminal charges brought by the Office of Attorney General regarding the misappropriation of funds in connection with the filing of objections to the nomination papers in the Nader and Romanelli cases would negate the decisions reached by the Commonwealth Court. In any case, the resolution of that issue is best left to the state courts. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). More importantly, it is difficult to see any relevance that the allegations regarding criminal activity surrounding the 2004 and 2006 elections have to the filing of nomination papers for future elections and whether the possible imposition of costs and fees by the judiciary would constitute a violation of the plaintiffs' constitutional rights.

Commonwealth Court by third parties. Defendants do not initiate a hearing on objections and do not participate as a party in those matters.

In order to bring a claim pursuant to § 1983, the official sued must have some type of personal involvement in the matters complained of. See Rouse v. Plantier, 182 F.3d 192 (3d Cir. 1999); Rizzo v. Goode, 423 U.S. 362 (1976).

Although Defendants Aichele and Marks are the Commonwealth officials with primary responsibility over the administration of the Election Code, determinations regarding objections to nomination papers, and the granting of costs pursuant to § 2937 are matters delegated by statute exclusively to the judiciary. The principles governing the separation of powers, the independence of the judiciary, and due process would surely be violated if Defendants could simply ignore or override the Pennsylvania Supreme Court's interpretation of the meaning of § 2937 or the factual determinations made by the Commonwealth Court.

Accordingly, all claims that the Commonwealth Defendants have violated the constitutional rights of the Plaintiffs by the possibility of the judiciary's imposition of costs and fees against them pursuant to § 2937 should be dismissed.

IV. CONCLUSION

For the foregoing reasons, the Amended Complaint should be dismissed and the case closed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kevin R. Bradford, hereby certify that the Motion to Dismiss Plaintiffs’ Amended Complaint has been filed electronically on October 14, 2014 and is available for viewing and downloading from the Court’s Electronic Case Filing System (“ECF”). The following parties are listed as ECF Filing Users and are therefore automatically served by electronic means:

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